

## ALTERNATIVE DISPUTE RESOLUTION IN THE FIELD OF CONSUMER FINANCIAL SERVICES

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**Abstract.** *Financial services have a very significant impact on and meaning to the daily life and welfare of consumers. The spectrum of these types of services is very broad, and their regulation is also changing both at EU and national (Member State) level. In order to implement the main or the most relevant EU level goals, such as high level consumer rights protection, consumer trust in business sector, proper and effective functioning of the EU internal market it is essential to ensure clear and sufficient legal regulation, establish responsibility of the services providers, consumer rights and duties as well as promote, seek for the more effective, faster and cheaper ways of solving consumer and business sector disputes. The authors of this article support the idea that the abovementioned goals can be achieved by close and more fruitful cooperation between the EU and national competent authorities, participation in various ad hoc expert working groups, committees or EUwide networks, such as FIN-NET. This article reflects general ideas about the problems arising in the financial consumer services sector, the activity of the EU and national institutions, seeking to ensure fair and transparent provision of such services to consumers, analysis of alternative dispute resolution (hereinafter – the ADR) methods and the good practice of their application in the EU Member States. This article highly supports the application of alternative, nonjudicial procedures and broader application of the means of selfregulation, such as codes of conduct.*

**Keywords:** *consumer, trader, business sector, financial services, alternative dispute resolution, arbitration, cancelation, mediation.*

## Introduction

Financial services have a very significant impact on consumers' lives. It is therefore important that consumers make well-informed decisions and feel confident that they are adequately protected if something goes wrong. The EU and national institutions are committed to ensuring a high degree of consumer protection as an essential feature of a smoothly-functioning EU market for financial services. Its work focuses on consumer credit, distance marketing of financial services, and ensuring that consumer interests are considered in other EU financial legislation.

This statement is illustrated by various EU wide research and investigations. In September 2011, the EU-wide investigation of websites offering consumer credit took place to check whether consumers were receiving the information to which they were entitled under the EU consumer law<sup>1</sup> before signing a consumer credit contract. National enforcement authorities checked more than 500 websites across the 27 Member States plus Norway and Iceland. They flagged 70% (393) of sites for further investigation in relation to the following main problems: the advertising did not include the required standard information; the offers omitted key information that was essential for making a decision; the costs were presented in a misleading way. National enforcement authorities will now contact financial institutions and credit intermediaries about the suspected irregularities and ask them to clarify them or take corrective action. The sweep operation checked in particular how business is applying the Consumer Credit Directive (recently transposed in the Member States), which aimed at making it easier for consumers to understand and compare credit offers. When people look for credit they sometimes discover that the credit turns out to be more expensive than it originally appeared, because important information was sometimes unclear or missing. Consumer credit is not always easy to understand, which is why the European legislation is in place to help consumers make informed decisions. It is therefore very important that businesses provide consumers with correct and necessary information. And it is the role of the Commission to work together with national enforcement bodies to make this happen.

When consumers cannot resolve their disputes with financial service providers bilaterally, few of them consider going to court. In many Member States, alternative dispute resolution (ADR) schemes, such as ombudsmen, mediators or complaint boards,

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1 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC L 133/66 22.5.2008, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC L 271/6 9.10.2002, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') *OJ L 149, 11/06/2005*, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market *OJ L 178, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts OJ L 095, 21/04/1993*.

are put in place to resolve disputes between consumers and their financial service providers out-of-court. Usually, such ADR schemes offer a much quicker and cheaper way to settle disputes than in court. Therefore, they are appreciated by both consumers and financial service providers. ADR schemes are also considered to improve access to justice as they provide an opportunity to resolve disputes that consumers would not normally pursue in courts. Furthermore, they increase consumer confidence in financial services because consumers know they will have access to redress if something goes wrong.

In its staff working document on the initiatives in the area of retail financial services accompanying the Communication ‘A single market for 21st century Europe’<sup>2</sup>, the European Commission announced that its services would further examine the possibilities of improving alternative redress mechanisms in the field of financial services, since gaps in their geographical and sectoral coverage still remained. Also, not all financial service providers adhere to ADR schemes and inform their customers about them. Single market is beneficial for consumers and businesses. It has supported job creation and stimulated growth, competitiveness and innovation.

