FIN-NET activity report
2018
1. **INTRODUCTION**

FIN-NET is a network of national Alternative Dispute Resolution (ADR) schemes in the European Economic Area (EEA) countries (the EU Member States plus Iceland, Liechtenstein, and Norway). These ADR schemes are responsible for handling disputes between consumers and retail financial services providers, e.g. banks, insurance companies, investment funds, payment service providers, etc. The European Commission launched FIN-NET in 2001. Its membership has grown steadily since then. Initially only operating on a Commission Recommendation\(^1\), FIN-NET's work is since 12 May 2016 guided by the Alternative Dispute Resolution Directive (ADR)\(^2\).

FIN-NET has also support from outside of the EEA area. Switzerland and the Channel Islands participate as FIN-NET affiliates in the network on a best efforts basis.

All schemes within FIN-NET cooperate to provide consumers with easy access to out-of-court dispute resolution in cross-border cases. If a consumer has a dispute with a financial services provider regarding a product purchased cross-border, FIN-NET members will put the consumer in touch with the relevant ADR scheme and provide the necessary information about it. “The competent scheme” is the appropriate body responsible for the out-of-court settlement of consumer disputes for financial services in the country where the service provider is established. “The nearest scheme” is a body responsible for the out-of-court settlement of consumer disputes for the appropriate financial services sector in the consumer’s country of residence.

The network works as follows: a consumer contacts an ADR scheme in his/her home country\(^3\). The home country's ADR scheme establishes who the competent ADR scheme is in the service provider’s country and informs the consumer. The home country's ADR scheme either transfers the case to the competent scheme or asks the consumer to do this. The consumer can also contact the competent scheme directly. The competent ADR scheme carries out the investigation and issues a decision/recommendation.

**Recent developments**

In 2018 the Steering Committee expired but most of the members applied to remain. Indeed there have only been two changes (the Italian Arbitro Bancario Finanziario replaced the Conciliatore Bancario Finanziario, same nationality, and the Spanish Comisión Nacional del Mercado de Valores took over from the Banco de España).

FIN-NET welcomed one new member: Slovakia’s Insurance Ombudsman (*Poišťovací Ombudsman*). The organisation still misses members in Bulgaria, Cyprus, Latvia and Romania. FIN-NET plans to encourage all notified ADR schemes in the above Member States to join the organisation as soon as possible.

**At the end of 2018,** FIN-NET had 58 members — national ADR schemes — which are listed in Annex 1. In some Member States and EEA countries, ADR schemes do not cover all financial sectors (e.g. banking, payments, insurance, and securities) yet.

---

\(^1\) Commission Recommendation 98/257/EC on the out-of-court settlement of consumer disputes.


\(^3\) According to the empirical evidence, consumers tend to address home country ADR bodies, be it for language reasons, or for perceived safety or for the difficulty in finding the competent body in a different country.
However, consumers in 24 Member States already benefited at the end of 2018 from full-sector coverage. See Annex 2 for a breakdown of coverage in the 26 EEA countries in which FIN-NET was represented at the end of 2018.

Challenges ahead

The network is growing towards the full coverage of the spectrum of financial services in all Member States. The next challenge will be the one of filling the missing spots in Annex 2.

The main long term challenge lies in a more consumer-oriented approach along two dimensions: an easier identification of the competent scheme and a more effective enforceability of cross-border decisions. Indeed, the current limitation of the jurisdiction of each FIN-NET member, although justified and deeply-rooted in the national legislation, sounds to the consumer as an obstacle to the solution of cross-border issues. More references to Alternative Dispute Resolution (ADR) schemes in the legislation, and to their cooperation across national boundaries would be a big step forward.

2. MEETINGS IN 2018

2.1. First plenary meeting in 2018

The first plenary meeting was held in Brussels on 13 June 2018, back-to-back with a big ADR conference.

DG FISMA debriefed the members of the provisional results of the awareness-raising campaign, discussing also possible steps for a deeper integration of the network, related to a common complaint form on the website or to the adhesion to the Single Digital Gateway (SDG).

DG JUST also delivered a technical presentation on the negotiations regarding the Representative Actions Directive (RAD), widening its current scope to include financial services legislative instruments.

In addition, DG FISMA presented the state of play of several files with a big impact on consumers and, therefore, to the work of FIN-NET members: the sustainable finance action plan and its related taxonomy, the crowdfunding proposal, the proposal on a secondary market for non-performing loans (NPLs), the revision of the motor insurance directive, the payment services directive (PSD2), the mortgage credit directive (MCD), the consumer credit directive (CCD, presented by DG JUST) and the payments account directive (PAD).

