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

Horizontal policies
Retail financial services

MINUTES

FIN-NET (HYBRID) PLENARY MEETING

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A. BORCHETTE 36, 1040, ETTERBEEK, BRUSSELS

Presentation by the Maltese Arbiter for Financial services on the model used to determine the level of negligence in consumer disputes

The Arbiter for Financial Services in Malta presented a model his office has developed to allocate responsibility between payment service providers (PSPs) and payment service users (PSUs) in cases of alleged payment fraud scams. The model aims to provide a clear and consistent framework for determining the level of negligence.

The model takes as a starting point that, if a payment was fully authenticated with two-factor authentication, 100% of the responsibility lies with the PSU. It then adjusts the allocation based on five key criteria:

1. If the fraudulent message was received on the same channel the PSP normally uses to communicate with the PSU, even if not usually for payment instructions, 50% of responsibility shifts to the PSP.
2. The extent to which the PSU cooperated with the fraudster to specifically authorise the payment, e.g. by providing the amount and authorisation code, shifts 30% of responsibility to the PSU.
3. The PSU's responsibility would increase by 20% if the PSP issued an appropriate warning on the same channel about such fraud schemes in the last 3 months or by 10% if issued in the last 6 months.
4. The PSU's responsibility is reduced by 20% if there are special circumstances, making the request of the fraudsters to press the link less suspicious, such as the PSU negotiating other matters with the bank.
5. If the PSU made no genuine similar online payments to third parties in the previous 12 months, its responsibility is reduced by 20%.

The model has helped resolve many cases in the pre-mediation stage by giving both parties a framework for the likely outcome. Only one decision allocating full responsibility to the PSP was appealed by a bank. The model is available at this link: https://financialarbiter.org.mt/content/technical-notes

In the Q&A session, the Arbiter clarified that the model considers whether payments were actually authorised by the PSU or just by the fraudster using the PSU's credentials based on the level of PSU cooperation. The physical or online hearings during adjudications proceedings allow the PSP's technical experts to explain system logs presented as evidence that the payment was duly authenticated. He noted that banks are taking steps to improve security systems in response to these cases and the recommendations made by the Arbiter when publishing the model.

Polish ADR entity *Rzecznik Finansowy* gave a presentation about ADR models in Poland and the issue of binding dispute resolution in the context of the principle of voluntary participation

During the presentation, a representative from the Office of the Financial Ombudsman in Poland provided an overview of the Alternative Dispute Resolution (ADR) models operating in the Polish financial market. The speaker outlined the key features of proceedings at the Financial Ombudsman, the Arbitration Court at the Polish Financial Supervision Authority, and the Banking Arbitrator.

Following this, the presenter shared essential statistical data concerning consumer complaints in Poland regarding financial market entities' activities, court disputes, and the value of claims in court lawsuits. This segment also addressed potential challenges consumers face in pursuing their claims on the Polish financial market, including high court costs, lengthy proceedings, and deficiencies in financial education. Notably, insufficient utilization of ADR proceedings' potential was highlighted.

The final portion of the presentation focused on discussing objectives for strengthening consumer rights protection in the financial market and enhancing popularity of ADR proceedings. Specific actions proposed to achieve these goals included:

a) Moving away from the principle of voluntariness to ensure entrepreneurs' participation in ADR proceedings;

b) Increasing the use of national regulations to mandate entrepreneurs' compliance with dispute resolutions imposed by ADR entities;

c) Enabling effective enforcement of judgments through state instruments;

d) Educational initiatives.

Possible impact of AML rules on consumer protection

The session started with presentations of AML related cases by four different dispute settlement bodies from the EU Member States.

First, the **Czech Financial Arbitrator** presented several AML cases where a bank terminated a banking relationship due to failure of a customer to meet internal criteria and obligations under the AML Act. Despite being in contact with the Financial Intelligence Unit (FIU), the Czech Financial Arbitrator received little information on the reasons of banks decisions.

Then the **Danish Financial Complaint Board** explained that, contrary to the Danish financial supervisory authority, it does not have the "means" to verify whether the

banks comply with the Danish AML Act when they take decisions to interrupt a business relationship, close an account or refuse to perform transaction on AML/CFT grounds. It highlighted the difficulty to handle such complaints when the banks' disclosure of the matter is limited due their obligation of confidentiality, making it difficult to conclude if banks comply with the Danish FSA's instructions in accordance with the rules of the Danish AML Act or use it as a pretext to get rid of “troublesome" customers.

The Irish Financial Services and Pensions Ombudsman (FSPO) explained that its Decisions are legally binding. Consequently, and to meet the principle of fair procedures, its processes for the investigation of complaints include the sharing of all evidence and submissions between the parties to a dispute. FSPO presented case studies of complaints made where bank accounts were closed – possibly on AML/CFT grounds, but the obligation for banks not to disclose the AML/CFT reasons that led them to shut an account, or to “tip off” a customer, means that sometimes when responding formally to a complaint investigation, the bank may be limited in the information that it can offer to the FSPO for sharing with the complainant, and may therefore be unable to explain why the account was closed.

