

<b>Institution: University of Leicester</b>
<b>Unit of Assessment: School of Law</b>
<b>Title of case study:</b> Improving non-judicial redress mechanisms for European online consumers
<p><b>1. Summary of the impact</b></p> <p>The growth of online purchasing, often across borders, is increasing in tandem with the number of disputes. With the aim of increasing trust in e-commerce, the EU and the UN have acknowledged the need to promote redress mechanisms that are suited for this forum. Through his work in this area, Dr Pablo Cortés has assisted in the drafting of EU legislation that strengthens the rights of half a billion consumers in the EU by guaranteeing the availability and online access of quality alternative dispute resolution (ADR) mechanisms for settling contractual disputes between consumers and traders. The legislation, approved in 2013, ensures the availability of quality ADR schemes, which will be accessible to European complainants through an Online Dispute Resolution platform.</p>
<p><b>2. Underpinning research</b></p> <p>E-commerce offers immense challenges to traditional dispute resolution methods as it entails parties often located in different parts of the world making contracts with each other at the click of a mouse. Conflicts arising from a typical purchase on eBay (e.g. a photographic camera that never arrives or that is damaged) are almost never resolved in the courts because the cost of bringing such claims would outweigh the value of the dispute, especially so when the parties are located in different jurisdictions. Therefore, the use of traditional litigation for disputes arising in this forum is often impractical, time-consuming and expensive, particularly for settling low-value cross-border disputes.</p> <p>Cortés (lecturer at Leicester from 2008 and senior lecturer from 2012) researches the effectiveness of informal, out-of-court dispute resolution, commonly known as Alternative Dispute Resolution (ADR), when complemented with Information and Communications Technology tools. More specifically his research (3.1-3.5) shows how the law could guarantee standards of due process in Online Dispute Resolution (ODR) methods (such as arbitration, mediation, negotiation and ombudsman schemes accessible online) and proposes the development of incentives to promote ODR systems that can instill trust in consumers' online transactions.</p> <p>Cortés has provided (3.1) an in-depth account of the potential of ODR for European consumers, offering a comprehensive and up to date analysis of the development of ODR. The monograph's unique contribution was the discussion on best practices for ODR providers that resolve consumer-to-business disputes arising from e-commerce. It recommended the drafting of a European Regulation and included a blue-print with the legal standards that ODR providers should have in order to become accredited by public authorities. It argued that the accreditation and monitoring of ODR mechanisms are necessary to close the gap between the potential of ODR services and their actual use. Accordingly, the book concluded that if ODR systems were to realise their full potential in the resolution of e-commerce disputes and in the enforcement of consumer rights, they must be grounded firmly on a European regulatory model. His monograph has informed the European Commission and the UN Commission for International Trade Law (UNCITRAL), which realised that an effective framework for online redress would in turn enhance the competitiveness of online trade. Similar conclusions have been reached by eBay-PayPal which, acting as a neutral third party, resolves over 60 million disputes a year between buyers and sellers. Empirical research by eBay has demonstrated that buyers who resolved their disputes in a short period of time subsequently enter into more transactions than those who have not had any disputes during the same time period. This research also found that sellers prefer to lose a case quickly than to spend weeks on a dispute that they eventually win.</p> <p>Cortés' research also expanded outside the regional approach, examining ODR systems that</p>

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operate internationally, where one of the parties lives outside the EU. More specifically he has conducted research on how to instil consumer protection measures that are compatible with the EU approach to consumer protection (3.2). Cortés has acted as an expert for the UN (UNCITRAL Working Group III) during the drafting of ODR rules, the goal of which is to address effectively cross-border disputes of low-value that arise from e-commerce (3.2).

### 3. References to the research

Funding: Principal Investigator (€22,000) European Commission Tender n° SANCO/2011/B4/005 concerning the provision of consultation services regarding the development of common criteria for Online Dispute Resolution (July 2011 to February 2012).

#### Key Publications:

1. P. Cortés, *Online Dispute Resolution for Consumers in the European Union* (Routledge, 2010) pp. 266.
2. P. Cortés and F. Esteban, 'Building a Global Redress System for Low-Value Cross-Border Disputes' (2013) 62(2) *International Comparative Law Quarterly* 407-440.
3. P. Cortés, 'Improving the EU's Proposals for Extra-judicial Consumer Redress' (2012) 23(2) *Computers and Law* 26-29.
4. P. Cortés, 'Developing Online Dispute Resolution for Consumers in the EU: A Proposal for the Regulation of Accredited Providers' (2011) 19(1) *International Journal of Law and Information Technology* 1-28.
5. P. Cortés, 'A European Perspective on Consumer Online Dispute Resolution' (2009) 15(1) *Computer and Telecommunications Law Review* 90-100.

### 4. Details of the impact

The main impact of Cortés research arises from the development of policy and law that enhances the out-of-court redress options available to consumers, particularly for those who participate in the digital market from where a huge number of disputes arise. Cortés main contribution comes from a tender that he won from the European Commission, the goal of which was to assist the Commission in the drafting of two legislative proposals: (i) the Directive 2013/11/EU on Consumer Alternative Dispute Resolution (ADR) and, (ii) the Regulation 524/2013 on Consumer Online Dispute Resolution (ODR). The deliverables of this consultation service were the writing of a report advising on the European Commission on legal provisions that should be included in the proposed legislation as well as on the viability of its implementation. Following on from this, Cortés not only assisted in the drafting of the Regulation, but also provided feedback, commentary and suggested wording for the Directive, informed by the research he had conducted in preparing his monograph (3.1). He provided overall direction for the team (Prof Fernando Esteban de la Rosa, Universidad de Granada, and Prof Julia Hornle, Queen Mary, London) with whom he co-authored the report that was submitted to the European Commission in three stages. Cortés also commented directly on the working legislative drafts and participated in many email exchanges, telephone conferences, and various face to face meetings in Brussels with the members of the European Commission in charge of drafting the above legislative texts. The final report has 167 pages and was distributed by the European Commission to the European Parliament and the European Council (5.7).

