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Consumer confidence in E-commerce.

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INTRODUCTION

The whole Internet environment is fairly young and new but still, electronic commerce has grown exponentially over the last few years, although mainly in the business-to-business sector. The expectations are that in the very near future business-to-consumer commerce will follow suit.^[1]

However, for some reason these expectations have not been fully met. The B2C branch still has to find a place in the market, in the heart of the consumers, and thus in the GDP figures. In fact, the consumer still seems rather slow to adopt the new ways of e-commerce.

There seems to be a consensus among the different parties involved that this reluctance is largely due to the lack of confidence consumers experience when confronted with Internet business. And although this distrust may in part be stirred up by the coverage of some incidents by the media (or by the Internet community itself), several studies and reports have pointed out that there is sufficient ground for the potential e-consumer to show caution before engaging in an e-commerce transaction. [2]

In this study, we will examine a few of the solutions that have been suggested to remedy this lack of confidence and thereby to establish a secure and trustworthy marketplace. The (possible) solutions we will consider more or less cover the different stages of commercial transaction on the Internet. In a pre-contractual phase, the consumer needs to be assured of the business' aptitude and reliability. This assurance could be offered by means of trust seals schemes, evaluated in the first part of this paper. Once engaged in e-commerce, the consumer's confidence will be strengthened when he knows his dealings over the Internet are secure and when he can rely on a form of insurance if the transaction went wrong. These issues are described in the second part. Finally, no matter what guarantees had been offered, the possibility remains of a dispute arising from the way the contract was performed. E-commerce disputes, when addressed in the traditional courts, are likely to be very difficult to settle. The Internet environment however, can offer ways of alternative dispute resolution on-line. This aspect will be discussed in the third part of the paper.

1. THE 'TRUST SEAL' OR 'SEAL OF APPROVAL'

A number of so-called 'trust seals' have appeared on the market in the last years. In America, the concept has been used since a few years back. In Europe however, it is still a rather new concept and many of the different projects are in their infancy. In this paper, we will consider three different trust seals projects that have been initiated in Europe recently. The first one is the Which? Webtrader project in the UK. Second the Trusted Shops in Germany and finally E-handelsfonden (the E-trade foundation) in Denmark. All three projects offer a trust seal programme but there are quite a few differences, for example in the form of organisation or funding.

1.1. The 'trust seal' concept

The seal of trust is provided by an organisation that maintains a list of reliable companies. A company who wants to be included in the list has to comply with certain conditions. The major condition is to comply with a code of conduct consisting of different kinds of obligations. Once the conditions are met, the company is allowed to display the organisation's 'seal of trust' logo type on its website.

It is assumed that the consumers will feel secure if they see a 'seal of trust' on a website. This sense of security will hopefully result in the consumer engaging in e-commerce with the vendor.

Often, the 'seal of trust' programme also includes some other function, such as a consumer insurance programme (Trusted Shops) or an on-line dispute resolution programme (Which? Webtrader). These other functions will be dealt with in the second and third parts of this paper.

1.2. Codes of conduct

The code of conduct the companies have to approve consists of different legal and moral obligations. Among the usual obligations are those about the quality of the information given on the website, the ordering process, the protection of privacy and of minors, the withdrawal from a transaction,

payments and deliveries. EC and national law however, already cover most of these obligations. Our estimation is that 85-90% of the obligations are covered by legislation. The other obligations are mostly of rather insignificant nature and may vary between the different organisations.

1.3. The different organisations

The organisations studied in this paper were chosen because of their differences in funding, structure and aims. They are also among the most established organisations in Europe. The Which?Webtrader scheme is run by a UK consumer organisation and it combines a 'seal of trust' programme with an on-line dispute resolution function (through mediation). It receives support and funding from the EU and the scheme has partner organisations in six other European countries.[4] These organisations and schemes are similar to Which? Webtrader (also originating from national consumer organisations) but the codes of conducts they use may vary. Moreover, a European network for cross-border complaints is in the making.[5] The Webtrader programme approximately has 1,300 approved e-businesses on its UK list.

The Trusted Shops scheme (Germany)[6] is operated as a joint operation between a German insurance company, the Gerling insurance group, and Impact Business & Technology Consulting. Their 'seal of Trusted Shops Guarantee' also includes a reimbursement guarantee for the on-line shoppers provided by the insurance company. The scheme also handles consumer complaints and has a 24-hour hotline for problems and disputes. The EU also supports this operation. Recently, Trusted Shops have extended their operation to the UK. They are planning to expand the operation to other European countries as well. Today, they approximately have 120 approved companies on their list. They forecast a massive growth and estimate that they will have 1,200 approved companies by the end of the year.

