

Online Dispute Resolution Scheme for E-Commerce: The ASEAN Perspectives

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In the age of information and communication technology, the Internet has become a new channel for meeting and social interaction of people all around the world, and e-commerce transactions are increasing radically worldwide. At the same time, disputes arising from such transactions are also increasing and these disputes are often difficult to deal with. Hence, policymakers and regulators, both at regional and international levels, are working to provide an appropriate redress scheme for disputes arising from e-commerce transactions, particularly those related to consumer rights and consumer protection. This paper is an investigation rather than an analytical study: it aims to examine the e-commerce-related online consumer protection in the Association of Southeast Asian Nations (hereinafter: ASEAN) and introduce the online dispute resolution mechanism of ASEAN for facilitating the development of e-commerce. The paper also reviews the rules of the UNCITRAL and of the EU regarding online dispute resolution for online consumer protection to help understand international perspectives.

Keywords: Online dispute resolution, consumer protection, ASEAN ODR, EU ODR, UNCITRAL

1. Introduction

E-commerce is a radically new pattern of conducting commercial activities, and it is potentially a significant force to increase economic growth and strengthen development around the world. It has established international trade through the sale of related goods and services and brought traders and consumers from around the world together in a virtual marketplace. The global e-commerce is projected to grow at a rate of twelve percent annually from 2015 and expected to maintain until 2020. By contrast, bricks-and-mortar-based retailing will only grow at the rate of two percent over the same period.¹

In the age of digitalization in the 21st century, electronic commerce is an essential engine for global economic growth. It helps increase productivity across sectors of economies, further promote both trade in goods and services and investment, and creates new jobs, new sectors of activities, new forms of marketing and selling as well as new revenue streams.² However, with the growth of e-commerce and the increasing use of e-commerce worldwide, there seems to be an increase in electronic transaction disputes too, especially disputes arising from cross-border e-commerce which concern the protection of consumers and their rights.³

¹ A. Bourlier & G. Gomez, *Strategies for Expanding into Emerging Markets with E-Commerce*, Euromonitor International, 2016, p. 1. https://unctad.org/meetings/en/Contribution/dtl-eWeek2017c08-euromonitor_en.pdf (18 November 2019).

² European Union - United States: Joint Statement on Electronic Commerce, *International Legal Materials*, Vol. 37, No. 3, May 1998, pp. 667-668.

³ SEC (2011) 1408 final, p. 20.

An example of this concern is apparent in the European Union, revealed by the Digital Single Market consumer survey (DSM survey): most problems with purchases online were not remedied, and even where the problems were addressed it was likely that they would not result in a satisfactory solution for the consumer.⁴ Indeed, when disputes arise from electronic transactions, cross-border proceedings can turn out disproportionately costly and lengthy, and even where a judgment was obtained in the consumer's favor, costs and effort are required to enforce it against the trader. Furthermore, the litigation possibility in foreign courts and differences in the laws applicable to the contract also make businesses abstain from engaging in cross-border electronic transactions.⁵ These issues could become a barrier to e-commerce development. Hence, it is necessary for policy-maker and businesses to provide an appropriate redress mechanism for dealing with disputes arising from e-commerce transactions. At the moment, online dispute resolution (ODR) seems to be one of the most appropriate mechanisms for dealing with disputes arising from such e-commerce transactions. It can help parties resolve disputes in a simple, fast, flexible, and low-cost method without requiring a presence at a meeting or hearing.⁶

ASEAN, like other regions, is embracing opportunities from the growth of innovation and technology. It has recognized the information and communication technology as a significant driving force for its regional integration and economic growth.⁷ In the last decade, ASEAN has brought prosperity and wealth to the region through innovation and technology.⁸ Despite this, ASEAN would not be able to achieve a dynamic economy development and a people-oriented, people-centered ASEAN without strengthening the framework of the consumer protection which is also strategy set by the ASEAN Economic Community (hereinafter: AEC) for 2025. Therefore, the protection of consumers as an essential part of the AEC 2025 strategy has a significant role in enhancing an effective, efficient, modern, and fair marketplace in the AEC.⁹

Recognising this, ASEAN developed its dispute resolution mechanism to build ASEAN citizens' confidence in domestic and cross-border transactions in order to promote e-commerce development and ensure the protection of consumers within the region. At this sectoral level, the strategic measures were further refined into specific initiatives and activities by the ASEAN Strategic Action Plan for Consumer Protection 2025 (hereinafter: ASAPCP 2025). Strategic Goal 3 of ASAPCP 2025 foresees among others the setting up of the ASEAN Regional Online Dispute Resolution (ODR) mechanism, including national ODR systems; an ASEAN ODR network; and an ASEAN mechanism for cross-border complaints and investigations.¹⁰

⁴ For information about the survey, see https://ec.europa.eu/info/files/obstacles-digital-single-market-final-report_en (5 April 2020).

⁵ COM (2015) 192 final, pp. 16-17.

⁶ U. Jeretina, *Consumer Online Dispute Resolution (ODR) – As a key cultural change – Mechanism For Innovative Public Administration in EU*, Central European Public Administration Review (CEPAR), 2018, p. 6; See UNCITRAL Technical Notes on Online Dispute Resolution, United Nations, 2017, para 2. See also P. Sengpunya, *Regional Online Dispute Resolution Mechanism: the EU Perspective*, Arsboni, 29 November 2019. <https://arsboni.hu/regional-online-dispute-resolution-mechanism-the-eu-perspective/> (24 December 2019);

⁷ See Review of E-commerce Legislation Harmonization in the Association of Southeast Asian Nations, UNCTAD, 2013, p. iii.

⁸ See ASEAN ICT Master Plan 2015, p. 6.

⁹ ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, June 2018, p. vii.

¹⁰ See the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016-2025: *Meeting the Challenges of a People-Centered ASEAN Beyond 2015 – Appendix - Summary of the Strategic Goals and Initiatives/Targets*, 2016.

1. Online Dispute Resolution for E-Commerce at International Level

In this digital age, the Internet has become a new channel for meeting and social interaction of people all around the world¹¹, and it has also become an important platform for commercial activities that introduce e-commerce in both business-to-business (B2B) and business-to-consumer (B2C). E-commerce has become a significant driving force for cross border trade in all regions around the world since it removes geographical barriers to international trade and opens up new marketplaces.¹²

With the increasing electronic activities and interaction online, the number of disputes between people is rising at the same time both domestically and across borders. These disputes arising from the online sphere are usually a concern of the use of e-commerce, the business-to-consumer (B2C) in particular.¹³ And the disputes arising from e-commerce can be difficult for courts to deal with because of several reasons such as questions as to the applicable law; the high volume of claims; differences between the litigation for high cost transactions and the claims for low value transaction; and the difficulty of enforcing foreign judgments.¹⁴ For this reason, the demand for ADR is increasing exponentially around the world, especially ODR, which is a fast, efficient, flexible, and inexpensive mechanism for handling e-commerce, both the domestic level and cross borders.

