

# Kluwer Mediation Blog

## ADR in Consumer Conciliation – The Example of the German Conciliation Body for Public Transport (söp). An Interview with söp Director Edgar Isermann

Greg Bond (Bond & Bond Mediation / University of Wildau ) · Sunday, September 24th, 2017

Greg Bond: Tell me about your organisation.

Edgar Isermann: The Conciliation Body for Public Transport (söp) was founded in 2009, as a result of EU regulations on passenger rights, and also a general need to strengthen ADR provisions. The public transportation companies gradually realised that they would have to join the scheme. Travelers whose complaints to the companies are not satisfactorily resolved can turn to the söp for out-of-court settlement. The söp is obliged to comply with the law, and works independently and neutrally – which has never been doubted. This makes our work so attractive and creates trust, for both the consumers applying for conciliation and the transportation companies.

Greg Bond: Who uses your conciliation services?

Edgar Isermann: Conciliation can be used by all flight, train, bus and ship passengers. In 2016, we received 13,600 applications, most of which concerned flights taking off or landing in Germany or in other states but run by an airline whose place of business is in the EU. In 2016 we also began to accept cases for airlines taking off or landing in the United Kingdom. Our conciliation is free of charge for passengers and is financed by the transportation companies, who have declared their willingness to conciliate by becoming members of our association. At present there are about 350 member companies.

Greg Bond: Why conciliate?

Edgar Isermann: Conciliation has advantages for both parties. It saves time, money and stress. For passengers, the procedure is free and easy to use. For the companies, conciliation is a sign that they respect their passengers and contributes to their reputation, and it also enhances customer retention.

Greg Bond: How does it work?

Edgar Isermann: Usually, a complainant fills in our online form under [www.soep-online.de](http://www.soep-online.de). The company then has an opportunity to state their point of view. The only evidence we gather is documentation of the trip. Our conciliators are all fully qualified lawyers, who check the facts and the law for each case and then make a conciliation recommendation, which never undercuts what the complainant is legally entitled to. In this, they also consider the interests of the two parties. The

result might be payment of compensation, but sometimes also a goodwill solution such as a travel voucher or a miles bonus. The parties are then given the opportunity to accept the conciliation proposal. If one party does not accept, then the conciliation procedure has not been successful. If both parties accept in writing, then their declarations of acceptance have the status of a contract. There are no face-to-face or live negotiations.

Greg Bond: How do you measure your success?

Edgar Isermann: The success of our work can be measured by acceptance rates, which have been consistently between 80% and 90% – a high number in the ADR field. Frequently, complainants whose claims have not been successful thank us and inform us that thanks to our work they now have a better understanding why they could not receive compensation. A lack of proper explanation is a problem in many conflicts, while providing information is an important way to improve customer satisfaction. Conciliation can even result in companies improving their own communication and organisation.

Greg Bond: Is your work mediation?

Edgar Isermann: We definitely use elements of mediation. Complainants are able to see that our work also takes into account their subjective experiences, their anger, and their problems – not just rational or legal considerations. Satisfaction can be increased by telephoning with both sides, explaining our analysis and making it easier to accept it. Many of our conciliators are not just lawyers, but also trained mediators, and this is very helpful.

Greg Bond: You are a former judge and president of court. How do you personally see the value of conciliation?

Edgar Isermann: In my years as in the courthouse, I strongly supported court mediation, arguing that judges should resolve conflicts and not only just write judgments. In conciliation, the tools we have to resolve conflicts are broader than what is available in litigation. It is the combination of law, a balance of interests, and a transparent risk analysis concerning any possible litigation that makes the formulation of a conciliation proposal so attractive. Conciliation is rewarding because we can see a result in the feedback from the parties. After a court ruling you rarely find out how the dispute really came to an end.

Greg Bond: What about the future of conciliation and ADR?

Edgar Isermann: ADR and conciliation have been strengthened by legislation. Consumer conciliation is now an everyday procedure and widely used. Some industries are still not fully participating, but this will change when companies gain more knowledge of how conciliation works to the satisfaction of both sides to a dispute. I am very optimistic about the future.

Greg Bond: Are ADR and litigation in competition with each other?

Edgar Isermann: Mediation and conciliation are to be welcomed, but there will always be disputes that require the ruling of a judge. I do not see competition between the courts and ADR. This misses the point. In consumer to business disputes, which are usually of low monetary value, ADR offers an additional choice for the consumer who might not want to go to court and yet still wants to resolve matters. Sometimes this is called “compensatory legal protection,” a description which may or may not be accurate. But the idea of “compensation” is right when it comes to ADR

provisions – to the advantage of both the consumers and the businesses.



Edgar Isermann has been director of söp since its foundation in 2009. He began his career as a judge in Hanover for 15 years, then spent 13 years in the Justice Ministry of Lower Saxony. He then became President of the Oberlandesgericht Braunschweig (2001–2009) and a judge at the Constitutional Court of Lower Saxony (2006–2013).

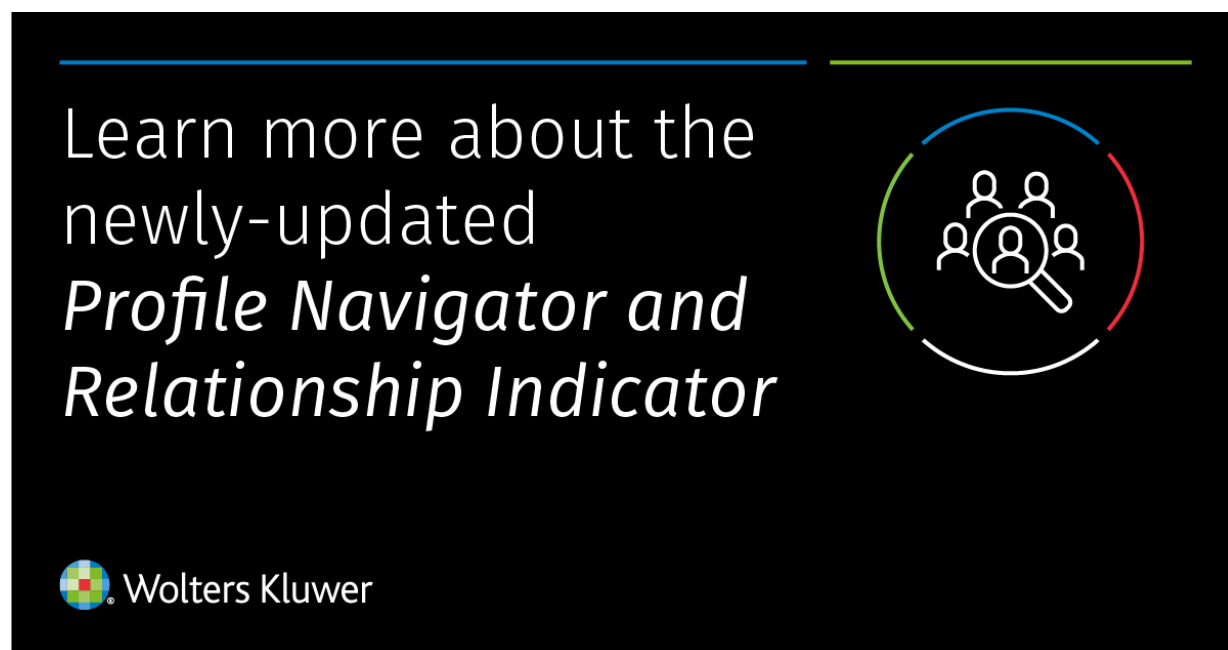
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