The E-handelsfonden[7] is a joint operation by the Danish government, consumer organisations and industry. The 'seal of trust' programme is combined with a consumer complaint handling function. It states clearly that it is only intended for the national market and has no ambition to expand its operation abroad. There are 22 approved companies at its list at the moment.

	Which? Webtrader	Trusted shops	E-handelsfonden
Organisation and Funding	Consumer organisation. Partly funded by EU	Joint venture: Gerling Insurance Group and Impact B&T Consulting	Joint operation by Danish government and interest groups. Funded by the Danish government
Obligations (not provided for by law)	Demands on the quality of the information on the website.	Rather high demands on encryption and other security matters.	Demands on the quality of the information on the website.
Spreading	UK. International partners in the Netherlands, Italy, Belgium, France, Spain, Portugal and Greece.	Germany and UK Plans to spread to France, Scandinavia, Benelux, Austria, Switzerland	Denmark

1.4. A short evaluation of the code of conducts

A conclusion that could be drawn after studying the different codes of conduct is that the approach used is influenced by the nature of the organisation. The language and method used in the Danish

code of conduct is very close to the ones used in legislation. The fact that the Danish government is deeply involved in the project might explain this effect. The German version could be compared to legal conditions in a business contract and the English version is written in a rather straightforward way. The simplicity in the English version makes it quite easy for the consumer to get a general idea of the concept. But a more legal analysis could find it lacking in clarity and it is unclear what legal effect it will have if it was challenged in court. The effect of the Danish version could be quite the opposite. The future may tell which method is the most effective.

1.5. The benefits

The greatest advantage of 'seal of trust' schemes is that they are easy to understand for the consumers. They can make consumer protection more accessible for the consumer. Presumably, a consumer is more likely to comprehend and trust a code of conduct, than to find his way through the jungle of EC and national consumer protection legislation. Even if legislation already provides for 85-90% of the obligations, the companies have agreed on additional demands to be imposed upon them. These extra guarantees will affect the consumers' rights in a positive way.

On the business side, trust seal programmes are a very cost effective method for a company that wants to enhance its reputation. Consumers will, hopefully, feel assured that the company who has been awarded a 'seal of trust' is a reliable and trustworthy e-business. Moreover, it can be useful for an unknown company from abroad who wants to establish itself in a new market. A 'seal of trust' from an organisation known to the consumers in the new market, could make way for a successful market introduction.

1.6. Potential problems

Of course, there are a few areas where problems may arise. The obligations provided by the code of conduct should not be overestimated. The additional obligations are, as said before, of a rather insignificant nature. Actually, one could claim that the only thing the companies who engaged in the scheme, have promised is that they intend to comply with the law.

Another problem is that at this point, the consumer awareness of the 'seal of trust' programmes is quite low. If the consumer does not know about the scheme, the seal is in vain.[\[8\]](#)

Again, the growing number of different 'seals of trust' could also prove counter-productive as this might confuse the consumer.[\[9\]](#)

In the US, another issue was raised, concerning the independence (or lack thereof) of the trust seals programme (in this case, a privacy seal). This occurred in the Geocities case.[\[10\]](#)

Geocities were found to breach the privacy rules set out in the code of conduct of the TRUSTe programme. TRUSTe however did not take any significant action against Geocities. Some claim that the reason for this was that TRUSTe was too dependent on Geocities membership fee.[\[11\]](#)

There is a risk of similar situations occurring in Europe if the organisations are not financially independent.

1.7. Conclusion

It is too early to give a fair judgement on the effectiveness of the 'seal of trust' programmes. The future will show just how good they are but it is a good initiative that could provide the consumer with enough confidence to consider e-commerce as an alternative for conventional commerce.

For the moment, it is also too early to say which organisation and method of funding is preferable. An answer, at this stage, to such a question will most likely depend on one's political opinions and views on the role (and level of interference) governments must take up in the e-commerce environment. Anyhow, the experience gained in the programmes investigated above may give us some directions which formula is the best one.

The current situation gives consumers the opportunity to choose which form of organisation he or she prefers to trust. But it takes a rather big effort from consumers to gather and evaluate the information about the different organisations in order to make up their mind. Nevertheless, two provisional conclusions could be drawn at this early stage. The first is that the organisation has to be financially independent in respect of the companies that are awarded a trust seal. This is essential to convince the consumer of its neutrality and reliability. The other conclusion is that the organisation probably needs an international dimension in order to promote confidence for E-commerce in Europe. The Danish project seems very ambitious and thorough but is limited in size and potential since it does not intend to expand its operations across the Danish borders.

