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DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Horizontal policies
Retail financial services

MINUTES

ON-LINE FIN-NET PLENARY MEETING 12 NOVEMBER 2024

9.30-12.30 CET

Welcome by the chairwoman, approval of agenda

The FIN-NET chairwoman warmly welcomed new FIN-NET members from France and Portugal and FIN-NET affiliate from Bosnia and Herzegovina.

Combating cyber fraud in payment services: how fraudsters exploit Apple Pay and Google Pay

Presentation by Hungarian Financial Arbitration Board; discussion

The Hungarian Financial Arbitration Board presented an update on their experience with fraud cases. They have seen a slight decrease in the number of cases, which they attribute to increased awareness of the dangers of fraud and the success of media campaigns. The Hungarian police have also made significant arrests in the past year, which has contributed to the decrease.

In most cases where the board terminated its procedure it found that the consumer's claim was unfounded. In some cases, the board had to terminate the procedure because it was impossible to continue the procedure due to the complexity of the case. The ratio of cases where consumers have been misled by fake links or websites has been decreasing in 2024 compared to the previous year, and cases where the consumers have given out their bank card information and SMS codes have been increasing in 2024 compared to 2023.

The board explained that they look for gross negligence on the part of the consumer when deciding on cases. They consider whether the consumer has taken reasonable steps to keep their security credentials safe and whether they have notified the bank promptly if they suspect a fraud.

The board has seen a high number of cases involving mobile payment apps, such as Apple Pay and Google Pay. The speaker noted that these services are not inherently fraudulent, and these cases do not represent different fraud types, but rather can be used as tools by fraudsters to commit crimes. In some cases, it was impossible to establish

how the fraudsters acquired the necessary information, but the bank's log information showed that the SMS code was sent to the consumer's phone and used for digitalization of the card.

The board is working closely with the Central Bank of Hungary and the Supervisory Authority to clarify technical questions and establish clear guidelines for handling these types of cases. The Hungarian Financial Arbitration Board is also involved in the Cyber Shield program, a cooperation among government agencies and other bodies to raise awareness of the dangers of fraud and to educate consumers on how to prevent it.

The board is also engaged in other awareness-raising activities, including publishing professional articles about their experience and providing information regularly about the procedures. They are working to combat fraud not only during their procedures but also outside of them.

The Hungarian Financial Arbitration Board has issued binding resolutions and recommendations in favour of consumers in some cases, and has also seen a number of quasi-settlement agreements and settlements made by the parties outside of the procedure.

The discussion also touched on the role of the courts in resolving cases of fraud, with one participant noting that the judicial framework in some countries is evolving to hold banks accountable for their role in facilitating fraud. In one notable case, a court ruled that a customer who was deceived by a fake advisor over the phone could not be held liable for the negligence of their bank, and was therefore entitled to be reimbursed for the fraudulent transfer.

PSR and PSD3 negotiations & fraud prevention

Latest updates from the Commission Services on the proposal, key insights from the ECB and EBA joint report on payment fraud; a discussion on fraud prevention challenges

DG FISMA staff provided an update on the ongoing discussions in the Council on the Commission's PSR proposal with a focus on fraud prevention measures and liability for fraudulent payment transactions.

Some members raised comments about the UK rules on reimbursement of victims of APP (Authorized Push Payment) fraud. In particular, one participant was of the view that, while the UK rules cover a too wide range of fraud cases, the 50/50 split of the cost of reimbursement in the UK between the sending and receiving payment service providers (PSPs) may be a good way to incentivise all PSPs to invest more in fraud prevention.

Another participant was of the view that such sharing of liability, which in the UK applies only for domestic transactions, would be difficult to implement at EU level for cross-border transactions. Another FIN-NET member asked about the bank's obligation to intervene in cases of suspicious transactions.

The presenter noted that there are provisions in the PSR proposal to enhance PSP's transaction monitoring mechanisms to detect and prevent fraud, that there are also provisions in AMLR (Article 71 read in conjunction with Article 69) which require banks to refrain from carrying out a transaction in case of suspicions of illegal activity, including fraud, and that these aspects are also being discussed in the Council. It was also noted that there is a need to ensure that customers are protected, but also to mitigate risks of legitimate payment transactions being blocked or delayed.