The British member of FIN-NET introduced a short discussion on the preparation for Brexit. Many question marks were (and still are) pending on the final results of the negotiations between the United Kingdom and the European Union, and this uncertainty falls on the consumers and finally on ADR schemes.

Finally, the discussion moved to two administrative points: the first one regards surveys that regularly reach FIN-NET members due to huge information potential of their daily work. This can be disruptive, and a filter is necessary to limit this practice only to very relevant surveys. The other point regarded the renewal of the steering committee and a presentation of the applications received.
2.2. The second plenary meeting in 2018

The second meeting of 2018 took place in Brussels on 8 November, following the annual meeting of the International Federation of Finance Museums, which attracted some FIN-NET members as well.

The discussions during this meeting started with a presentation on the most recent trends on fraud and scam observed by one FIN-NET member, to compare this experience with the observation of other members. Along the same line, a discussion on ATM fees followed, together with one on short-term loans.

Right afterwards, DG FISMA presented the Insurance Distribution Directive (IDD), also drawing some parallels with MiFID2 in terms of investments and insurance advice. Later on, DG JUST updated the participants on the Representative Actions Directive (RAD), and finally DG FISMA provided information on the ongoing work regarding crypto-assets, ICOs and crowdfunding.

3. FIN-NET’S OUTPUT IN 2018

3.1. Statistics

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of cross-border cases handled by FIN-NET members</th>
<th>Cross-border cases by sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Banking</td>
</tr>
<tr>
<td>2018</td>
<td></td>
<td>1384</td>
</tr>
<tr>
<td>2017</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>2016</td>
<td>2571(^5)</td>
<td>1202</td>
</tr>
<tr>
<td>2015</td>
<td>4 195</td>
<td>1 300</td>
</tr>
<tr>
<td>2014</td>
<td>3 514</td>
<td>1 276</td>
</tr>
<tr>
<td>2013</td>
<td>2 931</td>
<td>1 216</td>
</tr>
<tr>
<td>2012</td>
<td>2 727(^6)</td>
<td>1 325</td>
</tr>
<tr>
<td>2011</td>
<td>1 854(^7)</td>
<td>992</td>
</tr>
<tr>
<td>2010</td>
<td>1 794(^8)</td>
<td>1 123</td>
</tr>
<tr>
<td>2009</td>
<td>1 542(^9)</td>
<td>884</td>
</tr>
</tbody>
</table>

\(^4\) This number is based on data received from 39 FIN-NET members
\(^5\) This number is based on data received from 45 FIN-NET members
\(^6\) This number is based on data received from 42 FIN-NET members.
\(^7\) This number is based on data received from 40 FIN-NET members.
\(^8\) This number is based on data received from 33 FIN-NET members.
\(^9\) This number is based on data received from 39 FIN-NET members.
As shown in the table above, FIN-NET members reported that they handled 2649 cross-border cases in 2018, out of the 540524 total cases addressed in the year, of which 1202 were in the banking sector, 592 in the insurance sector, and 514 in the investment sector. 160 cases were attributed to the category 'others'. 3910 out of 58 FIN-NET members participated in this year's statistical reporting exercise.

The historical series shows that, besides 2014 and 2015 (when there was a very high number of complaints not falling in any of the three sectors), banking usually accounts for around half of the total number of cases, and it seems that in 2018 exceptionally investments ranked above insurance. Of course these data are very heterogeneous so it is not methodologically sound to infer any other trend.

The numbers show that while the size of FIN-NET members can vary a lot, the number of cross-border complaints will be more related to the degree of international openness of the financial sector of a single Country than to the size of the economy of that Country. The top-three members in terms of handled cases account for 69.50% of the whole number of cross-border complaints, and they are the only ones that received more than 100 cases in 2018. For most of the members who reported this figure, cross-border activity is lower than 1% of the total, while there are two members (part of the top-three mentioned above) who report a 82.46% and 55.21% respectively. The data do not show significant geographic trend (e.g. differing figures when comparing north vs. south or east vs. west).

When it comes to sectors, within the banking services (which already account for 52.25% of the total complaints), payment accounts attracts by far most litigation with FIN-NET members (45.55%), while within investments consumers complain mostly about pension funds (29.92%) and within insurance products it is payment protection that is most often disputed (34.48%).

Across the three sectors, consumers complain mostly about administration issues (45.70% of the banking complaints and 55.37% of investment ones) while in the insurance sector claims take most of the blame (44.74%).

It is not surprising, but still interesting for the regulator that, given the current level of consumer protection, the issues move from regulated aspects to generic titles that capture the little room for contentious provisions left in the contracts.