It is, however, essential that the trust seal be combined with other functions such as insurance, reliable ADR, effective enforcement and a good legal framework. The 'seal of trust' is not enough by itself but is a possible ingredient in the recipe for enhanced consumer confidence in European E-commerce.

2. INSURANCE FOR E-CONSUMERS.

Accessing a B2C website does not automatically involve buying the proposed goods. The further critical step of actually ordering and paying for the goods is a much more involving act. In France, for instance, the number of visitors purchasing goods on-line was evaluated in 2000 at only 0.5% of those accessing the website.

In order to increase this percentage, some solutions have been suggested. We will briefly deal with the security of the on-line payment and then focus on the insurance policies available to the e-consumer.

2.1. Securing on-line payments

Both technical and legal solutions have been implemented at a European level to reassure the e-consumer. A number of websites now employ either the Secure Sockets Layer (SSL) or the Secure Electronic Transaction (SET) protocol for payments. These protocols define the secured zones where the consumer can safely leave his credit card details. The credit card issuing company Visa also offers the solution of the smart card reader, a small encryption device plugged into the computer,^[12] which allows the consumer to pay securely.

Furthermore, the consumer is protected by legal texts. For example, the European Directive on electronic commerce^[13] provides guidelines for the formation of on-line contracts.

However, no technical measures can offer absolute security for they can always be overcome by hackers. And the legal procedures in the event of a dispute are cumbersome and time and money consuming, without guaranteeing a favourable outcome. (The issue of alternative - and faster - dispute resolution will be dealt with in part 3 of this paper.)

Moreover, the consumer is not really familiar with all these aspects of e-commerce. Studies show that he seeks a more secure, friendly and common way of dealing with the problems he encounters while shopping on-line.

2.2. E-insurance policies

Three different types of insurance are currently provided to the European e-consumer: cover for the hacking of the credit card details, for problems with the goods ordered (non delivery, delivery of a deteriorated or 'incomplete' product) and for problems with reimbursement after a return of the goods.

Most consumers seem to think that their credit card issuer covers any fraud involving their credit card number. Actually, Visa insures only the American e-customers. For European customers, the insurance provided is up to the bank issuing the credit card. Eurocard/Mastercard also left the matter up to the issuing banks. Fortunately, extra insurance is available for European customers from both insurance companies and B2C e-businesses themselves.

Indeed, a few European trust seal companies, associated with insurance companies, provide some protection. Depending on the organisation, the modalities of the e-insurance are quite different. In this study, we will especially focus on the German Trusted Shops and the French Fia-Net.com programmes. Then we will deal with the insurance policies issued by leading B2C websites, handling the cases of Amazon.com and eBay.com.

Trust seal insurance policies

As discussed above, only a few European trust seals programmes^[14] also provide insurance for the consumers. Moreover, the scope of the guarantees available from the trust seals is quite heterogeneous.

The German Trusted Shops scheme, operated by Gerling Insurance, is an example of a trust seal company providing an extra guarantee. It proposes free insurance of a broader scope for consumers shopping within its trust sealed area. The consumer involved just has to specify he wants to benefit from Gerling's money-back guarantee after his purchase on the merchant website. He can benefit from the insurance for the following problems:

- non-delivery of goods ordered within 30 days;
- non-refund of advance payment within 30 days after return of goods according to the retailer's policy;
- fraudulent use of credit card details up to £50, if the fraud can be traced back to a transaction with one of the certified retailers.

By insuring the actual process of delivery of goods, Trusted Shops deals with the object of the contract effectively as a traditional mail order retailing transaction. Moreover, Gerling's position as a professional 'traditional' (off-line) insurer guarantees that users have a 'physical' company to rely on. Finally, by being economically responsible for the good functioning of the shops it recommends, Trusted Shops shows the broad confidence it has in its trusted merchants and makes the 'seal' a real label of trust.

However, insurance for the misuse of credit card numbers seems very narrow compared to the potential scope of the fraud. Furthermore, one of the conditions for this guarantee is that the fraud has to be "traced back to the credit card's use in an on-line transaction covered by the guarantee." This will certainly involve a thorough investigation. Will a possible fraud case really be investigated for a maximum £50 reimbursement?

The French Fia-Net.com is another 'trust seal' provider. Just like Trusted Shops, it is also a free

insurer specialised in specific risks and related to an established company, Axa insurance.

