

TACD

TRANS ATLANTIC
CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

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JURISDICTION ON CROSS-BORDER CONSUMER CONTRACTS

1. Consumers must have access to adequate redress if problems arise after buying goods and services on the Internet. Given the "virtualization" and "de-territorialization" of electronic commerce (e-commerce), new complex questions arise as to which courts and which laws should apply to the transactions.
2. If consumers have to go to court in case of a problem they must have the right to take action before their own national courts. Depriving consumers of access to their own courts in practice is denying them their right to redress.
3. In most e-commerce transactions, consumers already bear a disproportionate risk because business requires pre-payment (for example by credit cards). The supplier will therefore rarely have any reason to want to sue the consumer.
4. Efficient access to courts can obviously not be the only means to ensure that consumers get redress in e-commerce transactions. The typical small value consumer transaction will not be treated by courts. We urgently need alternative dispute resolution schemes, where consumers can file in an easy, cheap and effective way their complaints without going to court. However, it is essential, that in the last event access to courts is possible for the consumer. A framework for international jurisdiction in cross-border consumer transactions is needed.

Recommendations for principles on jurisdiction on consumer cross-border contracts in e-commerce:

- The consumer is entitled to bring an action against business before a court in the consumer's home country;
- The consumer can only be pursued before a court in the consumer's home country;
- A choice of forum clause in a consumer contract is not enforceable;
- Execution of a judgement rendered in a foreign country
- Acknowledgement and effective enforcement of foreign judgements which have been rendered in the consumer's home country must be guaranteed;
- The costs and the time involved for cross-border execution must be reduced.

Further initiatives needed:

- Out-of-court settlement procedures for consumer litigation must be put in place to facilitate redress;
- Model contracts and international common standards should be developed, which will render conflict rules less important;
- Third-party certification systems should be established;
- International communication/cooperation should be improved.

Resolved:

1. The TACD urges the European Commission and member state governments and the US government, to ensure that the currently negotiated International Convention on Jurisdiction and the Enforcement of Judgements (The Hague Convention) provides the consumer with the right to sue business before the courts of the consumer's country of residence in e-commerce transactions.
2. Furthermore the TACD urges the Council of the European Union to adopt without delay the proposed EC regulation on jurisdiction and the enforcement of judgements in civil and commercial matters.