1.1. United Nations

By recognizing the increase of cross-border e-commerce worldwide and noting the need for appropriate mechanisms for dealing with disputes arising from e-commerce transactions, the United Nations Commission on International Trade Law (UNCITRAL) decided to undertake work on Online Dispute Resolution (ODR) at its forty-third session held on 21 June-9 July 2010 in New York. It established a Working Group III to embark on developing online dispute resolution mechanisms relating to cross border e-commerce transactions, including B2B and B2C.¹⁵

1.1.1. UNCITRAL Technical Notes on Online Dispute Resolution

In 2016, the UNCITRAL adopted a non-binding document at its forty-ninth session namely the UNCITRAL Technical Notes on Online Dispute Resolution (hereinafter: Technical Notes)¹⁶ aiming to enhance ODR development; and to support ODR platforms, ODR administrators, neutrals, and the parties of the relevant ODR proceedings.¹⁷ The Technical Notes embodies an ODR processes model, in which it encourages the ODR system to represent the following principles:

- a) Impartiality;

¹¹ S. E. Mustafa & A. Hamzah, *Online Social Networking: A New Form of Social Interaction*, International Journal of Social Science and Humanity, Vol. 1, No. 2, July 2011, p. 67.

¹² L. Chen & F. Kimura (Eds.), *Regional Online Dispute Resolution System ASEAN*, Routledge, New York, 2019, p. 4.

¹³ R. V. Cupido, *The Growth of E-Commerce and Online Dispute Resolution in Developing Nations: An Analysis*, IJEME, Vol. 10, No. 10, 2016, pp. 3371-3374.

¹⁴ L. D. Duca & C. Rule, & Z. Loebel, *Facilitating Expansion of Cross-Border E-Commerce - Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems – Work of the United Nations Commission on International Trade Law)*, Penn State Journal of Law and International Affairs, Vol. 1, No. 1, 2012, p. 62-63.

¹⁵ Official records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17), para. 257.

¹⁶ UNCITRAL Technical Notes on Online Dispute Resolution, United Nations, 2017, pp. iii – vii.

¹⁷ Technical Notes, para. 3.

- b) Independence;
- c) Efficiency;
- d) Effectiveness;
- e) Due process;
- f) Fairness; and
- g) Accountability and transparency.¹⁸

The Technical Notes intend to assist the structure and framework of an ODR system for resolving disputes arising from online cross-border purchase of low-value products, and they do not intend to promote any ODR practice as the best practice.¹⁹ The Technical Notes consist of 12 sections and 53 articles, and their characteristic features²⁰ can be clarified as followings:

- a) They reflect approaches to ODR systems that embody fundamental principles for ODR;
- b) They are designed for use in disputes arising from cross-border, low-value electronic transactions concerning B2B or B2C;
- c) They are a non-binding instrument; they are a descriptive document. They do not intend to be exclusive or exhaustive, nor to be used as rules for any ODR proceeding;

1.1.2. UNCITRAL ODR Package Model

The package model for ODR considered by the UNCITRAL consists of three stages: negotiation, facilitated settlement, and arbitration.²¹ According to the package model under the Technical Notes, the ODR process takes part when an unhappy party submits a claim through the ODR platform to the ODR administrator, and the ODR administrator notifies the respondent of the existence of the claim and the claimant of the response.

Under the UNCITRAL ODR system, in the negotiation stage, the disputed parties directly negotiate with each other through the platform operated by the ODR provider using electronic communication without any intervention of a third party as a neutral person.²²

If that negotiation process fails, the parties may move to a second stage – a facilitated settlement. In the facilitated settlement stage, an intervention of a neutral third party takes place as the ODR administrator appoints a neutral adjudicator for communicating with the parties and attempt to support the parties to reach a mutually acceptable settlement.²³

If the dispute remains unresolved, the process may move to the third and final stage – arbitration. In this final stage, the case is decided by an impartial neutral person, and the decision of this award

¹⁸ Technical Notes, para. 4.

¹⁹ Technical Notes, para. 5.

²⁰ Technical Notes, para. 4-6.

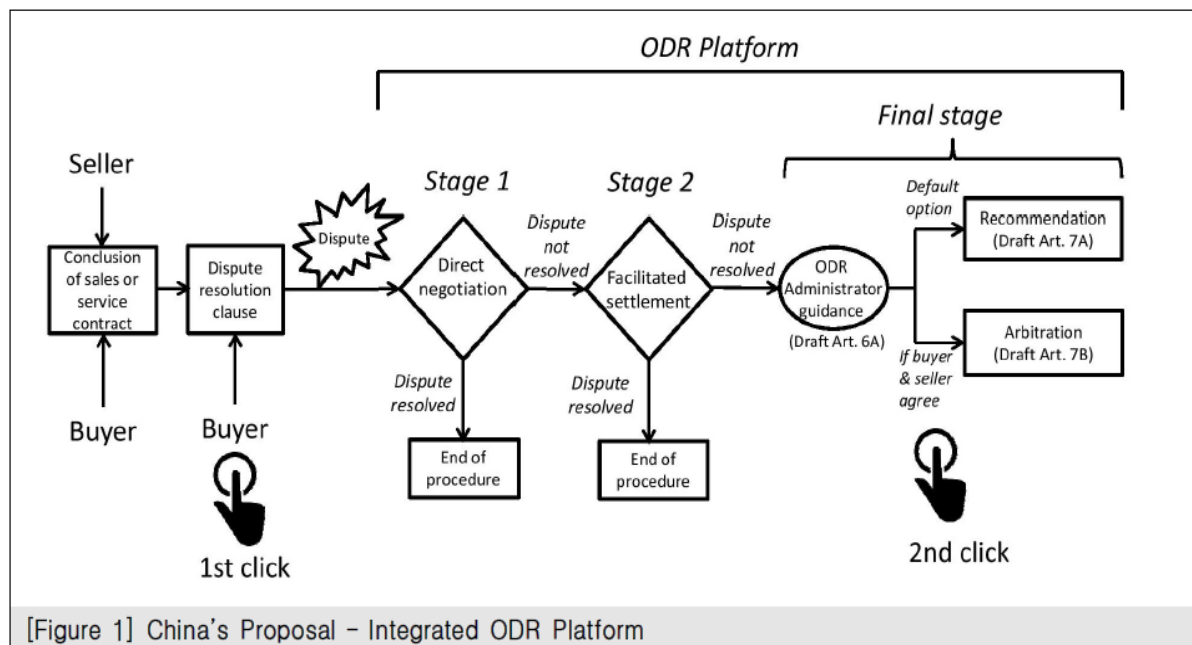
²¹ Technical Notes, para. 18.