Finally, the **Arbitraro bancario finanziaro** (Banking and Financial Ombudsman of the national bank of Italy) explained that complaints relating to disputes concerning obligations imposed by anti-money laundering regulations are generally deemed inadmissible as they are in the remit of specific authorities responsible for assessment of violations, with a separate sanctions system. Obliged entities which are required to report suspicious transactions, are prohibited from giving notice to client or third parties. The problem is that generally, the client and the ABF are not aware that AML regulation is involved in the closure of the bank account. As a result, the ABF knows cases that relate to breaches of contractual obligations or general rules of fairness and good faith. However, consumers may not dispute bank decisions to close bank accounts if the bank considers that the closure of the account is linked to AML, which raises issues in terms of right of defense / adversarial principle, given that this makes it impossible for customers to file a complaint.

Then a **DG FISMA representative, gave a presentation on the four legislative proposals of the Commission adopted on 20 July 2021**: 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 clarifies 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 (June 2023) and negotiations of AMLAR, AMLD, and AMLR are ending, with their publication expected for June 2024.

The presenter also highlighted new provisions in the AML regulation aimed at addressing unintended consequences of customer due diligences measures in the AML Regulation, with closure of bank accounts and refusals to make transactions based on AML concerns. The Commission representative explained that the new AMLR will 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.

During the discussions, participants asked if the obligations of banks not to disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted to the FIU or that a money laundering or terrorist financing analysis is being, or may be, carried out, will be modified under the new AML regulation. The Commission explained it was not possible to modify these rules, as they constitute a safeguard for protecting ongoing investigations. However, the AML directive provides that the fact for an obliged entity to seek to dissuade a client from engaging in illegal activity shall not constitute disclosure.

Participants 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.

AI Act and its opportunities in the field of financial services and their supervision

In the presentation given by the Commission services, the AI Act was outlined as the first comprehensive legal framework specifically tailored to manage the risks associated with AI technologies while positioning Europe as a global leader in this field. The presenter explained that the Act establishes clear guidelines for AI developers and users.

The presentation highlighted that the legislation is part of a broader initiative that includes the AI Innovation Package and the Coordinated Plan on AI, all aimed at ensuring the safe, ethical use of AI that respects fundamental rights.

A key focus of the presentation was the AI Act's risk-based regulatory approach. AI systems are categorized into four levels of risk, ranging from minimal to unacceptable, each with specific compliance requirements. It was pointed out that high-risk

applications, such as those used in critical infrastructure or sensitive sectors like law enforcement and judicial processes, are subject to rigorous prerequisites before they can enter the market. These include comprehensive risk assessments, the use of high-quality datasets to reduce biases, and strict security and documentation standards.

For AI applications that pose lower risks, the presenter noted that the Act mandates clear transparency measures to ensure users are aware when they are interacting with AI, and that AI-generated content is appropriately labeled.

The strictest regulations are reserved for the highest-risk uses, including remote biometric identification, which is largely prohibited unless under strictly regulated circumstances.

The presentation also emphasized that the AI Act is designed to be adaptive, allowing its rules to evolve in line with technological advances to ensure ongoing trustworthiness of AI systems. Oversight and implementation of the Act are managed by the European AI Office, which was established within the Commission. This office not only enforces the regulations but also fosters collaboration and innovation in AI across Europe and globally, underscoring Europe’s commitment to leading the ethical and sustainable development of AI technologies.

Consumer Credit Directive 2 and its expected impact on consumers and ADR entities

A DG JUST representative presented Directive 2023/2225 - the new Consumer Credit Directive (CCD) - which was published on 30 October 2023. The 2008 Consumer Credit Directive was an essential tool to protect EU consumers taking out credit.

After 15 years it was necessary to update it and respond to digitalisation which profoundly changed the financial sector. The aim of Directive 2023/2225 is to provide high level of consumer protection while ensuring access to credit in the single market. The scope of the Directive is now enlarged to some credits that are currently exempted. For instance, short-term high-cost loans of less than EUR 200 or free interest-free “Buy Now, Pay Later” schemes will now be included in the scope of the Directive.