The scope of its insurance policy is very broad. A purchase on one of its trust seal websites automatically provides the following guarantees:

- A guarantee against the hacking of credit card details that can be traced to a transaction on one of the associated websites: the consumer is insured up to 50,000 French francs (a bit less than £5,000) for any misuse of the credit card anywhere.
- For any commercial dispute involving an e-retailer, Fia-Net's legal department will assist the e-consumer to help him to get reimbursed.
- On certain trusted auction websites, Fia-Net reimburses both buyer and seller in case of fraud or non-delivery or deterioration of goods.

In other words, in case of shopping on a trusted website, the e-consumer is fully insured. Moreover, no registration is required to take advantage of this help and all Internet users can potentially be insured no matter what their nationality is. Fia-Net goes even further in that it also provides some help to the consumer in case of problems with non-trusted websites. In case the e-consumer is not sure that his credit card number has been hacked on one of the trusted websites, Fia-Net will use its influence with the consumer's bank to bring his claim to a successful conclusion.

So is Fia-Net the universal insurer of e-consumers?

Tests done by the magazine "60 millions of consumers" actually limit quite narrowly the scope of the policy: Fia-Net would actually refund the consumers only if their credit card numbers have been used on the websites within its 'trust seal'; otherwise, it would only 'assist' them in their actions without any reimbursement...

Insurance offered by e-commerce businesses

Interestingly, the 'trust seal' lists do not include the world leading business-to-consumer websites. These have their own insurance policies, which differ slightly depending on the countries involved. This paper will focus in particular on the UK, France and Germany.

Amazon.com Safe Shopping guarantee only covers the misuse of credit card details. The scope of this guarantee is different for different countries.

Amazon.co.uk only covers consumers up to £50 if they can prove that the fault does not lie with them for the unauthorised use of their credit card number (i.e. they have left it within a secured zone). Amazon.fr provides no insurance at all as the French law forces the banks established in France to fully cover the risk of credit card number fraud. Amazon.de provides the same guarantee as the British subsidiary up to 100 DM along with further insurance for returned goods worth more than 40 EUR.

The European consumer is therefore differently protected depending on which European subsidiary he purchases the goods from. It is certainly worth having a look at the scope of these policies before shopping and taking the maximum guarantee available.

The auction website eBay acts as a platform where seller and buyer can deal on-line and directly achieve an agreement. The payment is agreed between the two parties and does not go through the website. Consumers seem to be quite reluctant to bid on-line. On-line auctions are ranked by the (US) National Fraud Statistics as, by far, the most common credit card fraud venue: in 2000, they accounted for 79% of the Internet fraud.[\[15\]](#)

eBay wants to reassure both buyer and seller. The scope of the measures it provides is therefore quite broad. Besides the insurance, it implements a number of procedures: two different forms of ADR, investigation procedures and a way of checking the reliability of the parties.

eBay automatically and freely insures the buyer in the two following cases: the goods do not arrive or the goods that arrive are significantly different from the goods described in the contract. The amount of the insurance is quite broad and harmonised following the different European subsidiaries of eBay: respectively up to £120.00, up to 400.00 DM up to 1,500 FF in the UK, Germany and France.

2.3. Conclusion

Along with measures securing the on-line payment, different insurance policies are proposed to the European customer. A B2C website like Amazon merely provides a complement to the national customs. It insures the consumer up to a certain amount, assuming that the banks should cover additional amounts. Auction platforms like eBay propose far broader regulations to reassure the consumer: the buyer is insured in case of problems with the goods but the seller must cover himself.

These insurance policies are aimed at keeping the confidence of the e-consumer: Amazon and eBay are indeed some of leading dot.com companies in terms of use.

The insurance provided by 'trust seal' companies is in general broader than one offered on a B2C website. It deals with both the protection of payment means and the object of the contract, i.e. the delivery of the goods. As they are independent from the B2C websites and related to well-known firms, they are probably more likely to reassure the e-consumer.

3. ALTERNATIVE DISPUTE RESOLUTION

In the third and last stage of an e-commerce transaction, the consumer might have some complaints concerning the performance of the contract. There may have been problems with the delivery of the ordered goods or services or with the payment. The question is if and how he will be able to get redress or compensation for such contractual shortcomings.

Several elements complicate the handling of consumer complaints and the settlement of disputes in the e-commerce environment. First of all, since the location of the establishment of either the consumer or the business is difficult to determine on the Internet, any dispute will raise jurisdictional issues concerning which court will be competent to decide the case and according to which law. This kind of issues is not exclusive to e-commerce as they might occur in every transborder dispute. Still, the advent of the Internet and e-commerce has increased the (potential) number of non-professional individuals to be confronted with these difficulties considerably.