The single market has also been essential for the smooth functioning of the economic and monetary policies of the European Union. The single market needs to deliver better results and benefits to respond to the expectations and concerns of consumers and businesses. The guarantee of high standards has enabled consumer protection to be ensured in terms of choice and quality of goods, prices, rights, fighting unfair commercial practices and abuse of dominant position, etc. Nevertheless, the single market can offer more in key sectors of the daily life of consumers, such as energy or telecommunications, and sectors that are fragmented or typified by lack of effective competition. The safety and quality of goods and services and market surveillance also need to be strengthened. Food safety, pharmaceuticals and retail financial services are areas in which consumers must be educated and empowered in order to derive full benefit from the single market. In this respect, consumer rights, and especially contractual rights, and redress should be re-examined to move towards a simple, comprehensive protective framework.

In its resolution on the Green Paper on retail financial services<sup>3</sup> of June 2008 the European Parliament requested that consumers had access to ADR mechanisms both at national and cross-border level and called on the Commission to promote best practices on ADR.

The purpose of this document is to seek the views of the stakeholders on how ADR schemes in the area of financial services, providing consumers with individual redress, could be further improved. This consultation, although complementary, is a separate initiative from the work being carried out by the DG Health and Consumers on

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2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - a single market for 21st century Europe COM(2007) 725 final.

3 Green Paper on Retail Financial Services in the Single Market COM/2007/0226 final.

collective redress, which is wider in scope both in terms of sectors covered and the fact that it is not confined to redress through ADR but also covers judicial redress.

## 1. Alternative Dispute Resolution (ADR) Mechanisms in the Field of Financial Services

The key feature of all ADR schemes also in the field of financial consumer services is that a so called ‘neutral’ or a ‘third party’ (an ombudsman, a mediator or a complaint board) helps the consumer and the service provider resolving their dispute by proposing or imposing a solution or by bringing the parties together to convince them to find a solution by common agreement. In the area of financial services, the currently existing ADR schemes in different Member States either cover financial services in particular sectors (e.g. the Italian Banking Ombudsman scheme, the German Insurance Ombudsman, the French Ombudsman of the Authority of Financial Markets) or cover all financial services sectors (e.g. the UK Financial Ombudsman Service, the Consumer Complaints Manager of the Malta Financial Services Authority, the Dutch Financial Services Complaints Institute) or handle consumer complaints in general (e.g. the Swedish National Board for Consumer Complaints, the Lithuanian State Consumer Protection Authority). Most of the ADR schemes are central but some are regional, such as the Lisbon Arbitration Centre for Consumer Conflicts. Some of the ADR schemes are established by public authorities (e.g. the Complaints Service of the Bank of Spain, the Irish Financial Services Ombudsman’s Bureau), others are established by private actors, usually associations of financial service providers (e.g. the Ombudsman of the German Cooperative Banks) or by associations of financial services providers in cooperation with consumer organisations (the Danish Complaint Boards).

ADR schemes also apply different procedures. Some ADR schemes issue a decision as to the way the dispute should be settled. This decision can be binding on both the consumer and the financial service provider (e.g. the Lisbon Arbitration Centre for Consumer Conflicts) or binding only on the financial service provider (e.g. the UK Financial Ombudsman Service). Other ADR schemes only make a recommendation to the parties which the latter are free to follow or not (e.g. the Finnish Consumer Disputes Board). A number of ADR schemes do not formally adopt a position on the possible way to resolve the dispute but rather help the parties to come to an agreement, although sometimes they may propose a solution informally (e.g. the Belgian Insurance Ombudsman). Some ADR schemes apply a mix of procedures. For example, at the Dutch Financial Services Complaints Institute, a dispute is first handled through a mediation procedure, but if this procedure is not successful in resolving the dispute, an arbitration procedure may be initiated.

## 2. FIN-NET

The integration of retail financial services markets gave European consumers a greater choice of financial services, facilitated by the increasing purchase of financial services through the internet. They have the opportunity to shop around not only in their home countries but also across national borders. However, in order to be confident in buying financial services from providers established in other Member States, consumers need to know that they would have easy access to justice in case of a dispute.

