



Council of the
European Union

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JUSTCIV 104
CONSOM 79
EJUSTICE 38

DECLASSIFICATION¹

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Subject: Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the United Nations Commission on International Trade Law and its Working Group III regarding the negotiation of a legal standard on online dispute resolution for cross-border electronic commerce transactions
- Adoption

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

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

¹ Document declassified by the European Commission on [...].



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THE EUROPEAN UNION**

Brussels, 2 May 2013

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NOTE

from: Presidency

to: Coreper/Council

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Subject: Proposal for a Council Decision on the position to be adopted, on behalf of the
European Union, in the United Nations Commission on International Trade
Law and its Working Group III regarding the negotiation of a legal standard on
online dispute resolution for cross-border electronic commerce transactions
- Adoption

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the United Nations Commission on International Trade Law and its Working Group III regarding the negotiation of a legal standard on online dispute resolution for cross-border electronic commerce transactions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The United Nations Commission on International Trade Law (UNCITRAL) is a body established by and subordinate to the General Assembly of the United Nations. Its mandate is to further the progressive harmonisation and modernisation of the law of international trade by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law;

- (2) The Union has enhanced observer status within UNCITRAL. This entails the right to participate in the deliberations and debates and to present positions of the Union and its Member States, *inter alia*, by exercising the rights to speak, to reply and to present proposals and amendments. The right to vote is reserved to the members of UNCITRAL. Currently, eleven Member States of the Union are members of UNCITRAL;
- (3) At its 43rd session (New York, 21 June-9 July 2010), the UNCITRAL Commission assigned its Working Group III to undertake work in the field of online dispute resolution (ODR) relating to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions. In December 2010, Working Group III started its work on the preparation of a legal standard on ODR for such transactions. Since then, draft rules for a standard ODR procedure (the "ODR Rules") have been discussed. The ODR Rules would apply by agreement of the parties to a cross-border low-value, high volume transaction conducted by means of electronic communication;

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- (4) On 29 November 2011, the Commission adopted two legislative proposals that aim to establish rules in the field of alternative dispute resolution (ADR) and ODR: a proposal for a 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)¹ and a proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR)². A political agreement on the adoption of both legislative instruments in early 2013 was reached in December 2012³. The European Parliament adopted its position at first reading on both proposals⁴ on 12 March 2013. This position was approved by the Council on 22 April 2013⁵. The rules established by the impending European legislation on ADR and ODR are common rules within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union;
- (5) The ODR Rules discussed at the level of UNCITRAL overlap with the impending European legislation on ADR and ODR and may affect it or alter its scope;
- (6) The objective of the position of the Union within UNCITRAL is to ensure that the ODR Rules are devised in a way that is compatible with the Union's common rules and furthers their objectives while not affecting them or altering their scope.

¹ COM (2011) 793 final.

² COM (2011) 794 final.

³ See document 17514/2/12 REV 2 CONSOM 157 MI 818 JUSTCIV 355 CODEC 2987.

⁴ See documents 7217/13 CONSOM 33 MI 182 JUSTCIV 51 PE 113 CODEC 514 and 7218/13 CONSOM 34 MI 183 JUSTCIV 52 PE 114 CODEC 515.

⁵ See documents 7700/1/13 REV 1 CODEC 633 CONSOM 51 MI 221 JUSTCIV 65 OC 158, 7700/13 ADD 1 REV 2 CODEC 633 CONSOM 51 MI 221 JUSTCIV 65 OC 158, PE-CONS 79/12 CONSOM 163 MI 852 JUSTCIV 381 CODEC 3130 OC 773 and 7701/1/13 REV 1 CODEC 634 CONSOM 52 MI 222 JUSTCIV 66 OC 159, PE-CONS 80/12 CONSOM 164 MI 853 JUSTCIV 382 CODEC 3131 OC 774.

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union in the negotiations of a legal standard on online dispute resolution for cross-border electronic commerce transactions in the framework of the United Nations Commission on International Trade Law (UNCITRAL) and its Working Group III shall be as set out in the Annex.
2. The Commission shall present the Union position.
3. Member States shall support the Commission in presenting the Union position.
4. The Commission will keep the relevant Working Party of the Council informed of the implementation of this Decision. The relevant Working Party of the Council shall be convened whenever further guidance on the decisive elements of the position adopted by this Decision is appropriate.

Article 2

This Decision shall take effect on the day following that of its adoption.

Article 3

This decision is addressed to the Commission and to the Member States.

Done at Brussels,

For the Council

The President

- (1) The overarching objective of the Union in relation to the negotiations of a legal standard on online dispute resolution for cross-border electronic commerce transactions in the framework of UNCITRAL and its Working Group III is to seek to ensure that the ODR Rules contribute to the development of electronic commerce for the benefit of consumers and traders world-wide and in the Union while complying with the Union's *acquis* and policy, including in the field of consumer protection.
- (2) The Union shall take the following position regarding the conception and wording of the ODR Rules at the future meetings of the UNCITRAL Commission and its Working Group III and in any related preparatory process:
 - (a) Support proposals that seek to ensure the full respect of the Union *acquis* and Member States' legal traditions;
 - (b) Not support any proposals in so far as they may affect Union common rules or alter their scope, in particular prejudice the principles, the objectives and the effective and efficient application of the impending Union Directive on consumer ADR and Regulation on consumer ODR;
 - (c) Support proposals that seek to ensure that the ODR Rules also reflect the realities of ADR and ODR in the Member States, thus allowing European consumers, traders and ADR entities to fully use and benefit from the ODR framework envisaged by the UNCITRAL initiative;
 - (d) In particular, support proposals that seek to ensure that the ODR Rules allow not only for a process ending in an outcome that is final and binding, but also for other procedural pathways (...);

- (e) In particular, not support proposals that seek to provide binding solutions in ADR/ODR rules without a due information and consent of the consumer relating to the binding nature of the solution;
- (f) In particular, support proposals that seek to ensure that the ODR Rules respect that in some jurisdictions (as under the impending Union Directive on consumer ADR) pre-dispute agreements to submit the dispute to an out-of-court procedure which leads to a final and binding outcome that excludes the consumer's subsequent access to the courts are not binding on the consumer;
- (g) Support proposals that seek to ensure that the ODR Rules remain open towards the establishment of and the interoperability with regional ODR platforms like the European ODR platform to be established under the upcoming Union Regulation on consumer ODR.

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