²² Technical Notes, para. 19.

²³ Technical Notes, para. 20.

is enforceable.²⁴

The following figure shows the three stages of the ODR process proposed by China and promoted by UNCITRAL:



(Source: A/CN.9/827, p. 14)

The UNCITRAL ODR package is expected to be a significant model which can assist national legislators to adopt their ODR platform. It is deemed to significantly contribute to the ODR systems development to enable online settlement for disputes arising from cross-border low-value electronic transactions, which will significantly help all countries, especially developing countries and countries in transition of economies, to ODR proceedings in developing and using ODR systems²⁵

1.2. European Union

To facilitate cross-border e-commerce and to strengthen consumers' trust when shopping online is one of the political priorities of the European Commission in the framework of the EU internal market.²⁶ The EU considers cross-border e-commerce and consumers' trust in online transactions a vital part of the Commission's Digital Single Market strategy. Hence, the EU considers promoting access to efficient and effective redress mechanisms through ADR/ODR procedures as one of the key segments to achieve the Digital Single Market strategy.

1.2.1. Policy Background and Legal Framework

At first, the EU consumer ADR policy was addressed through non-binding standards and sec-

²⁴ S. Bae, *A Study on ODR Enforcement for Disputes Arising from Cross-border E-Commerce: Focusing on the UNCITRAL and EU*, the e-Business Studies, Vol. 17, No. 5, 30 October 2016, p. 173; and see also Technical Notes, para. 21.

²⁵ Resolution adopted by the General Assembly on 13 December 2016 (A/RES/71/138), paras. 7-8.

²⁶ COM (2017) 744 Final, Brussels, 13.12.2017, p. 1.

tor-specific legislation, where the Member States were required to encourage or ensure access to out-of-court redress.²⁷ In May 2010, the EU announced a strategy to improve the ADR system, including ODR, in its flagship initiative “Digital Agenda for Europe.” It intended to launch an EU-wide strategy to strengthen ADR/ODR systems and propose an EU-wide online redress tool for e-commerce and improve access to justice online.²⁸

In April 2011, the Commission adopted the communication “Single Market Act on Twelve Levers to Boost Growth and Strengthen Confidence”, The purpose of the initiative was to establish affordable out-of-court settlement procedures that were simple, flexible, and fast for consumers and protect relations between businesses and their customers including an e-commerce dimension.²⁹

In 2013, the EU adopted Regulation (EU) No 524/2013 (ODR Regulation)³⁰ and Directive 2013/11/EU (ADR Directive)³¹, aiming to strengthen the ADR/ODR system and to enable accessible and efficient out-of-court redress mechanisms for consumer disputes in the EU, including in disputes arising from cross-border e-commerce. The ADR Directive and the ODR Regulation together provide a legal framework to ensure that consumers have access to high-quality ADR mechanisms for resolving their disputes with traders, including through an ODR platform.³²

The ODR Regulation and the ADR Directive are both interlinked and complementary.³³ The ADR Directive builds trust in EU consumers regards certified ADR bodies for resolving any disputes arising from both domestically and cross-border shopping made online or offline³⁴, and the ODR Regulation ensures ODR contact points to be designated by Member States to provide users of the ODR platform one-to-one support.³⁵

The ODR Regulation and ADR Directive applies disputes arising from the purchase of goods or services made online or offline in both domestic and across borders in the EU and EEA countries.³⁶ However, they do not address disputes arising from any consumer-to-consumer (C2C) or business-to-business (B2B)³⁷ relations; they only address disputes stemming from the purchase of goods and services in business-to-consumer (B2C) context.³⁸ Furthermore, the ODR Regulation and the ADR Directive do not apply to disputes concerning public providers of higher education or health care services, nor do they lay down a framework for direct negotiation made by the parties, or settlement attempts made by a judge in the course of judicial proceedings.³⁹

1.2.2. EU ODR Scheme

To facilitate cross-border e-commerce and build trust for consumers online within the EU, the EU launched the ODR platform in January 2016, and the platform was officially opened to the public

²⁷ COM (2019) 425 final, Brussels, 25.9.2019, p. 1.

²⁸ COM (2010) 245 Final, Brussels, 19.5.2010, p. 13.

²⁹ COM (2011) 206, Brussels, 13.4.2011, p. 9.

³⁰ OJ L 165, 18.6.2013, p. 1-12.

³¹ OJ L 165, 18.6.2013, p. 63-79.

³² COM (2019) 425 final, Brussels, 25.9.2019, pp. 2-3.

³³ Sengpunya 2019.

³⁴ ADR Directive, Recital 4.

³⁵ ODR Regulation, Recital 25.

³⁶ ADR Directive, Recital 16.

³⁷ COM (2017) 744 final, p. 3.

³⁸ ODR Regulation, Art. 2; and *See also* ADR Directive, Art. 2.

³⁹ ADR Directive, Art. 2 para. 2; and *See also* ADR Directive, Recital 14 and Recital 23.

on 15 February 2016.⁴⁰ The launch of the ODR platform aims to facilitate the online resolution of disputes arising from the purchase of goods or services between consumers and traders that made online or offline domestically and across borders.

The EU ODR platform offers a single point of entry to consumers and traders seeking a dispute resolution mechanism to resolve disputes arising from both domestic and cross-border e-commerce transactions⁴¹ through an interactive web-interface without being together at a meeting room or going to court. The EU ODR platform was established with functions based on paragraph 4 of Article 5 of the ODR Regulation,⁴² in which the parties can conduct the dispute resolution procedure online through electronic case management. Consumers may initiate a procedure by submitting a complaint electronically to a trader, and the trader can identify the competent ADR entity. When the ADR body is mutually chosen, the parties transmit the complaint to that body. The platform also provides free translation of information necessary to all relevant actors for the dispute resolution.⁴³

According to the ODR Regulation and ADR Directive, the ODR process takes part when the consumer complainant submits a fully completed complaint to the ODR platform, and the trader responds and agrees to go to the ODR process for resolving the dispute under mutually agreed dispute resolution body.⁴⁴ Each dispute resolution body under the ODR Regulation and the ADR Directive has its own rules and procedures. The Directive establishes a minimum harmonization approach. It does not prescribe a specific model nor a specific type of ADR procedure.

In general, the ODR process under the EU ODR platform consists of four steps:⁴⁵

- a) Consumer complainant submits a complaint to the ODR platform, and ODR platform notifies the trader;
- b) The parties agree on a dispute resolution body;
- c) The dispute resolution body handles the complaint; and
- d) The dispute resolution body announces the outcome and closes the complaint.

⁴⁰ COM (2019) 425 final, p. 13.

⁴¹ European Commission - Press release, “*Solving disputes online: New platform for consumers and traders*”, Brussels, 15 February 2016.