Normally, out-of-court ADR schemes cover financial service providers operating in and from the country where the schemes exist. This means that if consumers complain about a foreign financial service provider, the complaint would normally be handled by an ADR scheme operating in the Member State where the provider is established as that scheme is the most likely to be able to secure redress from the provider. This situation may, however, prove complicated for the consumer who would have to know of the existence and details of foreign ADR schemes.

Therefore, in 2001 for easier resolution of cross-border disputes, the Commission connected the existing national ADR schemes in the EU Member States, Norway, Iceland and Liechtenstein, into a network, FIN-NET. Within this network, national ADR schemes assist consumers involved in disputes with financial service providers based in another Member State, in identifying and contacting the ADR scheme competent to deal with their complaint.

FIN-NET was designed to allow consumers contacting the out-of-court complaint scheme in their home country even when they have a complaint against a foreign financial service provider. The scheme in the consumers' country will help them identifying the relevant complaint scheme in the financial service provider's country and will give them, *inter alia*, the necessary information about the scheme and its complaint procedure, including: contact details, coverage, organisation, the languages of operation of the scheme, whether the consumer needs to pay any charges, whether the decision of the scheme is binding, typical time limits for handling complaints.

When consumers have all the necessary information about the relevant scheme and have decided to file a complaint with it, they can lodge the complaint with the FIN-NET member in their home country, which will then transfer it to the relevant scheme in the service provider's country. In some cases it might, however, be more efficient for consumers to contact the relevant scheme directly. In such cases, the FIN-NET member in their home country will recommend them doing so.

Cross-border complaints are handled by FIN-NET members on the same basis as domestic complaints. If a scheme needs more information about the legal rules on consumer protection in the country of consumer, it may obtain this from the FIN-NET member in the consumer's home country. The FIN-NET Memorandum of Understanding outlines the mechanisms and other conditions according to which members of FIN-NET cooperate and exchange information in handling cross-border complaints. Access to the Memorandum of Understanding is open to any scheme responsible for out-of-court

settlement of disputes between consumers and providers of financial services, provided it complies with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>4</sup>. In practice this means that a Member State authority has to certify to the Commission that a scheme wishing to become a member of FIN-NET complies with all the seven principles laid down in the Recommendation, i.e. independence, transparency, adversarial procedure, effectiveness, legality, liberty and representation. FIN-NET now has 50 members from 19 EU Member States, Iceland, Liechtenstein and Norway. This means that there are no FIN-NET members from Bulgaria, Cyprus, Estonia, Hungary, Latvia, Romania, Slovakia and Slovenia.

Furthermore, members from the 19 Member States do not always cover all financial services sectors. Based on the information received from Member States, it seems that around 20 existing ADR schemes are not members of FIN-NET. ADR schemes, non-members of FIN-NET have not committed to cooperate with ADR schemes in other Member States in cross border cases. This is likely to lead to situations where consumers will not receive the necessary assistance in pursuing their cross-border complaints.

## 2.1. The Role of the FIN-NET in the Field of ADR

The members of FIN-NET are actively participating in launching public consultations or are invited to express their views on possible solutions for addressing gaps in FIN-NET and ADR coverage, adherence of service providers to ADR schemes and awareness raising and information dissemination as to the existence of ADRs and FIN-NET. The most important questions are whether membership in FIN-NET should be obligatory, should the creation of ADR competent for handling disputes concerning financial services be mandatory and should FIN-NET Memorandum of Understanding be reviewed and become legally binding. Feedback was also requested on possible action at EU level.

Seeking to analyse the current situation and provide concrete suggestions as to how the existing ADRs handling and resolving consumer disputes concerning financial services could be encouraged to join the FIN-NET they were asked several questions. With regard to the main question, namely ‘Should membership in FIN-NET be obligatory or voluntary?’, FIN-NET members that reflected on the discussion paper are generally of the view that if ADR schemes and FIN-NET are to be successful throughout the EU, it is not enough to raise awareness of existence of FIN-NET and the ADR schemes. The key is to convince consumers and financial service providers of its benefits. As advocated, all parties dealing with the financial services, from businesses to regulators in each Member State should disclose the advantages and functioning of FIN-NET and ADRs.

