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

Horizontal policies
Retail financial services

MINUTES

FIN-NET PLENARY MEETING
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***Responsible lending**: presentation by the Bank of Spain on their internal decision regarding handling of complaints on irresponsible lending.*

At its presentation, the Bank of Spain addressed the handling of complaints related to irresponsible lending following a ruling by the Court of Justice of the European Union on case C-755/22. Prior to this ruling, the tendency was to justify the conduct of financial entities by referring to their internal policies. However, following the ruling, there has been a slight increase in complaints, prompting the Bank of Spain to modify their assessments regarding such matters.

The primary challenge originates from the requirement of the ministry's order, which regulates operations, to prove that some harm has been caused to the customer for a complaint to be filed against a financial institution. However, the European Court of Justice ruling stated that it is not necessary for the customer to have suffered harmful consequences due to a failure to assess creditworthiness. This contradiction poses a significant challenge.

The Bank of Spain employs a specialist team to handle complaints documentation and determine whether to dismiss or admit complaints. Complaints are admitted if they reflect an inability to pay debts possibly due to over-indebtedness that would have been avoided with a proper creditworthiness assessment. However, complaints that simply request information about creditworthiness assessments are generally dismissed. The decision-making process explores whether there was a possible failure by the financial institution in assessing creditworthiness, although demonstrating misconduct can be complex. The Bank of Spain emphasised that this issue had a very limited actual impact but recognised its potential for growth.

At the end of its presentations, the Bank of Spain invited FIN-NET members to share their experiences. A few FIN-NET members briefly informed about their cases related to consumer credit. The Chairwoman indicated that members could also provide their contributions after the meeting.

*IVASS presentation on the **results of the survey of FIN-NET members** covering insurance on 1) rules governing the participation of insurance companies and intermediaries in ADR schemes and 2) on mechanisms for allocating competence, in cases where more than one ADR body operates within the same country*

IVASS presented the findings of a survey conducted among FIN-NET members, focusing on insurance-related aspects. The survey covered two main topics: the rules governing the participation of insurance companies and intermediaries in Alternative Dispute Resolution (ADR) schemes, and the mechanisms for allocating competence in cases where multiple ADR bodies operate within the same country.

Regarding participation rules, IVASS found considerable variation across countries. Some jurisdictions have mandatory participation in ADR schemes for insurance companies, while others allow voluntary participation. This inconsistency reflects differing national regulations and the extent to which participation in ADR schemes is legislated within each country.

On the subject of competence allocation, IVASS highlighted that the presence of multiple ADR bodies in a single country can lead to jurisdictional complexities. These complexities necessitate clear mechanisms for allocating competence in order to avoid overlaps and ensure efficiency in handling disputes. The survey revealed that in some countries, specific legislation or guidelines exist to delineate the competencies of each ADR body, while in others, this remains an area of ambiguity and potential conflict.

IVASS emphasised the importance of achieving coherent ADR practices within the insurance sector to enhance consumer protection and streamline dispute resolution processes. The presentation underscored the need for regular dialogue among FIN-NET members to address these discrepancies and promote best practices in ADR scheme participation and competence allocation.

*Presentation by the Maltese Arbiter for Financial services of their policy on the treatment of **relationship-based scams,** including the interplay with the transaction monitoring required under PSD2*

The Maltese Arbiter for Financial Services presented their policy on handling relationship-based scams, commonly referred to as "Pig Butchering," and discussed the role of transaction monitoring under the Payment Services Directive 2 (PSD2) in combating such fraud.

These scams unfold over weeks or months, where fraudsters build a victim’s trust before encouraging investment in fictitious trading platforms. Once victims attempt to withdraw perceived profits, they face fabricated claims for additional payments. Eventually, communications are cut off, and victims may be targeted again by fraudsters posing as recovery agents.