Moreover, even if the problems of jurisdiction could easily be overcome, the low value of many of the e-commerce transactions will rarely justify taking a dispute to court.^[16]

The cost of traditional courtroom dispute settlement (compared to the low value of the transaction) and the often long duration of the proceedings or the need for professional advice leaves the e-consumer in a rather precarious situation when a dispute arises. This insecurity does not really inspire confidence in the electronic marketplace. In fact, it may very well deter consumers from e-commerce altogether.

For that reason, it is necessary to come up with a way of settling consumer disputes in a way that is more adapted to the e-commerce environment. On-line alternative dispute resolution (or ADR) could

offer this solution.

3.1. Definition

Basically, the term 'out-of-court dispute settlement' or 'alternative dispute resolution' refers to all means of resolving disputes without having recourse to litigation for redress.

There are different types of ADR, in the off-line as well as in the on-line environment. Usually, ADR systems are classified in four main categories:[\[17\]](#)

- Arbitration is the most formal type of out-of-court dispute settlement: parties choose one or more neutral persons to whom they present their dispute for a (usually) binding decision.

- Mediation/Conciliation aims to reach a voluntary settlement of the dispute with the help of a third party.

- Consumer complaints boards or ombudsmen proceedings are schemes to handle consumer complaints, set up by consumer, trade or industry organisations or by public authorities.

- Internal business customers' complaint handling refers to company policies to establish and maintain 'customer satisfaction'. This may take the form of a guarantee scheme (the customer gets assurance about the safe delivery of the goods or services) or a money-back guarantee. [\[18\]](#)

Each type of alternative dispute resolution has its own characteristics, advantages and disadvantages. It is however important to stress that there is no need for a 'unification' of ADR schemes: each type of settlement scheme responds to a specific type of dispute. The question whether the parties involved want a final and binding settlement or not, the complexity of the dispute, the cost implications will lead to the choice of a certain ADR programme.

Of course, similar forms of dispute settlement have always been used by parties who for some reason did not want their dispute to be dealt with in a conventional court. The advantages of these out-of-court proceedings are the specialisation and expertise of the arbitrators, the confidentiality, speed and 'cost-effectiveness' of the procedure, etcetera.

For e-commerce disputes, on-line ADR has the additional advantage that the technology enables parties located at opposite sides of the world to settle their disagreements. More important, e-commerce allows for the business to provide a dispute resolution mechanism along with the goods and services offered, in a 'one stop shopping' sort of way. This might inspire more confidence with the customer than the abstract idea of possible redress in court.

3.2. Jurisdictional issues

The advantages for e-dispute settlement are clear: 'seating' the dispute resolution body in cyberspace allows the parties in a transborder conflict to circumvent the issue of determining which court should hear the case.

In the same way, on-line ADR can solve the issue of the applicable law for these transborder disputes. Since parties agree to turn to a certain (established or to be established) ADR body to solve their dispute, they have the opportunity to specify which laws or regulations this body should found its decision on.

The basis on which the out-of court bodies can found their decisions is broad enough. As the European Commission Recommendation states, they "may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct." [\[19\]](#)

But the choice of these three 'sources of law' (i.e. legal rules, equity and codes of conduct) is not entirely free, at least not for e-commerce within the European Union. The recital in the Recommendation continues, "this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts."^[20]

This means that in the European Union, (national and Community) consumer protection legislation will always need to be taken into consideration in the choice of law for the ADR programme.^[21]

At this point, it is not clear to what extent consumer protection law may interfere with the ADR choice of law for e-commerce with non-European countries (as to this date, most e-businesses are located in the United States).

Although such a statement is difficult to prove at this stage of the development of e-commerce and on-line ADR, the use of equity as a basis for decisions may prove to be a very important factor for e-commerce dispute resolution. Especially in the field of low-value business-to-consumer-commerce, it is likely to be the best guarantee for a swift and just handling of the dispute. And since equity will take into consideration the weaker position of the consumer as opposed to the business, the outcome of the dispute will probably approximate the rules of consumer protection legislation.