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4 98/257/EC Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, OJ L 115 17.04.1998.

It was suggested that action at the European level should be taken in order to promote and raise awareness of ADR schemes and FIN-NET, as well as its role and advantages of becoming a member. In addition, large support was given to the possibility of making ADRs mandatory for all financial service providers. This way, businesses and consumers would have the opportunity to resolve eventual differences using out of court mechanisms. As suggested by one respondent, once a scheme becomes a candidate for the membership, existing members could help that candidate to meet the requirements of FIN-NET membership by choosing one of the members to coach the candidate. Other respondent suggested that FIN-NET should encourage and promote FIN-NET membership.

One member also proposed that the European Commission should invite existing ADRs non-members to join FIN-NET. This would mean invitation for participation in one or more meetings. Others suggested that one of the ways to encourage the existing ADRs to join the network would be to provide them with more information about FIN-NET. It was also added that it would be beneficial if the information about the network on the Commission's website was available in more than three languages. In relation to the second question, responses obtained revealed diverging views between members. As argued by one respondent, obligation to become a member of FIN-NET would enhance FIN-NET coverage. Others added that all ADRs covering financial services sectors and complying with the principles set out in Commission Recommendation 98/257/EC should be bound to become FIN-NET members, as this was the only way to ensure that consumers and financial services providers had the same opportunities and protection, despite their location.

On the contrary, one FIN-NET member suggested that since FIN-NET was a network with no legal obligations, its membership should be voluntary. Several other FIN-NET members also supported the view of voluntary membership.

## 2.2. Lithuania's Membership in FIN-NET

Lithuania is a full member of FIN-NET from 2005 and presents annual activity reports about the statistics concerning consumer complaints and cases handled within the particular years. For example, in recent years most of the received consumer requests or complaints concerned the performance of cross-border remittance, funds transfer operations. This problem arose due to very high level of emigration of Lithuanian citizens in recent years to other EU Member States (for example the UK, Ireland etc.). The majority of Lithuanians have found their jobs in the EU internal market. As a consequence, the number international funds transfers from and to Lithuania is increasing.

The benefit of such participation in the network is illustrated by the following examples of cross-border cases handled by the Lithuanian State Consumer Protection Authority (hereinafter – the Authority).

The consumer applied to the Authority stating that she performed a money transfer operation via company 'MoneyGram' to the UK. The recipient arrived to the bureau of

‘MoneyGram’ in the UK, but had not received any money. He was told that someone had already taken the money using his ID card data. After consulting the Authority, the consumer applied to the UK Financial Ombudsmen Service.

The consumer turned to the Authority in order to find out whether consumer credit institution existed in the UK and whether it conducted legal business. The Authority sent an information request to the UK Financial Ombudsmen Service and received an answer that the abovementioned financial institution did not have a license to engage in financial activities and the consumer was suggested not to sign any contract with that company.

The Authority received a request for assistance from the Polish Insurance Ombudsman to resolve the following situation. A Polish citizen was injured in the car accident. The driver of the vehicle had a driver’s liability insurance in the Lithuanian company. The Polish citizen presented all the requested documents to the branch office of the Lithuanian insurance company in Poland. Subsequently, he received information that all documents were sent to Lithuania. The Polish citizen has received no insurance payment or compensation. The Lithuanian insurance company did not respond to the requests of the Polish Insurance Ombudsman. The Authority forwarded the request for investigation to the Lithuanian Insurance Supervisory Commission. The complaint was resolved in favour of the consumer.

In summarising the information given above in this chapter, it is worth saying that FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries that are responsible for handling disputes between consumers and financial service providers, i.e. banks, insurance companies, investment firms and others. Within FIN-NET, the schemes cooperate to provide consumers with easy access to out-of-court complaint procedures in cross-border cases. If a consumer in one country has a dispute with a financial service provider from another country, FIN-NET members will put the consumer in touch with the relevant out-of-court complaint scheme and provide the necessary information about it, thus active participation in the network is beneficial both for business and consumer sectors and helps national institutions controlling this sensitive market.

