



MINUTES

FIN-NET (HYBRID) PLENARY MEETING

16 NOVEMBER 2023

A. BORCHETTE 36, 1040, ETTERBEEK, BRUSSELS

Welcome by the Chair, approval of agenda and introduction of new members

The chair welcomed all the participants to the plenary meeting. The assembly approved the agenda of the ongoing meeting. The Chair also welcomed five new members:

- Stanislava Kasikova from the Centre for Alternative Dispute Resolution Consensus in Bulgaria
- Claudiu Stanescu from the Alternative Dispute Resolution Department within the Financial Supervisory Authority in Romania
- Maija Voilaka from the Consumer Rights Protection Centre in Latvia
- Svilena Nasalevska from the National Association of Out-of-Court Settlement in Bulgaria
- the Financial Ombudsman from Cyprus (but the representative was not present for the introduction).

With the new members all Member States are now represented in FIN-NET network.

Transfer of complaints to competent schemes in other countries

A representative of the CNMV Complaints Service in Spain presented the service provided by CNMV to consumers regarding cross-border complaints, in particular as regards the cases in which the complaint was transferred directly by the FIN-NET member (as opposed to the cases in which the home FIN-NET member only provides information to the consumer about which FIN-NET member to address and the consumer files himself a complaint with the (recommended) FIN-NET member). The presentation included insights from the survey conducted among FIN-NET members on the feedback for cross-border complaints transmitted to a foreign competent scheme. The survey showed inter alia that many FIN-NET members do not directly transfer consumer complaints to other FIN-NET members but rather inform the consumer who can then decide whether or not to introduce a complaint with the (recommended) FIN-NET member. The representative of the CNMV Complaints Service underlined the importance that, in case a consumer complaint is directly transferred by one FIN-NET member to another FIN-NET member, the transferring FIN-NET member should receive an acknowledgement of receipt.

The chair opened the floor for questions and feedback. Some members expressed concerns about the lack of a direct contact for the original and referred bodies, limiting the acknowledgement process. One FIN-NET member suggested mapping out relationships between authorities to better understand the issue. Another member raised a point about the questionnaire focusing on states, noting variations in ADRs due to different countries.

The chairperson suggested that best way forward would be for the ADR body who transfers the complaint on behalf of the consumer should be able to receive an acknowledgment of receipt from the other ADR body and feedback on whether or not they would be dealing with that case. A template of such an email will be prepared and shared with members of the FIN-NET network.

Proposals for PSD3 and PSR

A DG FISMA representative presented the Payment Services Directive (PSD) review package which was published on 28 June, 2023, and is currently undergoing discussions in the Council of the European Union and the European Parliament. The Payment Services Regulation (PSR) aims to enhance transparency on charges for domestic ATM withdrawals and improve the functioning of open banking. It eliminates the need for two interface types, requires Account Servicing Payment Service Providers (ASPSPs) to provide a permissions management dashboard on data access for consumers, and extends the IBAN name check, free of charge, to non-euro currencies. The proposal also includes a refund right for consumers in cases of fraud or spoofing, subject to certain conditions. It introduced liability for technical service providers and operators of payment schemes for failure to support the application of strong customer authentication, and payment providers can share information on fraudulent IBANs for improved fraud prevention. The presentation stressed on informing customers and staff about new fraud techniques, streamlined strong customer authentication requirements, and retailers offering cash withdrawal services for transactions under 50 euros. Apart from that, independent ATM deployers must register and undergo supervision. The presentation concluded on dispute resolution procedures. While not mandatory, procedures must be accessible, adequate, independent, impartial, transparent, and effective. The PSR requires PSPs to subscribe to ADR, without mandatory participation, allowing room for more definitive rules. After the presentation, there was a fruitful discussion which covered fraud detection measures and the definition of gross negligence.

Digital insurance market. Fraud risks in online sales

A representative from IVASS Italy provided a comprehensive presentation on the fraud risks associated with the online insurance market. She highlighted that 93% of Italian digital customers express satisfaction with online insurance markets due to benefits such as lower prices, increased accessibility, the ability to manage insurance independently, greater product customization, the convenience of quick purchases and the possibility to managing it via smartphone. The representative shared statistics illustrating the growing trend of intermediaries and insurers operating through digital channels, predicting a further increase in the coming years.

However, she also emphasized that the use of technology introduces cyber risks and fraud. The three primary areas of concern for consumers are identity theft, payment fraud, and buying scams. The representative shed light on "ghost broking" or "ghost insurance," forms of fraud where perpetrators pose as genuine insurers or brokers to sell invalid or fake policies. Counterfeit policy sales, the most common form of ghost

broking, particularly in motor insurance, reached a peak in 2020, particularly due to the COVID-19 pandemic.

She pointed out that this type of fraud is not limited to online channels but can also occur via telephone, with payment processed offline in distant sales. The representative also discussed IVASS's active role in detecting and responding to fraud by collaborating with other authorities, informing consumers, and implementing prevention strategies.

The representative then continued the presentation, discussing IVASS's efforts in working to implement the CPC Regulation and prevention strategies, including publication of a IVASS whitelist and agreements with website engines to take down fraudulent ads. In 2022, IVASS even published a study on how to prevent fraud, along with organizing training days.

Following the presentation, a FIN-NET member inquired about educational initiatives for teachers and students on the topic of fraud.