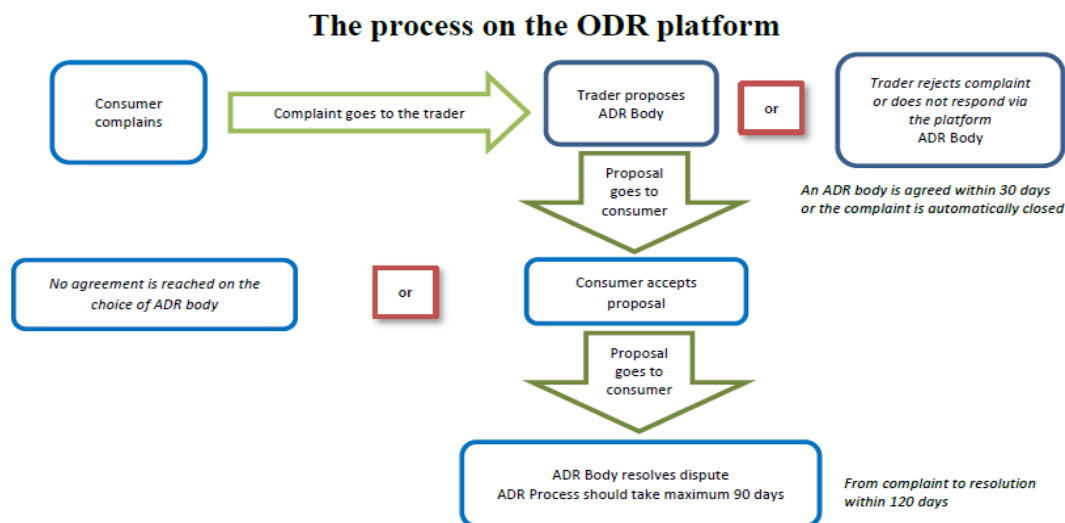
⁴² COM (2017) 744 final, p. 2.

⁴³ ODR Regulation, Art. 5 para. 4.

⁴⁴ ODR Regulation, Art. 9.

⁴⁵ <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks> (3 December 2019).

The following flow chart shows the ODR process under the EU ODR platform:



(Source: European Commission, 2017)

ODR platform of the EU provides consumers a user-friendly platform to file complaints online, consists of a multilingual register of ADR entities, and provides information on consumer redress. The ODR platform of the EU has the following key characteristics:

“a) Consumers and traders can choose any of the EU official languages for their interaction with the platform (e.g. submitting their complaints, receiving notifications). An automatic translation tool is available for free text communication; b) The platform identifies which notified ADR bodies are competent to handle the case and refers the dispute to the ADR body on which the parties agree; c) ADR bodies can use the platform’s case management system to conduct the ADR procedure entirely online; d) The parties can request that the outcome of the ADR procedure is translated by a professional translator; e) Clear deadlines are built into the platform to ensure a fast process.”⁴⁶

The EU ODR platform has functioned properly and has overall impressed consumers in the EU. The response of a survey conducted in 2017 indicated that 71% of the ODR platform visitors were satisfied and found it useful.⁴⁷ The ODR platform contributes to increasing consumers’ and traders’ confidence in online transactions both in domestic and cross-border, in which consumer disputes arising from online transactions can be settled in a simple, fast, and inexpensive way.⁴⁸ However, in the EU ODR platform the question remains whether participation in the procedure is voluntary or mandatory or whether the procedure’s outcome is binding or not.⁴⁹ Furthermore, not all ADR bodies from all Member States are connected to the existing ODR platform, and participation of traders in the platform still remains low, which only 2% of disputes submitted to the platform could be transmitted to an ADR entity and about 80% of disputes was closed automatically after 30 days because traders had not responded to the platform to the notification of the dispute.⁵⁰ To conclude, these are still key challenges for EU ODR system.

⁴⁶ COM (2017) 744 final, p. 2.

⁴⁷ Ibid. pp. 7-8.

⁴⁸ Jeretina 2017.

⁴⁹ COM (2019) 425 final, Brussels, 25.9.2019, p. 3.

⁵⁰ European Commission - Press release 2016, p. 14.

2. E-Commerce and Consumer Protection Laws in ASEAN

2.1. The ASEAN E-commerce Legal Framework

ASEAN has been working on developing the ICT landscape and its legal framework for years. The cooperation of ASEAN on ICT initiated before 2000, and it started becoming more concrete since year 2000 when an e-ASEAN Framework Agreement was adopted. This Framework Agreement intends to enhance the information infrastructure of ASEAN, facilitate e-commerce growth, and foster investments in the digital market. Along with the Framework Agreement, successive five-year ICT master plans were also adopted, the first in 2010, aiming at the development of infrastructure and the digital divide bridging.⁵¹ The Master Plan placed an action to foster the preparation of domestic legislation on e-commerce, and to harmonise the legal infrastructure for electronic contracting and dispute resolution in order to deepen the regional policy and regulatory framework.⁵² Moreover, the ASEAN ICT Masterplan (or AIM) 2020 was adopted in 2016, focusing on developing an integrated digital economy more broadly. It aims to drive ASEAN towards a secured, enabled, and transformative digital economy; and to enable an integrated, inclusive, and innovative ASEAN Community.⁵³

In November 2017, ASEAN adopted the Work Programme on Electronic Commerce 2017–2025 in order to strengthen the e-commerce development within the ASEAN single market.⁵⁴ The work programme aims to develop and implement guidelines, coordination mechanisms, and specific initiatives related to infrastructure of broadband, the e-commerce legal frameworks modernization, consumer protection, trade facilitation, payment systems, the security of electronic transactions, competition, and improved logistics.⁵⁵

However, currently, ASEAN does not have any legal superstructure to establish a unified regime that could support regional e-commerce, unlike the European Union that has a supranational legal order. ASEAN has developed an e-commerce legal framework by harmonizing the Member States' national laws into a regional legal system while respecting cultural sensitivities and national sovereignty.⁵⁶ Consequently, the e-commerce legal support of ASEAN depends upon the adoption of a common reference framework that serves as legal templates providing a guide for helping ASEAN Member States (AMS) enacting their domestic laws and regulations on e-commerce in the respective ASEAN jurisdictions.⁵⁷

By legal harmonization, ASEAN has made remarkable progress in the development of the e-commerce legal framework within its member states in order to strengthen e-commerce in the region and to achieve, as part of the e-ASEAN Framework Agreement, its Roadmap for Integration of the e-Commerce Sector. The e-commerce legal harmonization of ASEAN focused more on electronic

⁵¹ ASEAN Secretariat, ASEAN Investment Report 2018 – *Foreign Direct Investment and the Digital Economy in ASEAN*, (November 2018), p. 238; See also ASEAN ICT Masterplan 2015 Completion Report, ASEAN (2015), pp. 8-11; and ASEAN ICT Masterplan 2015, pp. 9-10.