Advertising obligations will increase consumer awareness, warning them that borrowing money also costs money. The new Directive also includes better structured pre-contractual information. Key information will be put up-front, displayed prominently and timely provided. A reminder of the consumer’s right of withdrawal (once the contract is concluded) in case information has been provided less than one day was also included. Another point that was highlighted is the strengthening of creditworthiness assessment rules. This will ensure that only relevant financial and economic data are used for assessments, excluding medical data or data stemming from social networks. Moreover, they will ensure that credit is granted only when the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met. In addition, when automated processing of data is involved, the consumer will have the right to request a human intervention, including a clear and comprehensible explanation and the possibility to request a review of the decision. Increased rules on the prevention of over-indebtedness were adopted. Measures to limit the cost of credit, such as caps, will have to be set by Member States and creditors will have to exercise forbearance measures before enforcement proceedings are initiated. A new provision concerning debt-advice services was inserted. Member States

will have to ensure that debt-advice services are always made available to all consumers. The presentation concluded on dispute resolution (ADR) procedures. A new recital has been added to the new CCD, stating that consumers should have access to adequate, prompt and effective ADR procedures for the settlement of disputes arising from rights and obligations relating to credit agreements, as well as in the event of pre-contractual disputes concerning rights and obligations established by the Directive. Member States are now required to transpose the Directive into national law by 20 November 2025. Questions and observations from the floor referred to the importance of including "Buy Now, Pay Later" into the scope of application of the Directive and whether "Buy Now, Pay Later" were to be considered a payment instrument or a credit agreement. On the latter, the Commission explained that if the agreement falls within the definition of a credit agreement, then the financial product ("Buy Now, Pay Later") would fall under the scope of Directive 2023/2225.

Update on the review of the ADR Directive and ODR Regulation

DG JUST representative provided an update on the ongoing work in view of the Commission legislative proposals 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 (in view of the low uptake of ADR disputes), and simplify the procedure while being cost effective for all ADR actors. The proposal 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 the MS designation of ADR contact points to assist consumers with cross-border disputes, the duty of traders to reply to ADR enquiries, reduced administrative burden for ADR entities, incentives for ADR entities to use more digital tools and bundle disputes when relevant, the new interactive tool by the Commission to inform consumers of various redress solutions and the discontinuation of the ODR platform due to its cost-ineffectiveness.

Regarding the state of play, Commission services informed that the European Parliament plenary voted the IMCO Report on the ADR review (including mandatory trader participation in air transport, some conditions on the extension of the scope to unfair commercial disputes, more obligations on traders) and the Report on the repeal of the ODR regulation (no amendments were tabled) in March. The EESC opinion has been very supportive of the Commission proposal.

The Council Working Party chaired by the Belgian Presidency is discussing the compromise text. MS praised the efforts of the Presidency team in moving the text in the right direction although some points remain to be discussed further – mainly the extension of the material and geographic scope. The next meeting is on 4th June; however, it is not likely that a General Approach will be reached under the Belgian Presidency. Further meetings will take place under the Hungarian Presidency.

Trilogues are foreseen to start at the end of 2024.

Call for grants for ADR entities: applications are open until 6 June.

For additional information or inquiries, email JUST-ADR@ec.europa.eu .

Update from the Commission on the Retail investment strategy

A FISMA representative informed the FIN-NET members about the achieved progress in the negotiations in the Council and in the Parliament. The Commission reminded the important issues that the proposal aimed to achieve, notably the ban on inducements for certain products, strengthening product governance rules for introducing new products to ensure that products provide value for money to consumers. The Commission proposal also included new disclosure rules to reduce information overload and adapt to new digitalisation trends to ensure that the consumer gets all the necessary information that enables him to choose the product which is in his best interest.

The ECON committee has voted its report. The discussions in ECON were controversial; political groups had very different view on many points of the proposal. The partial ban on inducements was removed and the value for money concept has been amended, particularly with respect to benchmarks on value for money which have become supervisory benchmarks only. In April, the EP plenary confirmed the mandate for starting negotiations with the Council.

The negotiations are still ongoing in the Council. A lot has been achieved under the Spanish presidency and discussions continue under the Belgian presidency. At the moment, there is generally a strong opposition to the proposed partial ban on inducements. On product governance rules to ensure value of money the discussion still continues.

The discussions on other topics, including disclosures, the annual statement, cost of disclosures, amendments to PRIIPS KID, but also rules on strengthening supervisory enforcement, professional qualifications, financial literacy are less controversial.

Presentation by FINSOM on its e-learning course on ADR addressed to professionals

FINSOM – a Swiss affiliate to the FIN-NET network – introduced to FIN-NET members an e-learning course that it developed to professionals working in both financial industry and supervisory authorities. The aim of the course is to improve the knowledge of companies about ADR and its place in companies' risk management.

Some FIN-NET members asked to share the training course with them. FINSOM has asked for those interested to get in touch with FINSOM, which will provide the contents of the e-learning course.

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The Chairwoman informed that the next (virtual) meeting is tentatively scheduled for 12 November 2024.

The FIN-NET members have been invited to inform, by end of June 2024, about their willingness to join the Steering Committee of the FIN-NET network.