In addressing these scams, the Maltese Arbiter outlined the responsibilities of banks, payment service providers (PSPs), and crypto exchanges through a Technical Note issued earlier in 2025. Banks, with the most robust transaction histories and customer knowledge, should detect unusual patterns and alert customers to potential fraud. If banks fail in this responsibility, they may be held accountable for a portion of the victim’s losses.

The presentation also highlighted the unique challenges faced by non-bank PSPs and crypto exchanges. Non-bank PSPs often provide services to crypto exchanges which can complicate tracing funds. Meanwhile, crypto exchanges have lesser historical interaction with clients and therefore lower transaction monitoring obligations. However, they retain a fiduciary duty to identify and report potential fraud when evident. The forthcoming

implementation of MICA and the Travel Rule, the regulation which requires crypto asset service providers (CASPs) to obtain and share information about the origin and destination of crypto transactions, will require further proof of ownership for recipient wallets, aimed at enhancing fraud detection and prevention.

A law change in Malta (effective 1st October 2025) will permit the Arbiter to hear complaints relating to fraud, even from customers without a contractual relationship with the financial services provider involved in the transaction.

Presentation of the judgment from the Curia, the highest court of Hungary, which elaborated ***on the issue of „gross negligence" in a data phishing case***

The presentation focused on a recent judgment by the Curia, the highest court of Hungary, which provided clarity on the concept of "gross negligence" in the context of a data phishing case. This judgement has significant implications for similar cases, offering a precedent for interpreting consumer responsibility and bank liability in cyber fraud incidents.

The case involved a consumer who was targeted by a cybercriminal posing as a buyer in an online marketplace transaction. The consumer was misled into entering their banking credentials on a phishing website that closely resembled their actual bank's website. Using these credentials, the fraudster managed to control their bank account by registering a mobile app on their device and executed unauthorised transactions.

Initially, the consumer's bank rejected their claim for compensation, suggesting that their sharing of login details constituted gross negligence. However, the Curia ruled that the consumer was not grossly negligent. It determined that the consumer could not have foreseen the resulting damage, and their actions, while unfortunate, did not reflect a clear disregard for potential risk. Therefore, the bank was held liable for compensating the consumer for the financial losses incurred.

The judgment underscored the importance of evaluating negligence on an individual basis, considering the consumer's understanding and the specific circumstances of the case. It highlights the duty of care required by banks, particularly in online payment contexts where detecting fraud can be challenging for consumers. The ruling now serves as guidance for lower courts and financial institutions, emphasising the necessity for banks to implement more robust measures to protect consumers from cyber fraud.

Cooperation between banks to stop fraudulent transactions*: the presentation by the Belgian Ombudsman on the issues faced by consumers; discussion on the possible ways forward to reduce detriment for consumers*

The Belgian Financial Ombudsman delivered a presentation addressing the cooperation challenges between banks in efforts to halt fraudulent transactions, highlighting the significant issues faced by consumers in such instances. Fraudulent activities frequently involve multiple banks across different EU member states, complicating efforts to recover lost funds promptly.

When a consumer reports a fraudulent transaction, the victim's bank must act swiftly to recuperate the funds, including informing the beneficiary's bank about the suspicious transactions. However, the success of these efforts heavily relies on the cooperation of the beneficiary bank, particularly if situated in another country. While collaboration

between Belgian banks tends to be effective, cross-border cooperation is often less reliable.

A critical issue is that refunding the stolen funds can be contingent on the consent of the account holder, who is often the fraudster. Additionally, some countries do not have provisions to compel the disclosure of the fraudster's identity.

To address these consumer challenges, the discussion explored potential measures, including establishing a 24/7 contact obligation for all EU banks to enhance coordination, harmonising laws across EU member states to prevent legal loopholes exploited by fraudsters, and considering mechanisms for better accountability when banks fail to cooperate effectively.

The discussion underscored the need to foster stronger collaboration between EU banks, streamline communication channels, and implement consistent policies to mitigate consumer detriment due to fraudulent activities.