### 3. ADR Schemes in the EU Member States

This chapter is based on the information received from Member State authorities on the geographical and sectoral coverage of ADR schemes. It shows coverage for the banking, payments, insurance and securities sectors and whether the relevant ADR schemes have joined FIN-NET. In some countries, one scheme covers all sectors or more than one sector. This table should be seen as a rough picture of the existing situation, as in some countries, even if a sector seems to be covered, gaps may still remain due to the fact that, for example an ADR scheme only handles disputes involving financial service providers that are members of a specific association.

### 3.1. Development of the ADR Schemes

In a number of Member States the existing ADR schemes already cover all financial services sectors. In the Member States where ADR schemes currently do not cover all financial services, generally no legal obstacles exist to establish an ADR. A number of Member States (Cyprus, Czech Republic, Italy, Poland, Romania, Slovakia, Spain and Liechtenstein) report about work underway or plans to create ADR schemes. Only one Member State is of the view that there is no need to encourage the creation of ADR schemes due to a well developed judicial network and existence of other less formal procedures, e.g. support for consumers by consumer associations.

A number of Member States (Latvia, Lithuania, Luxembourg, Romania) have expressed their intention to the Commission to encourage the existing ADR schemes to join FIN-NET. Some EU legislative acts in the area of financial services contain provisions encouraging the creation of ADR schemes or obliging Member States to ensure that they are created. In Austria, Cyprus, Estonia, Latvia, Lithuania, Luxembourg, Poland, Romania and Liechtenstein there is no obligation on the financial service providers to inform customers about the existence of a relevant ADR scheme.

In seven Member States (Denmark, Ireland, Netherlands, Slovenia, Spain, Sweden, UK, and Norway) the obligation on the financial service providers to inform customers about the existence of a relevant ADR scheme exists across all financial sectors. In other Member States such obligation exists in certain sectors. For example, in Belgium, Bulgaria, Finland, France, Germany, Hungary, Portugal, Iceland such obligation exists in the insurance sector, in Bulgaria, Czech Republic and Germany it exists in the payments sector and in France it exists in the banking sector. In a few countries (Finland, Germany, Hungary, Portugal and Slovakia) there is an obligation on financial services providers to inform their clients about an ADR scheme when a contract is concluded at a distance. No Member State applies an obligation on financial service providers to inform their clients about FIN-NET. Some EU legislative acts in the area of financial services require that information about the existence of an ADR scheme is to form part of the contractual information that financial service providers provide to their customers.

The dominant type of financial ADR in Western Europe is the financial ombudsman. Many started covering a single sector (such as banking or insurance), however, now there is a trend towards establishing a single financial ombudsman covering all financial sectors. Some countries use alternative forms of financial ADR, such as a complaints department within a financial regulator, complaint boards (with an independent chair and equal number of members from consumer and industry bodies) or regional arbitration. Case studies are provided of an industry-established ombudsman scheme with a governance body; an industry-established ombudsman scheme without a governance body; and an ombudsman scheme established by law.

Financial ombudsmen are established in many different countries and sectors. They need to take account of the relevant constitutional, legal and cultural circumstances – whilst remaining faithful to fundamental ombudsman principles, including independence and effectiveness. Key issues on coverage and governance include: whether financial

businesses are required to be covered by a financial ombudsman; whether there should be a single ombudsman or ombudsmen for different sectors; how the financial ombudsman is appointed and funded; and whether there is a governing body. Key issues on procedure include: complaint-handling requirements for financial businesses, including requirements to tell dissatisfied consumers about the financial ombudsman; enquiry and case handling processes of the financial ombudsman; the basis for the financial ombudsman to decide; and whether ombudsman decisions are legally binding.

The name of ‘ombudsman’ should not be used for a body that does not follow the ombudsman principles – including independence and effectiveness – or that is unable to secure redress for consumers in practice. The ombudsman should be as independent and impartial as a judge (and also should be seen as such) – as well as having the necessary legal and technical expertise to resolve financial disputes authoritatively. This needs to be reflected in the appointment and governance arrangements.

Industry funding can comprise a levy on all the financial businesses covered, case fees payable by financial businesses that have cases decided by the ombudsman or a combination of the two. Even a modest fee for consumers would be a barrier for the vulnerable.

