
ODR Developments Under a Consumer Perspective: The Italian Case

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The topic of ADR has been a longstanding concern with Altroconsumo. We have made extensive statements on this traditional consumer policy issue closely linked to the access to justice regarding, for instance, various European Commission initiatives² as well as different law proposals still pending in the Italian Parliament³. We also favor online dispute resolution (ODR) since we consider that cyberspace can become a privileged space for small claims resolutions especially on e-commerce disputes but not limited to them.

The formal legitimation of ODR in the Community legal system comes from article 17 of the Directive 2000/31/EC on e-commerce. Such Directive has been implemented in Italy by Decree n. 70/2003, but after two years from its coming into force ODR systems are regrettably not yet commonly known and used in our Country.

In the meantime the advent of convergence and digitalisation together with the diffusion of large band has proved to be very important factors for the development of the information society in terms of benefits for the single citizen-user as well as for the State system. This new technological situation requires, on the other hand, an always greater attention to consumers' protection in the virtual environment.

If five years ago space and time barriers dematerialization could have been partially considered an empty e-commerce slogan typical of those periods of new economy boom, nowadays such technological developments seem to be able to endow concrete opportunities for consumers in many cases. Take just online supermarkets, online auctions, and distribution of music and cinema digital contents via Internet. For those same reasons a consolidation of legal certainty as well as of safety in transactions are indeed urgently needed in this sector. As an example, it does not appear any more acceptable that, like it happened in the last two years, a large part of the revenues in the e-commerce sector is attributable to the pervasive phenomenon of high amounts that Italian users found in telecom bills because of unintentional Internet connections provoked by programs of automatic access to for paying services, the so called "dialers"⁴, that very

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often hidden in a file .exe self installing, disconnect the pc from the provider to which the user is normally connected for connecting it to a different provider with very high costs. And all this happened without any possible form of quick and agile redress being put at the disposal of the unfortunate users in order to get back the amount of money abusively extorted.

Altroconsumo considers that, in a desirable operation aimed at strengthening in our Country consumer's confidence in the virtual environment, there would be today realistically an important role to play also for ODR systems.

There are actually three possible patterns of development for ODR in Italy:

1. Chambers of Arbitration and Chambers of Commerce that, as in the case of Risolvionline, institute ODR services⁵, provided that, making the best of a scale economy, while costs of access to the procedure stay low the system manage to handle a large number of cases;
2. Regional Committees for Communications (CORECOM), functionally administrated by the Italian Authority for telecommunication (AGCOM) and delegated to manage the compulsory attempt of mediation actually in force by law in the telecommunication sector⁶, provided that the procedure actually too heavy and bureaucratic become more agile, this implying also the introduction as soon as possible of the possibility to handle it online, on the basis of what is already prescribed in the Code of Electronic Communication;
3. The joint ADR model, developed on the basis of agreements and protocols between the most important consumers associations and undertakings or associations of undertakings, designed with a commission composed by two mediators, one representing consumers and the other the undertaking, which are asked to reach an agreement on a possible solution proposal of the dispute that the consumer will have the possibility to accept or not.

Such model first implemented in 1992 within the protocol between Telecom Italia (SIP at that time), and the consumers associations has been

thereafter applied to other sectors of consumer interest such as postal services, insurances, energy services and has covered during these years the absence in Italy of institutional ADR bodies operating in the consumers sectors of interest, managing a considerable number of disputes with appreciable results.⁷ Today the joint ADR model adjourned and responding to the principles of the European Recommendations (impartiality, transparency, effectiveness and fairness)⁸ is opening to the first ODR experiments⁹.

Notes

1. Altroconsumo, with more than 280.000 members, is the most representative Italian consumers association and is the unique Italian member of BEUC (Bureau Européen des Unions de Consommateurs).
2. We refer to the EEJ-NET Project launched by the Commission on 2001 and recently merged with the Euroguichets network, to the Green Paper on alternative dispute resolution in civil and commercial law and, finally, to the draft Directive on mediation.
3. See, for all: " Disposizioni per la promozione della conciliazione stragiudiziale " , Pending law proposal n. 5492.
4. In the AGCOM decisions n. 327-328-329/04/CONS, sanctioning three telecom operators for violations happened from January to August 2003 of those sorts, it is possible to read that the total revenues amount to more than 200 million Euros. See more in detail on the AGCOM web site www.agcom.it
5. Risolvionline (www.risolvionline.it) was launched by the Chamber of Arbitration of Milan in 2001 and, since then, has received 89 cases. The Chambers of Commerce of Roma, Firenze and Bari have already activated ODR services similar to Risolvionline.
6. Altroconsumo is against this and any other form of compulsory mediation. Indeed imposing a mandatory ADR onto the consumer would be equal to barring access to justice, and would therefore violate the European Convention of Human Rights and the Charter of fundamental rights of the European Union. If consumers do not want to use mediation, for whatever reason, the option to bring the case to courts should

remain widely open. The characteristic of ADR procedures, and perhaps the key to their success, is indeed that they are processes voluntarily entered into by the parties, with outcomes that are non-binding if the parties so wish. Compulsion of ADR could also lengthen disputes for which the consumer has made up his mind in favor of court proceedings, as he would have to undergo the mediation first.

7. For what it concerns the mediation scheme Telecom/consumers association, only in 2004 there were 1625 applications of which 1290 actually solved.
8. We refer to Recommendations 98/257/CE and 2001/310/CE.
9. A first example is the procedure launched by the mobile telecom operator TIM in 2004. See it here:
http://www.azienda.tim.it/az_dettaglio/0,,39_9863,00.html