The third legal source for ADR consists of codes of conduct. The European directive on electronic commerce urges the national governments to encourage the drawing up of these codes by trade, industry, professional and consumer organisations.^[22]

It is however essential for the legal security of the ADR scheme that these codes be clear and easily accessible.^[23]

The distinction between the different types of ADR - whether they are on-line or off-line - comes into play in the choice of the applicable law by the ADR body. Mediation services have no real recourse to legal rules in order to come to a solution, because they do not really decide a case: they merely try to induce parties to come to a solution. Therefore, mediators will explore the parties' respective interests and goals, rather than their legal rights.^[24]

The rules applied by arbitration schemes will largely depend on the motives behind the parties' decision to submit their dispute in the first place. If the main reason for choosing arbitration was the expertise of the arbitrator or the confidentiality of the proceedings, it may be left onto the arbitrator to decide which rules to apply. Alternatively, parties can also describe the applicable law very precisely in their arbitration agreement.

As has been mentioned before, the customer complaints programme will most likely work on an equity basis, although these boards very often do not impose decisions, but mostly act as an intermediary between business and consumer, trying to find a solution that is satisfactory for both parties.

3.3. Fair and effective redress mechanisms

Different institutions and organisations have drawn up a list of principles, requirements and criteria which ADR programmes should comply with.^[25]

The goal of these rules^[26] is to ensure the fair and effective means of redress for the parties concerned.

However, the balance between fairness and effectiveness is a difficult one to strike. It is obvious that the more procedural or other obligations are imposed on the ADR body to safeguard a 'fair trial', the

more elaborate the proceedings will become, thus putting at risk the speed of the ADR programme.

A similar difficulty is encountered with the cost criterion. All parties concerned seem to agree on the fact that ADR services should be free or at a low cost for the consumer. But offering a free ADR scheme might have an impact on the quality and the independence of the scheme.

If an e-commerce business needs to set up a free-of-charge ADR scheme on its own, or pay a fee to participate in an existing programme, it might be inclined to economise on the quality of the programme (by employing, for example, less qualified personnel). On the same level, the impartiality of the ADR body might be affected if it is solely the company that finances the ADR.

In the end, a company can be forced to opt for either fairness (in the form of a fully equipped ADR programme) or effectiveness (by establishing a speedy and cost free, but maybe less reliable scheme).

3.4. Networking as a means to improve the effectiveness of ADR

Initiatives have been taken to broaden the scope of some ADR mechanisms. Complaint boards schemes, especially when they have been put together by trade organisations or consumers associations, will often have a limited reach as far as competence is concerned. Their competence will in many cases be limited to complaints concerning a particular trade or industry or coming from their country of origin.

A possible solution for this lies in the networking of these different bodies in a more global context. By connecting these mechanisms cross-border, the scope of their actions can be extended and their service to the customer improved.[\[27\]](#)

Early 2000, the European Commission issued a working document on the creation of the European Extra-Judicial Network or EEJ-Net.[\[28\]](#)

The basic goal of the EEJ-Net is to facilitate the filing (and solving) of transborder consumer complaints, by enabling easy access to out-of-court dispute settlement organisms in the European member states (where the business is located). To do so, a single contact point, a 'Clearing House', is established in every member state. The consumer can contact the Clearing House, either for information about possibilities for redress in the country where the business is located or to get support in filing a complaint with the competent ADR body.

The Clearing Houses gather information about the national ADR programmes which they certify as being compliant with the Commission's recommendations for out-of-court dispute settlement and function as an advice and support service for transborder consumer complaints.[\[29\]](#)

The Webtrader-programme is managed by the independent consumer organisations of several European countries and is co-funded by the European Commission. Besides the trust seal scheme, mentioned in the first part of this paper, it offers an arbitration programme for subscribing enterprises in the countries involved.

3.5. Conclusions

The possibility for a commercial transaction to turn out badly is not necessarily greater in the electronic marketplace than in the 'real world'. However, disputes in the e-commerce environment raise a number of challenges, incorporating all the complications of transborder legal disputes and

adding a few more.

On-line ADR may provide a solution for these disputes, but there still are a lot of difficulties and unanswered questions to make ADR work for e-commerce. In an individual case, finding a solution for a dispute may still prove to be very troublesome, but from a larger perspective, these difficulties are not really unusual because after all, e-commerce and on-line ADR are completely new concepts and their evolutionary process has only just begun.

It might be interesting to see what solutions the Internet (business) community can come up with to offer a fair and effective way of resolving e-disputes. One of the characteristics of the Internet and e-commerce is their flexibility and aptitude to adapt quickly to new challenges and changing environments.

Because in spite of all the buzzwords and pep talk that surround the whole concept, there is something new to on-line ADR. For the first time, an easily accessible form of competition is available in the field of 'legal' redress and conflict/complaint handling. Arbitration has existed for a very long time, but it never has been a real contender for the courts system. It has always been too much for specialists, too complicated, aiming too high for an ordinary customer complaints dispute.