A growing and efficient market in financial services depends, amongst other things, on consumer confidence. Developing consumer confidence requires effective:

- prudential regulation, to ensure that financial businesses are financially sound and run by fit and proper people;
- conduct of business regulation, or self-regulation through industry codes, to ensure that financial businesses treat consumers well;
- arrangements to provide appropriate protection to consumers if a bank or other significant financial business becomes insolvent; and
- accessible and user-friendly arrangements to resolve disputes between consumers and solvent financial businesses; and
- measures to create confident consumers, by increasing their financial capability through information on financial issues and on their rights and liabilities.

In focusing on resolving disputes between consumers and financial businesses, this report draws on experience in the developed market of Western Europe in order to identify principles that are likely to be equally applicable elsewhere. Common themes from nine previous World Bank reports on improving consumer confidence in financial services in individual countries<sup>5</sup> included:

- Special attention should be paid to consumer complaints. Many are enquiries rather than disputes. If they are not satisfactorily addressed, they undermine public confidence.
- Businesses should tell customers in writing how they can complain, and have a designated department or person to handle complaints. Regulators should review complaint files.

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5 Azerbaijan, Bulgaria, Croatia, Czech Republic, Latvia, Lithuania, Romania, Russian Federation and Slovakia – see <<http://go.worldbank.org/HHAM6ZTHT0>>.

- Consumers should have access to a fast, inexpensive and effective redress mechanism. Ideally there should be one, clearly identified, central location for complaints or enquiries.
- The central complaints office should have a free phone line. Consumers should be able to submit complaints by e-mail, post or personal visit.
- Going to court is not a viable alternative for most consumers. Policy-makers should consider establishing a financial ombudsman.
- Statistics on consumer complaints should be analysed and published. They should be used to identify future improvements in the protection framework. Experience shows that an effective financial ombudsman benefits financial businesses and the state, as well as consumers.
- Consumers have greater confidence in financial services when they know that, if anything goes wrong, they will be able to take their dispute to an independent body that will resolve the issue quickly and informally, without the consumer needing a lawyer. This is also likely to help with financial inclusion.
- Financial businesses benefit because: consumers are more likely to buy financial products; the cost of resolving disputes with consumers is kept to a minimum; and unscrupulous competitors who act unfairly are held to account.
- The state benefits because: feedback from an ombudsman can help improve future regulation; and (at a time when many countries need to limit public expenditure and/or face an ageing population) confident consumers are more likely to save and make provision for retirement. Ombudsmen can fulfil a wider role than the courts. Like the courts, they resolve individual cases.

Unlike the courts, they can also deal with consumer enquiries, and feed back the lessons from their work to help governments, regulators, financial businesses and consumers improve things for the future.

Therefore, an ombudsman's role in underpinning consumer confidence in financial services includes:

- helping to support improvements, and reduce disputes, in financial services; and
- helping financial businesses themselves to resolve disputes with consumers; as well as;
- resolving consumer disputes that financial businesses fail to resolve themselves; and hence;
- reducing the burden on the courts.

### 3.2. Adherence by Financial Services Providers to ADR Schemes

In some Member States financial service providers are obliged to adhere to an ADR scheme. For example, in Belgium, this obligation exists for insurance intermediaries, banking and investment service brokers. In Denmark, once a financial service provider is approved by the authorities, the relevant Complaints Board has the competence to deal with complaints against that provider. Also in the Netherlands the law requires

that most financial service providers join the Financial Services Complaints Institute. However, the Commission does not have comprehensive information on this issue from all Member States.

#### 4. Financial Services Code of Ethics and Business Conduct

The Codes of Ethics and Business Conduct set principles that a business must follow in its activities as a director, officer, or employee of the financial services company in general. It should be read together with other applicable company policies and procedures, including the officer and employee Code of Conduct. The Code of Ethics does not cover every legal or ethical issue. No code can attempt to anticipate the myriad issues that arise in any business. However, following this Code and other company policies and procedures, adhering to the letter and the spirit of all applicable laws and regulations, and above all applying sound judgment to the activities, demonstrates commitment to the company's values.