*Updates from the Commission services on the negotiations of **the review of the ADR directive** and on the Commission grants available for ADR entities*

The Commission services presented the proposed changes in the review of the ADR Directive. Key changes include extending the material scope to cover pre-contractual and non-contractual disputes; and the geographical scope to cover non-EU traders.

The review proposes the duty to reply – an obligation for traders to respond to ADR queries, ensuring they face consequences if they fail to reply within a stipulated deadline.

The proposal includes the introduction of ADR Contact Points across all member states to assist in cross-border ADR claims and emphasizes the protection of vulnerable consumers whilst promoting digital tools. Furthermore, there is a suggestion to bundle similar ADR disputes against the same trader to ensure conformity and cost-benefits. Importantly, the proposal recommends introducing a new user-friendly digital tool to inform consumers about redress mechanisms and to host the list of quality ADR entities (currently on the ODR platform which will be discontinued as of July 2025). The proposal was part of the Commission Rationalisation Package 2023 which aimed at reducing administrative burdens. The minimum harmonisation approach is to be maintained.

Commission services have also broadly presented the positions of co-legislators. The Commission seeks extension of the scope to maximise ADR’s potential for the digital age.

The EP is proposing mandatory ADR for air carriers, the new duty for traders to reply should be a genuine obligation, with penalties for non-compliance.

However, there are divergent views among co-legislators on the following points: the extension of the material and geographical scope, mandatory ADR for air carriers and on the new obligations for traders and ADR entities, such as reporting unfair practices – proposed by the EP.

There is provisional agreement at a technical level on bundling of similar ADR disputes, the role of ADR contact points, rationalizing reporting by ADR entities, and the new

Commission IT tool requirements. Political and technical meetings are ongoing to address unresolved issues constructively.

Finally, as the matter of specific interest to FIN-NET members, DG JUST recalled the ongoing Commission call for ADR-related projects which could benefit from the Commission grants for which EUR 1.5 mio has been allocated. The deadline for submission is 27 August. More information is available on the EISMEA website:

Call for proposals for action grants to provide financial contributions to ADR Bodies and RAD Qualified Entities (SMP-CONS-2025-ADR-RAD) - European Commission

IVASS presentation on the ***establishment of the new Italian ADR entity for insurance services***

IVASS provided a presentation on the establishment of the new Italian Alternative Dispute Resolution (ADR) entity dedicated to insurance services. The creation of this ADR entity aims to enhance consumer protection, boost public trust, and potentially reduce judicial litigation related to insurance matters.

The new ADR entity, known as the Italian Insurance Arbiter, offers a more accessible and transparent system for resolving disputes out of court. This entity complements the existing complaint handling mechanisms within IVASS and is designed to function entirely online—from the submission of complaints to the issuance of decisions—making it straightforward and accessible for consumers.

Participation in the Arbiter is automatic and mandatory for insurance undertakings and intermediaries operating in Italy. However, there is a provision for those operating under the freedom to provide services to opt out, provided they adhere to another ADR system in their home country that is a part of the FIN-NET network, and they notify IVASS accordingly.

The Arbiter's jurisdiction includes a broad definition of claimants, encompassing not only consumers but also professionals and businesses with a contractual relationship with an insurance service provider. Complaints can only be filed after an initial complaint has been submitted to the insurance company, and if no satisfactory response is received within 45 days. A minimal fee is required to lodge a complaint, which must be filed within twelve months of the original complaint date.

The establishment of the Italian Insurance Arbiter represents a significant step toward ensuring that Italian insurance consumers enjoy the same level of protection afforded to banking and financial service clients. The initiative is currently in the final stages of implementation following public consultation and regulatory approval procedures.

The FIN-NET members raised additional questions and comments to the IVASS to better understand admissibility criteria and other important aspects related to the functioning of the new ADR entity.

AOB

The Chairwoman informed that the next FIN-NET meeting will be online and is tentatively scheduled to take place on 18 November 2025