⁵² ASEAN ICT Masterplan 2015 Completion Report, ASEAN (2015), pp. 30-32

⁵³ See generally ASEAN ICT Master Plan 2020.

⁵⁴ See the Preamble of the ASEAN Agreement on Electronic Commerce (2018); and also <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/e-Commerce/> (08 December 2019).

⁵⁵ ASEAN Secretariat 2018, p. 239.

⁵⁶ J. Wong, *On Legal Harmonization Within ASEAN*, Singapore Law Review, Vol. 5, 2013, pp. 1-2.

⁵⁷ E. Mik, *Legal and Regulatory Challenges to Facilitating e-Commerce in ASEAN*, in P. Hsieh & B. Mercurio (Eds.), *ASEAN Law in the New Regional Economic Order: Global Trends and Shifting Paradigms*, Cambridge University Press, 2019, p. 344.

transactions laws and less on other cyber laws.⁵⁸ ASEAN hopes that e-commerce legal harmonization will drive development and further the ASEAN regional integration in the ICT age and establish a legal environment that will foster its e-commerce development.⁵⁹

Furthermore, ASEAN launched the ASEAN Work Programme on E-commerce in November 2017, which called on ASEAN to strengthen coordination and cooperation on e-commerce. The work programme resulted in an ASEAN Agreement on e-Commerce, aiming to facilitate trans-border e-commerce transactions and connectivity of digital in ASEAN by laying down trade rules on e-commerce.⁶⁰ The ASEAN Economic Ministers endorsed the ASEAN Agreement on e-Commerce at the 50th ASEAN Economic Ministers Meeting on 29 August 2018, and later then the Agreement was officially signed by the ASEAN Economic Ministers on 12 November 2018, on the side-lines of the 33rd ASEAN Summit and Related Meetings.⁶¹ However, the entry into force and eventual enforcement of the agreement will depend upon the deposit of ratification instruments of the Member States.⁶² And as of April 2020, only five out of ten member states (Singapore, Thailand, Vietnam, Cambodia, and Myanmar) have deposited the ratification instrument.⁶³

2.2. ASEAN Regional Framework on Consumer Protection

ASEAN has included consumer protection in a central place in its regional agenda on policymaking and it considers consumer protection as one of the most significant segments of the ASEAN economic and social integration process. It is essential in enhancing economic growth and promoting a competitive market and the appropriate consumer protection can increase consumer demand and confidence so that it will bring possible implications to the business cycle.⁶⁴

Nevertheless, the complex regulatory and institutional regimes of ASEAN, as it follows an informal legalism with no legal superstructures, can disrupt the consumer protection laws' effectiveness, and it can be very challenging for consumer protection in ASEAN. Hence, relying on the regional commitment of the ASEAN Community, ASEAN has strategically positioned the protection of the consumer in the AEC Blueprint and affirmed it during the 39th Meeting of ASEAN Economic Ministers in 2007, stating *inter alia* that:

*“Given the significant progress achieved in the integration of ASEAN toward a “people-centered” community, the Ministers agreed that it is time to promote regional cooperation initiatives that would provide ASEAN consumers with a high level of protection. As such, the Ministers endorsed the establishment of the ASEAN Coordinating Committee on Consumer Protection.”*⁶⁵

⁵⁸ See Review of E-commerce Legislation Harmonization in the Association of Southeast Asian Nations – *Executive Summary, and Introduction*, UNCTAD, 2013, p. ix.

⁵⁹ *Ibid.* pp. iv and 1.

⁶⁰ Preamble, ASEAN Agreement on Electronic Commerce (2018); and *See also* Towards an ASEAN Agreement on Electronic Commerce, UNCTAD, Geneva, Switzerland, (2018). <https://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1730> (10 December 2019).

⁶¹ See generally: Press-release: *Factsheet on ASEAN Agreement on Electronic Commerce*, MTI Singapore, 12 November 2018.

⁶² For more information about the ASEAN Agreement on e-Commerce, see <http://agreement.asean.org/search.html?q=electronic+commerce> (02 April 2020).

⁶³ <http://agreement.asean.org/agreement/detail/368.html> (02 April 2020).

⁶⁴ ASEAN Secretariat 2018, p. 12-13.

⁶⁵ The Thirty-Ninth ASEAN Economic Ministers' (AEM) Meeting, Makati City, Philippines, 24 August 2007. Online https://asean.org/?static_post=the-thirty-ninth-asean-economic-ministers-aem-meeting-makati-city-philippines-24-august-2007 (12 December 2019); *See also* Brief Policy “ASEAN Consumer Protection: Essential actions towards a single market”, ACCP, 15 June 2011, p. 2.

By the above affirmation, the ASEAN Committee on Consumer Protection (ACCP) was established. The ACCP has a role to ensure all AMS adopt their consumer protection measures, policies, laws, and regulations; and to ensure the enhancement of formation access by consumers, mechanisms establishment for consumer dispute resolution and product recalls, and the strengthening of institutional capacity.⁶⁶ Up to date, nine out of ten AMS have laws consumer protection⁶⁷, while Cambodia is working on drafting consumer protection law and it is expected to be passed by the end of 2019.⁶⁸ The ACCP consists of consumer protection agencies representatives of all AMS.⁶⁹ It serves as the central point of ASEAN for implementing and monitoring regional mechanisms and arrangements to enhance consumer protection in the region.

And by recognizing the importance of consumer protection for supporting an efficient, effective, modern, and fair marketplace, ASEAN continues to frame effective protection of the consumer in its ASEAN Economic Community Blueprint 2025 (the AEC Blueprint 2025). The AEC Blueprint 2025 lays down Strategic measures including:

“a) Establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms, including alternative dispute resolution mechanisms; b) Promote a higher level of consumer empowerment and knowledge by addressing consumer concerns as well as enhancing consumer knowledge and advocacy; c) Build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, stronger participation of consumer representatives, and promotion of sustainable consumption; d) Encourage consumer-related matters in ASEAN policies through impact assessment of consumer protection policies and development of knowledge-based policies; and e) Promote consumer protection measures in products and services sectors such as finance, e-Commerce, air transport, energy, and telecommunications.”⁷⁰

To achieve the strategic measures under the AEC Blueprint 2025, the ASEAN Strategic Action Plan on Consumer Protection 2025 (ASAPCP) was adopted on 14 October 2016.⁷¹ The purposes of the ASAPCP are to develop a common framework of consumer protection in ASEAN through modernized legislation, promoting higher levels of consumer confidence and consumer empowerment, and taking into account e-commerce trends.⁷² The ASAPCP sets out a consumer policy strategy for ASEAN for the years 2016-2025, its implementation is overseen by the ACCP in collaboration with other sectoral bodies of ASEAN and relevant stakeholders.⁷³ This initiative intends to provide protection and fair treatment to ASEAN consumers, lower gaps in the consumer protection implementation within ASEAN, strengthen the technical capacities of ASEAN officials, and enable ASEAN to integrate concerns of consumers into all other policies of ASEAN and at the same time

⁶⁶ <https://www.aseanconsumer.org/cterm-asean-cooperation-in-asean/asean-committee-on-consumer-protection-accp> (10 December 2019); and See also the ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, June 2018, p. 13.