Cortés was also invited in 2012 to speak in the European Parliament (EP) as one of four experts at a public hearing in front of the MEPs of the IMCO Committee (Internal Market and Consumer Protection), which considered the EP amendments to the proposals published by the Commission. His presentation and slides are available online on the EP website (5.2). He was also interviewed by the MEP Rapporteur for the ODR Regulation, Róza Gräfin, who was in charge of introducing the amendments in the EP. Many of the amendments proposed by Cortés (5.2) were later introduced by the EP and the European Council as well as in the recommendations made in an independent

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report commissioned by the EP (5.2). Cortés is now in the UK Government Department of Business, Innovation and Skills (BIS) list of stakeholders, whose role is to advise the UK government in the implementation of the Directive on Consumer ADR into domestic law.

When the European Commission issued its Impact Assessment Working Paper, which justified its decision to legislate in this particular area, it specifically referenced Cortés' monograph (3.1); this was the only academic output cited in the Working Paper (5.1). The Irish Law Commission also referenced his monograph in its report on Alternative Dispute Resolution (5.5).

The Head of Unit B4 Financial Services and Redress stated "*Mr Pablo Cortes was contracted during 2011 and 2012 by the European Commission to provide consultation services regarding the development of common criteria on Online Dispute Resolution. His work has been considered, amongst other inputs, during the preparatory phase of the legislative proposal on Online Dispute Resolution.*" (5.3) Many of the recommendations made by Cortés can be traced from his monograph, to the report, and to the legislative texts. In general, the conclusions of his monograph (calling for the drafting of a European Regulation on ODR to ensure quality standards for ADR and ODR providers) have been clearly reflected in the EU legislation –see preambles and both articles 1 of the ADR Directive and the ODR Regulation (5.6).

Further examples of Cortés' recommendations being adopted vis-à-vis increasing awareness, regulating best practices, and encouraging the growth of ODR systems within the EU include:

- The need to increase awareness of ODR (Arts. 1 of the ADR Directive and ODR Regulation).
- Accreditation of ADR/ODR providers (Art. 19 of the ADR Directive).
- Consumers should access ODR for free or at a low-cost (Art. 8 of the Directive; and Art. 5(2) of the Regulation).
- Requirements for third neutral parties (Arts. 6-9 of the Directive).
- The involvement of the European Consumer Centres (ECC-Net) and the European Commission in managing the ODR Platform and ensuring compliance of ODR providers (Art. 14 of the Directive and Art. 7 of the Regulation).
- Privacy and user information (Recital 29 and art. 17(4) of the Directive).
- Submission of reports to the ECC-Net (Art. 19 of the Directive).

The impact of Cortés' research has also been reflected through his invitation to collaborate with UNCITRAL Working Group III which, similarly to the EU, is contributing to the development of the legal framework for the promotion of ODR mechanisms. Here again, his monograph prompted an invitation from UNCITRAL to become a member of an expert-group. He assisted UNCITRAL during the first drafting process of procedural rules suitable for resolving low-value cross-border disputes arising from e-commerce. The expert group meeting took place at the UN in Vienna from the 28 February to 1 March 2011. Cortés also attended a plenary meeting in New York in May 2011 with all the delegations of UNCITRAL and participated as an expert, in the category of observer and member of the NGO The Internet Bar Organisation. He additionally participated in many group-telephone conferences with various delegations (i.e. country-representatives) of UNCITRAL (5.4). His main contribution has been assisting in the drafting of UN ODR rules that are compatible with the EU approach to consumer protection, thereby strengthening the extrajudicial redress options of European consumers, making it easier for those making online purchases from any website (not just from eBay) to enforce their legal rights.

**5. Sources to corroborate the impact**

1. Commission Staff Working Paper Impact Assessment [SEC(2011) 1408 final] (p. 17, fn. 54) See [http://ec.europa.eu/consumers/redress\\_cons/docs/impact\\_assessment\\_adr\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/impact_assessment_adr_en.pdf)
2. European Parliament public hearing (29.02.2012). His presentation and slides are available at the following link of under the caption of Dr Cortes:

<http://www.europarl.europa.eu/committees/en/imco/subject-files.html?id=20120424CDT43871> which informed the IMCO Study by H. Micklitz and G. Sartor, "Assessing the Scope of European Online Dispute Resolution Platform" pp. 13-19 (15.03.2012) Available at:  
<http://www.europarl.europa.eu/committees/en/imco/studiesdownload.html?languageDocument=EN&file=72871>

3. Head of Unit B4, Financial Services and Redress, Directorate General for Health and Consumers, European Commission.
4. Head of the Legislative Branch UNCITRAL Secretariat and President of the Internet Bar.
5. Irish Law Reform Commission Report on Alternative Dispute Resolution: Conciliation and Mediation (LRC 98-2010). Available at:  
<http://www.lawreform.ie/fileupload/Reports/r98ADR.pdf>
6. Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes OJ L165/63 and Regulation 524/2013 on Online Dispute Resolution for Consumer Disputes OJ L165/1
7. European Commission, DG for Health and Consumers "Study on the Development of Common Criteria for Online Dispute Resolution" 167pp. Final Report prepared by P. Cortés, F. Esteban and J. Hörnle, Consultation Services DG SANCO/2011/B4/005 (31 January 2012) available on request.