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CONSOM 195
EJUSTICE 96

DECLASSIFICATION

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Subject: UNCITRAL Online Dispute Resolution
- Comments from the Polish delegation

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

from :	the Polish delegation
to :	Working Party on Civil Law Matters (General Questions)
No. prev. doc.	15977/13 JUSTCIV 259 CONSUM 194 EJUSTICE 95
Subject :	UNCITRAL Online Dispute Resolution - Comments from the Polish delegation

1. The Polish delegation shares the general objective of ensuring the UNCITRAL ODR arrangements' consistency with *Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC* (Regulation on consumer ODR) as well as with *Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC* (Directive on consumer ADR).

2. We continue to assume that binding arbitration clause should not be possible prior to the entry of the parties into a dispute. Also, taking into account the multi-stage nature of ODR proceedings the consumer should be aware that the transfer from one stage of proceedings occurs even if no action is taken by him/she (automatically). This information should be clearly communicated to the consumer and probably repeated in the messages sent to the parties. We also understand that binding nature of settlement, where it has been previously so agreed with the consumer may not abolish the possibility, based on limited grounds, existing under national law, of bringing the settlement to a common court.

3. As regards Article 4A (Notice) para. 4h (doc. WP.123) it seems quite open. We understand this provision does not impose an obligation to use a qualified electronic signature as this could be cumbersome for the consumers.

4. We have some doubts as regards Article 9.2 (Arbitration) (doc. WP.123). We recognize that in some cases the possibility given to the arbitrator to reverse burden of proof might play in favour of the consumer. However, this provision should be better drafted in order to avoid such decisions having detrimental effects on the consumer.

5. As regards Article 12.1. (Language of proceedings) (doc. WP.123) we support ADR directive solution providing for the obligation of each ODR provider to have its list of available languages to be used in the proceedings. The parties should choose the language prior to agreeing on initiating the proceedings. Otherwise we fear, that the ODR operator might be able to impose the language on the consumer considerably weakening his/her standing in the proceedings.