⁶⁷ ASEAN Secretariat 2018, pp. 19-55.

⁶⁸ C. Vannak, *Consumer Protection Law to pass this year*, Khmer Times, May 3, 2019. <https://www.khmertimeskh.com/50600269/consumer-protection-law-to-pass-this-year/> (11 December 2019).

⁶⁹ [https://www.aseanconsumer.org/file/pdf_file/List%20of%20ACCP%20Leads%20\(ACCP%20Website\)%20-%204May18.pdf](https://www.aseanconsumer.org/file/pdf_file/List%20of%20ACCP%20Leads%20(ACCP%20Website)%20-%204May18.pdf) (12 December 2019)

⁷⁰ ASEAN Economic Community Blueprint 2025, Jakarta: ASEAN Secretariat, November 2015, Section B.2, pp. 13-14.

⁷¹ <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> (18 December 2019).

⁷² ASEAN Secretariat 2018, Foreword, p. v.

⁷³ See generally the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016- 2025: Meeting the Challenges of a People-Centered ASEAN Beyond 2015.

achieving the highest benefits for consumers and business in the AEC.

2. The Online Dispute Resolution System of ASEAN

ASEAN considers consumer protection as an important driving force for the smooth functioning of an integrated market. With the growth of e-commerce, there are likely increasing online consumer transactions in ASEAN, especially cross-border transactions. Consumers and sellers would be able to enjoy substantial benefit if cross-border transactions within the ASEAN were facilitated by harmonized laws and regulations, and where online disputes can be settled by simple, fast, and low-cost methods.⁷⁴ Based on this recognition, ASEAN established a working group for ensuring that legislation on consumer protection of AMS is in place. It further developed a dispute resolution mechanism, particularly an online dispute resolution system, in order to increase online consumer confidence and facilitate e-commerce growth in the region.

2.2. ASEAN Online Dispute Resolution Framework

Similar to the start of the EU consumer ADR policy, the ASEAN policymakers and regulators currently address consumer dispute resolution through non-binding standards requiring AMS to encourage or ensure access to out-of-court redress mechanisms.

In 2015, ASEAN launched the ASEAN Economic Community (AEC), which became a major milestone in regional economic integration. The AEC has been guided by the AEC Blueprint 2025 adopted by ASEAN Leaders on 22 November 2015 at their 27th ASEAN Summit.⁷⁵ The AEC Blueprint 2025 recognizes e-commerce growth as a significant segment in supporting regional economic integration. It highlights the development of a regional legal framework for online dispute resolution (ODR) for facilitating e-commerce transactions in ASEAN.⁷⁶ The AEC Blueprint 2025 thus calls for action to adopt an agreement on e-commerce, including strategic measures as follows:

*“ a) Harmonised consumer rights and protection laws; b) Harmonised legal framework for online dispute resolution, taking into account available international standards; c) Inter-operable, mutually recognised, secure, reliable and user-friendly e-identification and authorisation (electronic signature) schemes; and d) Coherent and comprehensive framework for personal data protection. ”*⁷⁷

To implement the strategies related to online dispute resolution under the AEC Blueprint 2025, the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025 was adopted upon work on consumer protection of the ASEAN Committee on Consumer Protection (ACCP).⁷⁸ The ASAPCP has set the Online Dispute Resolution mechanism of ASEAN in its Strategic Goal 3, where the high consumer confidence and cross-border commercial transactions shall be instituted, and an ap-

⁷⁴ The ASEAN Secretariat, *Consumer Protection Digests and Case Studies: A Policy Guide* (Volume 1), November 2014, p. 140.

⁷⁵ <https://asean.org/asean-economic-community/> (3 January 2020).

⁷⁶ V. Chen & A. Godwin, & I. Ramsay, *ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution*, *Asian Journal of Comparative Law*, Vol. 12, No. 1, July 2017, pp. 167-196 and pp. 22-23; see further ASEAN Economic Community Blueprint 2025, paras. 52-53.

⁷⁷ ASEAN Economic Community Blueprint 2025, para. 53.

⁷⁸ <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> (3 January 2020).

appropriate regulatory framework and enforcement measures shall be ensured. The goal provides that an ASEAN Regional Online Dispute Resolution (ODR) Network shall be established, including:

- a) National ODR systems;
- b) ASEAN ODR network; and
- c) ASEAN mechanism for cross-border complaints and investigations.⁷⁹

This initiative is an important performance of ASEAN for identifying regulatory gaps for the responsive and effective framework of consumer protection in the region and enhance consumer confidence and trust within the ASEAN markets. It would help ASEAN to have appropriate and effective dispute resolution mechanisms in place taking into account technology developments and in accordance with international norms and standards for facilitating e-commerce and protecting online consumers in the region.

2.3. ASEAN Online Dispute Resolution System and Way Forward

ASEAN aims to become a people-oriented and people-centred community and to develop a dynamic economy. As such, it recognizes the importance of consumer protection for increasing confidence for consumers in order to support the development of its single market. Hence, ASEAN included ADR and ODR mechanism as one of the important elements of the ASEAN Work Programme on e-Commerce 2017-2025,⁸⁰ which was further supported by the ASAPCP into specific initiatives and activities in consistence with the AEC Blueprint 2025.

Based on goal 3 of the ASAPCP, the ASEAN Online Dispute Resolution scheme would have a structure consisting of three elements: National ODR systems, ASEAN ODR network, and ASEAN mechanism for cross-border complaints and investigations.⁸¹

2.3.1. National ODR Systems

According to the ASAPCP, by the year 2020, each ASEAN Member State shall create its national Online Dispute Resolution System in order to serve as the platform providing mediation service for e-commerce transactions. The objectives of the national ODR system are to strengthen accessibility to consumer redress; provide a low cost, simple, and fast method for dispute resolution; and increase trust and confidence for consumer in e-commerce transactions.⁸² The national ODR system should at least comprise the following elements for an effective consumer redress:

“a) It must be applicable for all types of transactions, be it done online or offline. An OADR system may be web-based but it should not discriminate on B2C transactions with a brick and mortar business, or online business; b) It should enable a three-way communication between the consumer complainant, business establishment, and mediator since OADR involves the conduct

⁷⁹ Ibid.

⁸⁰ See <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/e-commerce/> (5 January 2020).

⁸¹ Ibid.