Usually financial institutions are subjects of numerous laws and regulations in a variety of domestic and international jurisdictions. It is essential to understand the laws applicable to a company's responsibilities and to comply with both the letter and the spirit of these laws. This requires that a subject not only avoids actual misconduct but also the appearance of impropriety. Certain significant policies, laws and regulations are highlighted below and additional information may be found in other applicable company policies and procedures, including the officer and employee Code of Conduct. This is not a complete list of the laws, rules, regulations and policies that must be adhered to by every person subject to this Code in the conduct of his or her duties at concrete financial institution.

Conflicts of interest may also arise as a consequence of the Company's interests and relationships with multiple customers, counterparties, and suppliers. Conflicts, for example, can occur between different customers and between customers and the Company itself. Officers and employees are responsible for: identifying and managing conflicts in accordance with the regulatory requirements and Company policies. Once a potential conflict is reviewed and approved, employees and officers must notify promptly the original approving parties of any changes to the business structure of the external activity, any changes in ownership or of any changes in participation in an external activity previously approved at which time the prior approval may be re-evaluated.

Officers and employees cannot accept an external position if that position would interfere with the ability to perform work for the company. While it is not possible to describe every situation in which a potential conflict of interest may arise, the following are examples of situations that do raise a conflict of interest, and therefore must be disclosed to and approved by the special body within the company.

Day-to-day responsibilities may expose to situations that potentially raise personal conflicts of interest. Avoid any investment, activity, interest, or relationship outside the

company that could impair the judgment or interfere with (or give the appearance of interfering with) some responsibilities on behalf of the company, its customers, or its shareholders.

## Conclusions

*The quality of information on financial services disclosed to consumers should be improved*<sup>6</sup>. The professional associations should be encouraged to develop a simple and standard Key Facts Statement for each major financial product oriented toward retail consumers. The format should be reviewed by the financial supervisory agencies and the Statement should be provided to the consumer at the point of sale of the contract. In addition, financial institutions should make their standard contracts for financial products readily available to consumers. For financial products, where the price may vary over time, consumers should also receive information about the impact of changes. For residential mortgages, the Association of Lithuanian Banks should adopt the European Standardised Information Sheet (ESIS). Consumers should also have access to comparable quotes for standard financial products, elaborated by the financial regulators, state institutions or consumer associations.

*Market practices in the retail financial sector should be strengthened*. The financial professional associations should *develop codes of conduct*, subject to review by the competent state institution and the financial supervisory agencies, and make them widely available to consumers. In addition, sellers of retail financial services should receive specialised training. Consideration should also be given to increasing competition in the financial sector by authorising new entrants into specific areas of financial services such as payments or money transfer services and by ensuring that consumers can select the provider of any financial product required for another product. At the same time, all financial service providers should be authorised and supervised by one of the financial supervisory agencies and be required to disclose their regulatory status in their advertising. One competent state institution should play a role in alerting consumers on possible unfair practices, by using different means such as setting up a special section on its website or distributing press releases to the media.

*The processes of handling inquiries, complaints and disputes should be improved*. All public agencies should periodically forward the consumer communications they receive, using a common format, to one competent state institution, which should maintain a central database of financial consumer communications. The state institution and professional associations should analyse trends in consumer communications and prepare proposals on ways of addressing issues that are repeatedly raised. All financial

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6 See OECD, *Improving Financial Education and Awareness on Insurance and Private Pensions* (2008) [interactive]. [accessed 12-01-2012]. <[http://www.oecd.org/document/8/0,3343,en\\_2649\\_34851\\_41210376\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/8/0,3343,en_2649_34851_41210376_1_1_1_1,00.html)>; OECD, *Improving Financial Literacy: Analysis of Issues and Policies* (2005) [interactive]. [accessed 12-01-2012]. <[http://www.oecd.org/document/28/0,2340,en\\_2649\\_201185\\_35802524\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,2340,en_2649_201185_35802524_1_1_1_1,00.html)>.

institutions should be obliged to have a designated official or department responsible for receiving customer complaints. Government should establish itself as the central point for helping consumers resolve problems related to financial services. In the short term, this abovementioned institution should be in charge of handling consumer complaints and disputes for all financial services except for the insurance sector, which would remain the responsibility of ISC. As a second stage, it should expand its responsibilities to include handling complaints and disputes in insurance matters. As the consumer protection system becomes stronger, the number of inquiries, complaints and disputes is likely to increase and the authority is likely to become overwhelmed with the task of resolving consumer disputes. For this matter, consideration should be given to establishing an independent financial statutory ombudsman. Cost-benefit analyses of the possible approaches to ombudsmen should be prepared.