On-line ADR has the potential to be a contender in this field, not so much for the courts - because the difficulties surrounding e-disputes in traditional courts will probably put off complainants - but to enter into competition with other programmes offering similar services.

As an on-line ADR scheme will become more of a competitive commercial element, e-businesses will start to show off with their redress policies, just as we see privacy policies appear as attempts for e-consumers. In this way, an elimination process may start for those mechanisms that do not succeed to satisfy both businesses and consumers. Its origins and development may be a bit unusual, but if on-line dispute settlement reaches that stage (of leaving both parties more or less satisfied), then this must come close to what is otherwise referred to as a 'fair trial.'

On-line alternative dispute resolution might solve some of the 'old' problems concerning transborder legal disputes for the e-commerce context, but it has produced new ones along the way. These new problems mainly originate from the attempt to adapt more traditional redress mechanisms to a new environment, the Internet. Maybe, if all the parties concerned - businesses, consumers and governments - are given enough credit, they might come up with new solutions as well, resulting from the experience of a competing market.

4. CLOSING COMMENTS

As it has been stated in the introduction, the Internet and especially e-commerce are quite new phenomena. Therefore, it cannot be expected that at this point, consumers embrace it as enthusiastically as some commentators would like. Still, several initiatives have been undertaken that might strengthen the consumer's confidence in e-commerce. Most likely, there is not one single solution, either for attracting more consumers to engage into e-commerce or for resolving the problems he or she might encounter. Establishing (and keeping) consumer confidence is a case of many factors, of many ingredients...

The ingredients examined in this paper - trust seals, e-insurance and ADR - have the advantage of being relatively easy to implement for the businesses and easy to understand and use for the consumer. For that reason, these concepts deserve some credit: the experience businesses and consumers will gain in e-commerce will or will not prove their worth.

[1] In 1999, e-commerce accounted for 2 to 3% of retail in the U.S. In Europe, it was 0.2%, although

some countries approximated the American percentage. Estimates are that in two or three years, e-commerce will take up to 5% of retail ciphers. (Source: OECD - Jonathan Coppel, author, "*E-Commerce: Impacts and Policy Challenges*", Economics Department Working Papers No. 252, June 2000,

[http://www.oelis.oecd.org/olis/2000doc.nsf/linkto/eco-wkp\(2000\)25](http://www.oelis.oecd.org/olis/2000doc.nsf/linkto/eco-wkp(2000)25)

[2] Cybersource.com conducted a survey on the (potential) consumer's perception of on-line fraud (http://www.cybersource.com/fraud_survey)

[3] <http://www.which.com/webtrader>

[4] Netherlands, Belgium, Italy, France, Spain and Portugal.

[5] The European Extra-Judicial Network (EEJ-Net), see the European Council Resolution on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes, Brussels, May 11th 2000, [

http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just07_cr_en.pdf

[6] <http://www.trustedshops.org>

[7] www.e-handelsfonden.dk

[8] Pichler, Rufus. Trust and Reliance - Enforcement and Compliance: Enhancing Consumer Confidence in the Electronic Marketplace. <http://www.law.stanford.edu/library/special/rufus.thesis.pdf>

[9] Hopkins, Alison. Electronic Commerce, a study produced for Health & Consumer Protection Directorate General. http://europa.eu.int/comm/dgs/health_consumer/events/event17w2_en.html

[10] <http://www.nytimes.com/library/tech/98/08/cyber/articles/13geocities.html>

[11] <http://www.spectacle.org/998/mccarthy.html>

[12] This feature can also be implemented in certain mobile phones.

[13] Directive 2000/31/EC of the European Parliament and of the Council of June 8th 2000 on certain legal aspects of Information Society services in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce), Common Position (EC) No. 22/2000, EU O.J. C 128/32 of 08/05/00, http://europa.eu.int/comm/internal_market/en/media/electcomm/com31en.pdf

[14] See also part one of this study.