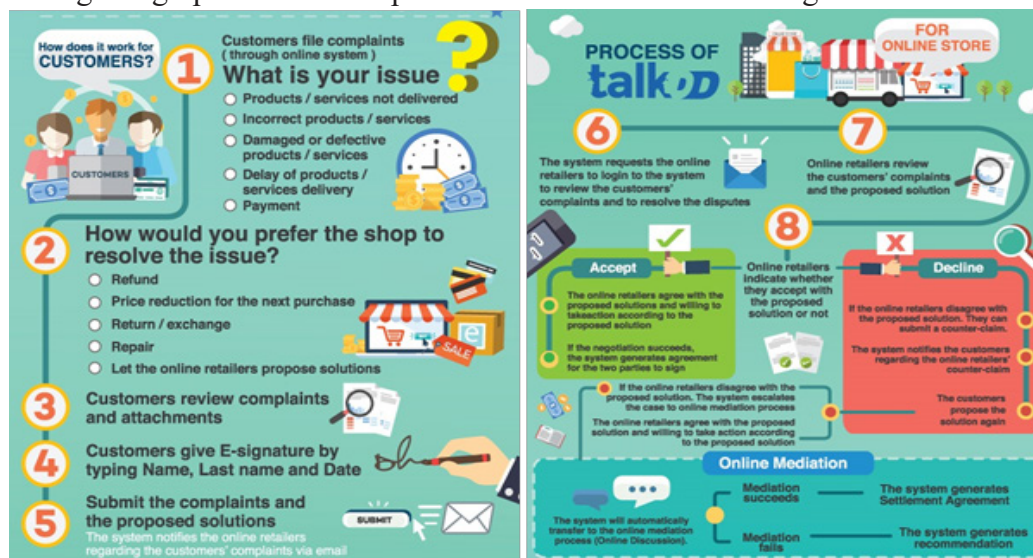
⁸² IGE Consumer, Establishment of the National Online Alternative Dispute Resolution System in the Philippines – 2017-2020 Work Plan, 3rd SESSION, 9-10 July 2018, Room XVII, Palais des Nations, Geneva, 10 July 2018, p. 3.

of mediation conferences via online; c) It must be user-friendly. Common understanding of its use, purpose, processes, and terminologies must be ensured among the consumers, businesses, and government; and d) It must be accessible, fair, independent, transparent, effective, and timely in facilitating redress for consume.”⁸³

The ASAPCP lays down reference material for AMS to develop their own action plan and establish an online dispute resolution system in line with ASAPCP recommendations.⁸⁴ Similar to the EU ODR system, the ODR body of each AMS may have its own rules and procedures. However, from an existing ODR system of Thailand,⁸⁵ it is possible to envisage that the national ODR system of ASEAN could consist of fundamental procedures as followings:

- a) Consumer files complaints and the proposed solution to ODR body;
- b) The ODR body contacts the trader to review the complaint and proposed resolution;
- c) The trader reviews the complaint and indicates whether or not accept the proposed solution;
- d) If the trader accepts the proposed solution, the ODR body produces an agreement for the parties to sign. If the trader declines the proposed solution, the ODR system will automatically transfer to the online mediation process; and
- e) If the mediation succeeds, the ODR body generates the settlement agreement. If the mediation fails, the ODR body generates a recommendation for the parties.

The following infographic shows the procedures of Thailand’s existing ODR:



(Source: TalkDD, 2019)

⁸³ Intergovernmental Group of Experts on Consumer Law and Policy, Establishment of the National Online Alternative Dispute Resolution System in the Philippines – 2017-2020 Work Plan, 3rd SESSION, 9-10 July 2018, Room XVII, Palais des Nations, Geneva, 10 July 2018, pp. 6-7. https://unctad.org/meetings/en/Contribution/cicplp3rd_c_dti_drr_en.pdf (2 April 2020).

⁸⁴ ASEAN – Australia Development Cooperation Program – Phase II, Study on AADCP II Influence on Consumer Protection Policy in Select ASEAN Member States, The ASEAN Secretariat, May 2018, p. 14.

⁸⁵ <https://talkdd.com/en/about-us> (2 April 2020).

2.3.2. ASEAN ODR Network

To support and facilitate further development of the ODR system, ASEAN has already put the ASEAN ODR network as the second element of the ASEAN ODR Scheme underway. The ASEAN ODR network should compose authorities from all AMS, and upon the completion of the network establishment by 2025, the network may include the following strategies:

- a) To co-ordinate and co-operate on ODR procedure and enforcement matters.
- b) To share information and intelligence on ODR trends and challenges.
- c) To share best practice information about key relevant laws, enforcement powers, and regulatory approaches to ODR.

Members may meet annually to discuss key ODR issues from a global perspective, exchanging their experience regarding enforcement and relevant challenges. The member may present different projects and take decisions for new initiatives and follow-up action. The meeting would also serve to strengthen the network's cohesiveness and foster better contacts between members.

2.3.3. ASEAN Cross-border Complaints and Investigations

The ASEAN Cross-border Complaints and Investigations is the third element of the ASEAN ODR Scheme. The objective is to provide a channel or facility for ASEAN consumers to complain or claim for any loss over a purchase of any goods or services in a less cumbersome, speed manner, and at a minimal cost.⁸⁶

In 2012, ASEAN launched the ASEAN Consumer Protection website (www.aseanconsumer.org), which serves as the major reference point for consumer protection in ASEAN including the information provision on:

“a) AMS focal points for handling cross-border complaints; b) notifications on recalled/banned products; c) consumer protection legislation of AMS; and d) other information such as publications and workshop materials.”⁸⁷