Issues regarding estimation of the value at maturity of life insurance policies

A representative from the OAFS in Malta explained challenges related to life insurance policy complaints, specifically the maturity value in the life policy and gave examples where wide legal terms had been used by the arbiter in favour of the consumer. With over 150 recent complaints, the arbiter applied fairness and reasonableness to each case and also considered consumer expectations when determining outcomes. The few cases that were appealed had all confirmed by the Court. That set indicative awards that ranged between 10% to 15% in compensation in addition to the declared maturity value, depending on the circumstances of the case. During the presentation, an attendee inquired about assessing legitimate expectations of the consumer while determining fair compensation.

Review of the ADR Directive and ODR Regulation

A representative from DG JUST provided an update on the ongoing work to amend the ADR directive and repeal the Online Dispute Resolution (ODR) regulation. The reform aims to make the ADR Framework fit for the digital markets, to provide customised assistance to consumers, build trust, and simplify the procedure while being cost effective for all ADR actors. The proposal is not proposing mandatory ADR but keeps it optional for consumers and traders. The proposed changes widen the ADR directive's scope to also cover consumer disputes related to pre-contractual information and disputes involving non-EU traders and introduce safeguards for consumers and incentives for trader participation. Key features include ADR contact points, reduced administrative burden, and discontinuation of the ODR platform due to its cost-ineffectiveness.

Definitions of domestic and cross-border disputes are modified, and ADR entities are encouraged to bundle similar cases to ensure more consistency and be more cost-effective. Traders must respond to ADR inquiries within 20 days, and information obligations are voluntary i.e. traders are no longer required to provide the link to the ODR platform.

During the discussion, focus centred on bundled disputes, the 90-day period, the role of the contact points and the importance of ensuring that traders do not hinder or make it difficult for consumers to open a complaint. For additional information or inquiries, the contact is JUST-ADR@ec.europa.eu.

Retail investment strategy

A FISMA representative presented the EU retail investment strategy, highlighting two legislative proposals; a directive amending MiFID, UCITS, AIFMD and Solvency 2 and a regulation amending PRIIPS. The RIS addresses in a coherent way across different sectors a number of issues including transparency/disclosure rules, and risks associated with social media use, conflict of interest, as well as high costs of products.

To enhance transparency, the proposed changes include a summary dashboard in PRIIPS KID, adaptation to the digital environment through layering of PRIIPS KID as well as digital by default rules, introduction of standardized terminology for cost disclosures, requirements of an annual disclosure statement of costs and performance and adding risk warnings for particularly risky financial instruments.

On the conflict of interest, the impact assessment had suggested a full ban on inducements, but the Commission had considered it too disruptive opting for a ban for independent advisors, a partial ban for non-advised services as well as rules to strengthen the best interest of the client obligation.

In addition, the RIS included rules to ensure value for money. This would require firms to justify that products provide value for money, in particular in cases in which relevant benchmarks (to be developed by ESMA and EIOPA) are not met.

Additional topics include high professional qualification standards, financial literacy, supervisory enforcement and client categorisation. FIN-NET members expressed their support for the RIS.

Impact of the AML rules on consumer protection

A colleague from DG FISMA in charge of the anti-money laundering policies, gave a presentation on four legislative proposals of the Commission adopted on 20 July 2021 and that are still under negotiations: the AML Regulation (AMLR), AML Directive (AMLD), Transfer of Funds Regulation, and AML Authority Regulation (AMLAR). The AMLR harmonises existing rules formerly in a directive, broadens the scope of obliged entities submitted to AML rules, in particular Crypto Assets Service Providers and crowdfunding service providers, with specific requirements for the private sector, revised mandatory due diligence rules that credit institutions must apply to their customers, such as a new threshold for occasional transactions (lowered from €15,000 to €10,000).

Key aspects of the AMLR also include a renewal and clarification of the EU AML high risk third-country policy, in particular its coordination with Financial Action Task Force (FATF) listings, clearer and more detailed rules on cases where it is required to apply simplified or enhanced due diligence, clearer suspicion criteria with reduced data record retention (reduced from 10 to 5 years), and the progressive ban of anonymous accounts and bearer instruments.

The AML Directive governs tasks and powers of supervisors, Financial Intelligence Units (FIUs), exchange of information, and registers. It also strengthens and clarify requirements of Member States for performing regular national risk assessments at least every four years. These rules are completed by the Recast of the Transfer of Funds Regulation, which aims at ensuring cryptocurrency transfers traceability.

Last, the new AML Authority will create a single integrated system of AML and Countering the Financing of Terrorism (CFT) supervision, directly supervising major banking and financial institutions and coordinating the supervisory authorities across the Union for the supervision of other financial sector obliged entities. It will also serve as a

coordination and support Mechanism for EU FIUs, supporting their cooperation and joint analyses. The co-legislators have already finalised the negotiations of the Recast of the Transfer of Funds Regulation and are currently in trilogues on AMLAR, AMLD, and AMLR, addressing unintended and de-risking consequences in the AML Regulation.

The discussion focussed on the “de-risking” issue (cases of banks refusing to establish or maintain business relationship with a customer on the basis of potential money laundering or terrorist financing risks). Attendants raised that the AML framework was not always sufficiently protecting the consumers, raising cases of complaint against banks that blocked accounts with no information on the reasons of this decision.

The Commission representative explained it is proposing in the AMLR to better streamline the practice of customer due diligence duties performed by banks, in particular the need to justify decisions not to open or maintain a business relationship, by including the grounds for such a decision in its customer due diligence records.

Attendants also raised possible conflicts between due diligence measures performed on customers under AMLR and privacy rules. The Commission representative acknowledged that some difficult balance needs to be found, recalling that AML legislation must be applied in full compliance with the General Data protection regulation (GDPR), which includes however exemptions for task carried out in the public interest.

Next meeting

The next (physical) meeting is tentatively scheduled to take place on 14 May 2024 in Brussels.