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## ALTERNATYVUS GINČŲ SPRENDIMAS VARTOTOJAMS SKIRTŲ FINANSINIŲ PASLAUGŲ SRITYJE

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**Santrauka.** *Finansinės paslaugos turi labai didelę reikšmę bei įtaką vartotojų gyvenimui, jo gerovei, o jų spektras bei teisinis reglamentavimas nuolat kinta tiek ES, tiek ir jos valstybių narių lygiu. Siekiant pagrindinių ar šiuo metu vienu svarbiausių Europos Sąjungos tikslų – aukšto vartotojų teisių apsaugos lygio užtikrinimo bei vartotojų pasitikėjimo verslo sektoriumi, tinkamo ir efektyvaus Europos Sąjungos vidaus rinkos veikimo, finansinių paslaugų išsigijimo, ypač nuotolinėmis ryšio priemonėmis, būdų, skatinimo ir esamų rodiklių gerinimo, būtina ne tik aiškiai reglamentuoti šių paslaugų teikimo tvarką, paslaugų teikėjų atsakomybę, vartotojų teises ir pareigas, bet ir skatinti efektyvesnio, greitesnio ir pigesnio kylančių vartotojų bei paslaugų teikėjų ginčų sprendimo paiešką. Vienas iš daugelio būdų, padedantis siekti nurodytų tikslų įgyvendinimo, yra glaudus Europos Sąjungos ir nacionalinių valstybių narių kompetentingų institucijų tarpusavio bendradarbiavimas įvairių ad hoc ekspertų darbo grupių, komitetų ar nuolat veikiančių bendradarbiavimo tinklų pagalba. Būtinai tokių subjektų priimamų sprendimų bei jų vaidmens viešinimas, verslo ir vartotojų įtraukimas į tokių tinklų vykdomą konsultacinę veiklą, ieškant geriausių kylančių problemų sprendimų. Dėl šios priežasties šiame straipsnyje pateikiamas bendrasis požiūris į finansinių paslaugų, skirtų vartotojams, srityje kylančias vartotojų teisių apsaugos problemas, ES ir nacionalinių institucijų veiklą, siekiant užtikrinti sąžiningą ir skaidrų tokių paslaugų teikimą jų vartotojams bei alternatyvius galimus vartotojų ir finansinių ginčų sprendimo būdus, priemones ir metodus, jų taikymo patirtį ES valstybėse narėse. Šio straipsnio autoriai palaiko alternatyvių ginčų sprendimo metodų taikymą ir platesnį savireguliacijos mechanizmų – elgesio kodeksų – diegimą bei mano, kad daugeliu atvejų privalomų valstybės prievartos priemonių ar sankcijų nebuvimas skatina vartotojo ir verslo subjekto santykių disbalansą silpnesniosios sutarties šalies – vartotojų – nenaudai. Dažnai praktikoje pasitaiko situacijų, kai pasireiškia teisinis netikrumas ir nėra aišku, kurios valstybės jurisdikciją ar teisę reiktų taikyti virtualioje erdvėje sudarytų finansinių paslaugų išsigijimo sandorių metu kilusiems ginčams spręsti, kaip spręsti brangaus teismo proceso klausimus verslas vartotojams santykiuose. Alternatyvi priemonė – ginčų sprendimas ne teisme finansinių paslaugų srityje – yra viena iš patraukliausių galimybių ar priemonių, galinti pašalinti ar bent jau sumažinti šioje paslaugų srityje kylančias problemas, vadovaujantis gerosios praktikos kodeksais, ginčo šalims naudojant alternatyvias teismui procedūras, t. y. taikant mediacijos ar arbitražo metodus bei jiems būdingus principus arba juos sujungiant į vientisą visumą.*

**Reikšminiai žodžiai:** *vartotojas, prekybininkas, finansinės paslaugos, verslo sektorius, alternatyvus ginčų sprendimas, ginčų sprendimas internetu, arbitražas, taikinimas, mediacija.*

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