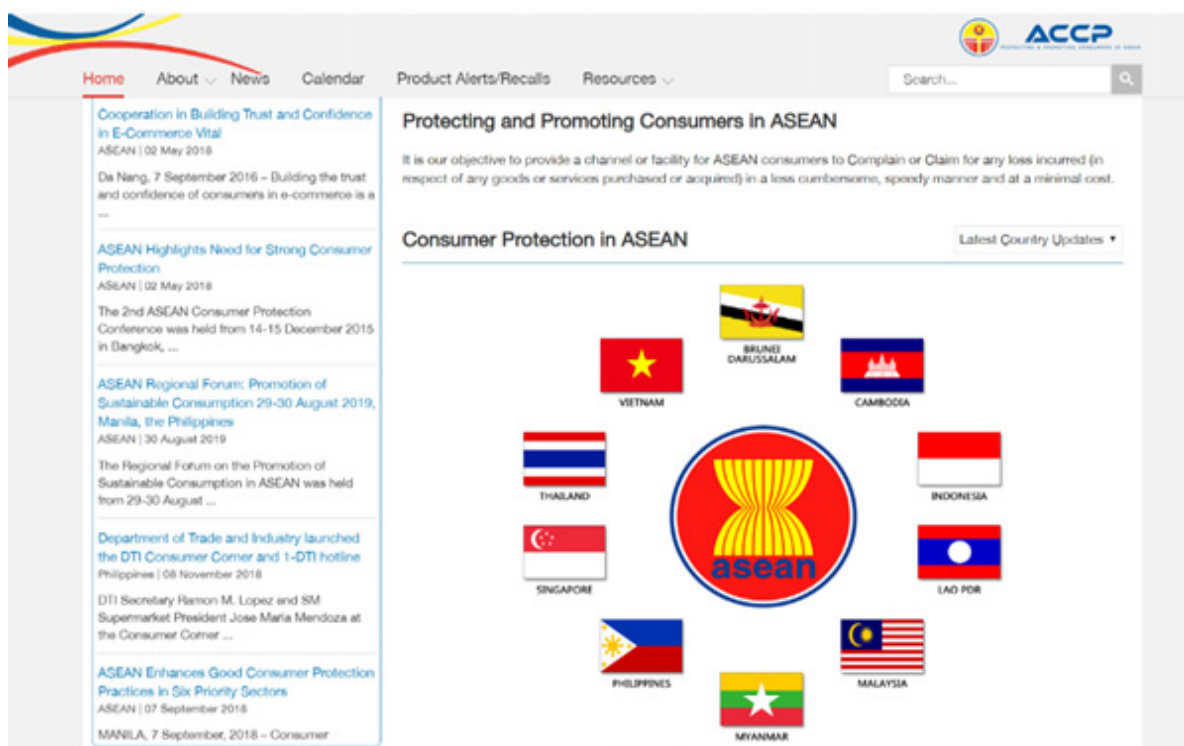
The website has become operational for cross-border consumer complaints⁸⁸ and currently plays an important role for cross-border consumer complaints in ASEAN. However, in my view ASEAN should further consider an effective body, as it still lacks an appropriate implementation mechanism and remains long process for cross-border complains through this operational website. Hence, ASEAN may also provide research support and training in very practical areas of consumer agency design, governance, and operations, and ensure user-friendly and effective process and strengthen implementation of ASEAN Cross-border Complaints and Investigations in order to promotes the website and facilitate cross-border consumer dispute resolution with a low-cost, simple, and fast method.

⁸⁶ <https://aseanconsumer.org/> (2 April 2020).

⁸⁷ <https://asean.org/archive/the-asean-committee-on-consumer-protection-accp/> (2 April 2020).

⁸⁸ A. Asher & W. Dee & J. T. D. Wood, *Models for Internal Complaint Systems and External Consumer Redress Schemes in ASEAN*, ASEAN Complaint and Redress Mechanism Models, December 2013, Australian Aids – ASEAN, pp. 53-54.

The following picture shows the channel for cross-border consumer complaints in ASEAN, where consumers can select a country to claim or complain by selecting the relevant country flag and file a complaint through the focal point of relevant country.



(Source: ACCP, 2019)

The present major effort at the regional level to address the consumer protection is the ASAPCP. The ASAPCP is an implementation of ASEAN policy regarding consumer protection which has focused on information-sharing between regulators. Nevertheless, it includes more ambitious aims such as establishing a cross-border dispute resolution system, particularly the online dispute resolution mechanism, and a quick alert system on product safety.⁸⁹

3. Summary and concluding remarks

Disputes arising from e-commerce are usually difficult to deal with, and that is especially true for disputes arising from cross-border and low-value e-commerce transactions. Hence, it is necessary to have an appropriate resolution mechanism to handle and resolve these disputes in this era of the digital world.

The UNCITRAL introduced an ODR process model for resolving disputes arising from cross-border, low-value electronic transactions concerning B2B or B2C via its non-binding documents, presenting a package model for the ODR system in three stages: negotiation, facilitated settlement, and arbitration. However, the UNCITRAL, as a major international economic and regulatory organization, should further consider and work on a comprehensive legal framework on ODR in order to handle and facilitate e-commerce growth worldwide.

At the same time, the EU, as one of the international economic actors, has developed its ODR

⁸⁹ *The Digital Economy in Southeast Asia: Strengthening the Foundations for Future Growth*. Information and Communications for Development. World Bank, Washington, D.C., 2019. p. 96.

system for facilitating cross-border e-commerce growth and consumer protection in the EU. It adopted a comprehensive legal framework at the EU level with an endeavour to strengthen the ADR/ODR system in the EU and to enable accessible and efficient out-of-court dispute resolution mechanisms for consumer disputes. The EU launched its ODR platform, offering a single point of entry to consumers and traders seeking a dispute resolution mechanism to resolve disputes arising from both domestic and cross-border online transactions. However, the EU ODR platform remains low participation of traders in the platform. Most of the disputes submitted to the ODR platform were closed automatically due to no response from the trader, which is still a big challenge for the EU ODR scheme.

Similarly, ASEAN considers e-commerce and consumer protection as an important driving force economic and social integration process, and for the smooth functioning of an integrated market. Hence, it has included consumer protection to a central place in its regional policy-making agenda leading to develop an online dispute resolution mechanism to build ASEAN citizens' confidence in domestic and cross-border transactions. ASEAN address the online dispute resolution through non-binding standards, which its online dispute resolution mechanism was highlighted by the AEC Blueprint 2025 and was further supported into specific initiatives and activities by the ASAPCP 2025.

According to the ASAPCP, the ASEAN ODR Scheme consists of three elements: the National ODR system, the ASEAN ODR Network, and ASEAN Cross-border Complaints and Investigations. The National ODR system and ASEAN ODR Network are underway, in which the National ODR system expects to complete by 2020 and the ASEAN ODR Network in 2025. And at the moment, ASEAN has a website that serves as the major reference point for consumer protection in ASEAN, including AMS focal points for handling cross-border complaints, and serves as a primary channel or facility for ASEAN consumers to complain or claim across borders. However, ASEAN should further consider the website to offer a single point of entry with register qualified dispute resolution bodies to consumers and traders so that the parties can choose a dispute resolution body for resolving their dispute online through the website.

Furthermore, ASEAN does not have any legal superstructure to establish a unified regime that could support its ODR initiatives. ASEAN legal regime depends upon harmonizing the Member Countries' national laws into the regional legal system by respecting cultural sensitivities and national sovereignty. The complex institutional and regulatory regimes can undermine regional ODR implementation and enforcement matters. Hence, in order to establish and implement an effective ODR system in ASEAN, ASEAN will require a clear and comprehensive regulatory framework, including in the areas of consumer protection laws and ADR laws.

To this end, upon the completion of the initiatives on online dispute resolution system of ASEAN, the results will allow access for a broader consumer base, offer a low cost, fast and simple method for resolving consumer disputes, and increase consumer confidence in online transactions in the region. ASEAN's ODR initiatives would only be able to advance as soon as all AMS themselves establish their own national online dispute resolution systems, which would be of utmost importance.