FIN-NET survey: digitalisation of complaints handling among the FIN-NET members

IVASS presentation on survey finding highlighting current practices among FIN-NET members; discussion

The FIN-NET survey on Alternative Dispute Resolution (ADR) and online access aimed to assess the extent of digital integration in ADR processes and the remaining reliance on offline procedures. The survey involved 41 ADR schemes across 25 countries, all offering online complaint submission options, primarily through online portals (76%) and/or e-mail (43%). These ADR bodies handle an average total workload of about 5000 complaints per year.

Key findings include:

- ADR schemes with restricted or optional online access tend to have a higher offline workload.
- Providing specific tools to assist with online complaint submissions correlates with a lower offline workload.
- Overall, the digitalisation of ADR processes is high, with 70% of complaints being submitted online, reflecting a clear preference for digital channels among complainants.

The survey also noted that 23% of ADR schemes do not offer claimants a free choice between online and offline. These ADRs may therefore be affected by the European Commission's proposed revision of Article 5(2) of the ADR Directive, which grants the claimant a free choice on the access channel.

In conclusion, the survey highlights that improving digital tools for online submission can reduce the offline workload while ensuring accessibility for less digitally literate users, aligning with broader efforts for greater digitalisation in ADR processes.

Review of the ADR Directive and ODR Regulation

Presentation by the Commission on the state of play of the review of the ADR Directive and ODR Regulation; Q&As

Review of ADR Directive

On 25 September, COREPER agreed on the Council General Approach text and that the Hungarian Presidency enters into inter-institutional negotiations. The text is very restricted on the scope, i.e. it does not cover non-contractual disputes nor disputes involving third country traders. On the duty to reply, the Council proposes to extend the number of days for traders to respond to ADR enquiries from 20 to no-more-than 40 working days in complex cases or exceptional circumstances and that the consumer should be informed accordingly. The Council clarifies that the duty to reply does not apply where trader participation is mandatory, when ADR outcomes can be reached without the trader's consent to participate or when the traders have already committed contractually or through a statement on their website to use ADR entities to resolve disputes with consumers. Finally, the Council proposes that if the trader has not replied within the set deadline, Member States shall ensure that the trader is presumed to refuse to participate in the procedure (and therefore the case could for example considered closed by the ADR entity), which shall have the consequences set out in national legislation. Member States also asked for further clarifications on the use of AI in ADR; especially on information requirements to consumers. The intention is that trilogues start this year/early 2025 in view of an early second reading agreement.

Repeal of ODR Regulation

No amendments have been tabled by the European Parliament nor the Council; hence no trilogues will take place.

Sharing national experiences: handling of complaints related to the fees for inheritance processing and the correspondent account maintenance fees

Presentation by the Bank of Spain, followed by the discussion with participants

The Bank of Spain gave a presentation on handling complaints related to inheritance and probate fees in the financial sector. The speaker explained that Spanish law governs inheritance, and Article 661 of the Civil Code states that heirs take on all the rights and obligations of the deceased.

The speaker highlighted two main types of complaints: issues with the inheritance process, which can be complicated by local laws and taxes, and problems with specific financial products.

A common complaint is about the probate processing fee, which banks often charge automatically when handling an inheritance. This fee can cause conflict because it may not always be justified or clearly explained.

To address this, the speaker's organization introduced a rule requiring banks to explain and justify the probate fee. Each case is reviewed individually to determine if the fee is fair. The organisation also limits situations where banks can charge this fee automatically.

Additionally, a new rule was introduced to stop banks from charging maintenance fees on accounts even with no money, especially when delays in the inheritance process are beyond the heirs' control.

The discussion emphasised the importance of transparency and fairness in charging fees, particularly in sensitive situations like inheritance. It also raised concerns about charging fees during alternative dispute resolution (ADR) processes and stressed the need for clear rules and guidelines.

AOB

The Chairwoman has provided tentative dates for FIN-NET meetings in 2025: 15 May (in person), and 20 November (online).

She invited FIN-NET members who wish to host an in-person FIN-NET meeting in 2025, including possible dates, to inform the Commission services by the end of 2024.