[15] <http://www.fraud.org/internet/lt00stat.htm>

[16] Currently, small amounts purchases of compact discs, books, software and the like still take up the majority of B2C e-commerce. To illustrate this point, in 1999, two thirds of e-commerce retail in Australia was taken up by purchases of £200 or less. (OECD - Jonathan Coppel, author, "*E-Commerce: Impacts and Policy Challenges*", Economics Department Working Papers No. 252, June 2000, [http://www.oelis.oecd.org/olis/2000doc.nsf/linkto/eco-wkp\(2000\)25](http://www.oelis.oecd.org/olis/2000doc.nsf/linkto/eco-wkp(2000)25)

[17] European Commission Joint Research Centre (Marc Wilikens, Arnold Vahrenwald, Philip Morris, authors), "*Out-of-court dispute settlements systems for e-commerce. Report of an exploratory study*", April 20th 2000, p. 4-7 <http://dsa-isis.jrc.it/ADR/Reportv20apr.pdf>

[18] These schemes differ from the previous category in the fact that they do not include the involvement of a third party, and that maybe they operate more out of a commercial than a legal disputesolving concern.

[19] European Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, recital 19
http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just02_en.html

[20] Ibidem. A similar viewpoint is adopted in the OECD guidelines: "[C]onsumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce." (OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, December 1999, part 2 - General principles, I (and IV, A), <http://www.oecd.org/dsti/sti/it/consumer/prod/guidelines.htm>)

[21] Cfr. European Commission Joint Research Centre (Arnold Vahrenwald, author), "Out-of-court dispute settlement systems for e-commerce. Report on legal issues. Part II: The protection of the recipient", May 29th 2000, <http://dsa-isis.jrc.it/ADR/legalrep.html>

[22] Directive 2000/31/EC of the European Parliament and of the Council of June 8th 2000 on certain legal aspects of Information Society services in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce), Common Position (EC) No. 22/2000, EU O.J. C 128/32 of 08/05/00, article 16
http://europa.eu.int/comm/internal_market/en/media/eleccomm/com31en.pdf

[23] E-commerce directive, article 16, 1c, also supported by the GBDe (GBDe Paper, Global Business Dialogue on Electronic Commerce, *Alternative Dispute Resolution Paper*, September 2000, <http://www.gbde.org/library/adr.doc>)

[24] U.S. Department of Commerce and the Federal Trade Commission, Summary of June 6-7th 2000 Public Workshop hosted by the U.S. DOC/FTC, "Alternative Dispute Resolution for Consumer Transactions in a Borderless Online Marketplace", November 2000, p.4
<http://www.ftc.gov/bcp/altdisresolution/index.htm>

[25] European Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes,
http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just02_en.html

- U.S. Department of Commerce and the Federal Trade Commission, Summary of June 6-7th 2000 Public Workshop hosted by the U.S. DOC/FTC, "Alternative Dispute Resolution for Consumer Transactions in a Borderless Online Marketplace", November 2000,
<http://www.ftc.gov/bcp/altdisresolution/index.htm>

- [Global Business Dialogue on Electronic Commerce (GBDe),] *Alternative Dispute Resolution Paper*, September 2000, <http://www.gbde.org/library/adr.doc>

- [Trans Atlantic Consumer Dialogue (TACD),] "Alternative Dispute Resolution in the Context of Electronic Commerce Recommendation", February 2000, <http://www.tacd.org/ecommercef.html#adr>

These recommendations were compiled in the run-up to the conference on ADR, jointly organised by the OECD, the International Chambers of Commerce (ICC) and the Hague Conference on Private International Law. See .

http://www.oecd.org/dsti/sti/it/secur/act/Online_trust/online_trust_workshop.htm

[26] For example, the European Commission, who was the first to come up with a recommendation for "the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes." proposed seven principles:

- independence of the third party;
- transparency (provision of information about the ADR programme, the cost of the procedure, the legal value of the outcome of the procedure);
- adversarial principle (parties must be heard);
- effectiveness (a simple, fast and low-cost procedure, giving an active role to the deciding body);
- principle of legality (the consumer is always entitled to the protection provided by the laws of the state where the ADR body is located or, in cross-border cases, of the mandatory law in his state of residence);
- principle of liberty (an out-of-court settlement decision may only be binding if the parties were informed about this and agreed to it);
- principle of representation (parties cannot be deprived of the right to be represented or assisted if they wish to).

(European Commission Recommendation 98/257/EC.)

[27] An overview of a few projects can be found in the JRC Exploratory study report, p.23-29 (see footnote 17)

[28] European Commission Working Document on the Creation of a European Extra-Judicial Network (EEJ-Net), SEC(2000) 405,
http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just07_workdoc_en.pdf
[This was confirmed by the European Council Resolution on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes, Brussels, May 11]th 2000,
http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just07_cr_en.pdf

[29] The European Commission's website offers information about the national Clearing Houses and about the different participating ADR bodies
http://europa.eu.int/comm/consumers/policy/developments/acce_just/index_en.html