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Online dispute resolution for cross-border electronic commerce transactions: timelines

Note by the Secretariat

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I. Introduction

1. At its twenty-sixth session, the Working Group requested the Secretariat to provide at its twenty-seventh session a list of the time periods contained throughout the draft procedural rules on online dispute resolution for cross-border electronic commerce transactions (the “Rules”). The Working Group suggested that such a list be considered, alongside a general provision regarding modification or extension of deadlines with consent of the parties, at a future session of the Working Group (A/CN.9/762, para. 57).

2. Documents A/CN.9/WG.III/WP.119 and its addendum set out draft procedural rules on online dispute resolution for cross-border electronic commerce transactions and provide for two presumptive tracks, to constitute discrete stand-alone sets of Rules: one track terminating in an arbitration stage (“Track I”) and the other track terminating without recourse to arbitration (“Track II”), either (subject to the election of the Working Group) at the close of the facilitated settlement stage, or if a settlement has not been reached, with a non-binding decision by a neutral enforceable via private mechanisms such as trustmarks (see A/CN.9/WG.III/WP.119, paras. 15-20). Consequently this note sets out time periods common to each Track, and time periods in the Rules relevant to proceedings conducted under Track I or Track II.

3. Where the time period in a relevant provision has not been finally agreed and remains in square brackets for the Working Group’s consideration in the draft Rules, those square brackets are replicated in this note.

II. Online dispute resolution for cross-border electronic transactions: timelines

A. Time periods common to Track I and Track II

General

4. A number of provisions require the prompt determination by the ODR provider or neutral, or prompt notification to the parties or neutral of communications at the ODR platform. By way of non-exhaustive example:

- (i) The ODR provider shall promptly communicate acknowledgements of receipt of electronic communications between the parties and the neutral to all parties [and the neutral] at their designated electronic addresses (draft article 3(6)).
- (ii) The ODR provider shall promptly notify all parties and the neutral of the availability of any electronic communication at the ODR platform (draft article 3(7)).
- (iii) Subject to an agreement by the parties, the neutral shall, promptly after its appointment, determine the language or languages to be used in the proceedings (draft article 12(1)).

5. In the interest of concision, not all such provisions are replicated in this note. Likewise provisions that may involve an element of timing (e.g. an obligation that a party must provide its electronic contact information at the time of transaction, in

draft article 3((2)) but which are not linked to a specific deadline, have been omitted.

Commencement of the ODR Proceedings: Response

6. The respondent shall communicate to the ODR provider a response to the notice ... within seven (7) calendar days of receipt of the notice (draft article 4B(1)).

7. A counterclaim by the respondent shall be submitted no later than [seven (7)] calendar days after the notice of the claimant's claim is communicated to the ODR provider (draft article 4B(2), Options 1 and 2).

Negotiation and appointment of neutral

8. [Upon communication of the response ... to the ODR provider ... the parties shall attempt to settle their dispute through direct negotiation ...] (draft article 5(1)).

9. If the respondent does not communicate to the ODR provider a response to the notice ... within seven (7) calendar days ... then the ODR proceedings shall automatically move to the facilitated settlement stage, at which point the ODR provider shall promptly proceed with the appointment of a neutral in accordance with article 6 (draft article 5(2)).

10. If the parties have not settled their dispute by negotiation within ten (10) calendar days ... then the ODR proceedings shall automatically move to the facilitated settlement stage, at which point the ODR provider shall promptly proceed with the appointment of a neutral in accordance with article 6 (draft article 5(3)).

11. The parties may agree to a one-time extension of the deadline [for the filing of the response] [for reaching settlement]. However no such extension shall be for more than ten (10) calendar days (draft article 5(4)).

Objection to neutral's appointment

12. Either party may object to the neutral's appointment [(i)] within [two (2)] calendar days of the notification of appointment ... [or (ii) a fact or a matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the neutral ... at any time during the ODR proceedings] (draft article 6(5)).

13. [Where a party objects to the appointment of a neutral under draft article 6(5)(ii), [the ODR provider] shall make a determination within [three (3)] calendar days, regarding whether that neutral shall be replaced] (draft article 6(5) bis).

14. [Either party may object, within three (3) calendar days of the final appointment of the neutral, to the provision by the ODR provider to the neutral of information generated during the negotiation stage. Following the expiration of this three-day period and in the absence of any objections, the ODR provider shall convey the full set of existing information on the ODR platform to the neutral] (draft article 6(6)).

B. Time periods only applicable to Track I

Expiry of facilitated settlement stage

15. If the parties have not settled their dispute by facilitated settlement [within ten (10) calendar days of appointment of the neutral] (the “expiry of the facilitated settlement stage”), the ODR proceedings shall automatically move to arbitration (draft article 8(2), Track I).

Arbitration

16. The neutral shall, at the expiry of the facilitated settlement stage, proceed to communicate a date to the parties for final submissions to be made. Such date shall be not later than ten (10) calendar days from the expiry of the facilitated settlement stage (draft article 9(1)).

17. The neutral ... shall render an award (draft article 9(2)). The award shall be rendered promptly and in any event within seven (7) calendar days (with possible extension of additional seven (7) calendar days) after the date for the communication of final submissions (draft article 9(6)).

[Correction of award]

18. Within [five (5)] calendar days after the receipt of the award, a party, with notice to the other party, may request the neutral to correct in the award any error in computation, any clerical or typographical error, [or any error or omission of a similar nature]. If the neutral considers that the request is justified, he or she shall make the correction [including a brief statement of reasons therefor] within [two (2)] calendar days of receipt of the request. Such corrections [shall be recorded on the ODR platform and] shall form part of the award. [The neutral may within [five (5)] calendar days after the communication of the award make such corrections on its own initiative.] (draft article 9 (bis)).]

[Internal review mechanism]

19. Either party may request annulment of the award within ten (10) calendar days of the communication of the award ... (draft article 9 (ter)(1)).

20. The ODR provider shall appoint a neutral ... to assess the request for annulment within five (5) calendar days (draft article 9 (ter)(2)).

21. That neutral shall render a final decision on the request for annulment within seven (7) calendar days of his or her appointment. If the award is annulled the ODR proceedings shall, at the request of either party, be submitted to a new neutral constituted in accordance with article 6.]

C. Time periods only applicable to Track II

Expiry of facilitated settlement stage

22. If the parties have not settled their dispute by facilitated settlement [within ten (10) calendar days of appointment of the neutral], the ODR proceedings shall automatically terminate (draft article 8(2), Option 1, Track II).

23. If the parties have not settled their dispute by facilitated settlement [within ten (10) calendar days of appointment of the neutral] (the “expiry of the facilitated settlement stage”), the ODR proceedings shall automatically move to the final stage of proceedings pursuant to article 8 (bis) (draft article 8(2), Option 2, Track II).

Decision by a neutral (draft article 8, Option 2, Track II)

24. The neutral shall at the expiry of the facilitated settlement stage proceed to communicate a date to the parties for final submissions to be made. Such date shall be not later than ten (10) calendar days from the expiry of the facilitated settlement stage (draft article 8 (bis)(1)).