**Examples of cross-border cases**

The following three case descriptions exemplify how FIN-NET contributed in 2018 to solve cross-border disputes in the retail financial services area. More cases are in Annex III.

**Case 1:**

An Italian consumer, holding a current account’s contract at an Italian bank, moved to Malta and notified the transfer of residence to his bank. The latter did not change the

---

9 This number is based on data received from 38 FIN-NET members.

10 As the number of the reporting schemes varies over the years, no consistent and comparable time series can be established.
header of the contract but, on the opposite, unilaterally terminated the contract. The account holder filed a complaint with the Italian Arbitro Bancario e Finanziario (ABF) asking the Italian bank to maintain his current account or, alternatively, to close the latter and open a new one at the same conditions.

Following the complaint, the Italian bank claimed that the transfer of residence had not been promptly notified within the 180 days’ legal dead line.

The ABF stated that both Articles 21 and 26 TFEU on the freedom of movement and PAD Directive, and specifically the rules regarding payment accounts with basic features, are applicable. According to the ABF, the transfer of residence of a citizen from Italy to Malta should be irrelevant in relation to the execution and continuation of a contract. Even if any changes were necessary in the contract, the client may not be deprived of the operation of the current account. Moreover, the ABF stated that the 180 days’ dead line of notice (required by the Italian bank) is not provided by law nor by the contract and concluded that the bank’s behavior was unlawful.

Case 2:

A French consumer bought a motorcar insurance from a Luxembourg provider. After an accident, the consumer had to pay for towing and guarding, and he asked for reimbursement. Since the provider was not replying, he asked the French Le Mediateur de l’Assurance (LMA) to intervene, and the provider accepted to pay for the due charges.

Case 3:

The complainant, a Cyprus resident, held a portfolio with a Greek bank, having signed a portfolio management agreement. He requested the liquidation of the securities contained therein and the credit of his bank account in Cyprus with the liquidation proceeds. He also requested the transfer of the bulk cash at hand from his investment account to his bank account in Cyprus.

The Greek bank informed him that the later was not possible, due to the restrictions of funds transfer (Legislative Act "Emergency arrangements for the introduction of restrictions on cash withdrawals and the transfer of funds", G.G. A84/18.7.2015). Following the Hellenic Financial Ombudsman intervention, the Banking Transactions Approval Committee in Greece recommended the transfer of the cash at hand in fixed installments of around one third of the amount every 2 months. However, the complainant chose to withdraw the total sum in person.
Annex 1 — Members of FIN-NET

Members of FIN-NET
(* new members that joined in 2018
listing in the order of protocol)

Belgium

1 Ombudsman des Assurances / Ombudsman van de Verzekeringen
   Insurance Ombudsman

2 Ombudsfin, Service de mediation des services financiers

Czech Republic

3 Finanční arbitr České republiky
   Financial Arbiter of the Czech Republic

Denmark

4 Det finansielle ankenævn
   The Danish Financial Complaint Board

5 Ankenævnet for Forsikring
   Danish Insurance Complaints Board

6 Ankenævnet for Fondsmæglerselskaber
   The Complaint Board of Danish Securities and Brokering Companies

Germany

7 Ombudsstelle fur Investmentfonds
   Ombudsman Scheme for Investment Funds

8 Schlichtungsstelle bei der Bundesanstalt für Finanzdienstleistungsaufsicht
   (BaFin)
   Arbitration Board at BaFin

9 Schlichtungsstelle bei der Deutschen Bundesbank
   Arbitration Board at the Deutsche Bundesbank

10 Ombudsmann der privaten Banken
    Ombudsman Scheme of the Private Commercial Banks

11 Deutscher Sparkassen- und Giroverband (DSGV)
    German Savings Banks Association

12 Verband der Privaten Bausparkassen e.V. – Schlichtungsstelle Bausparen
    Association of Private Bausparkassen – Arbitration Board

13 Ombudsmann der deutschen genossenschaftlichen Bankengruppe (BVR)
    Ombudsman of German Cooperative Banks
| 14 | Ombudsgmänner der öffentlichen Banken Deutschlands (VÖB)  
*Ombudsman of German Public Sector Banks* |
| 15 | Ombudsmann private Kranken- und Pflegeversicherung  
*Ombudsman Private Health and Long-term Care Insurance* |
| 16 | Versicherungsombudsmann e.V.  
*Insurance Ombudsman* |
| 17 | Ombudsstelle für Sachwerte und Investmentvermögen e.V.  
*Real Asset Investment Arbitration Board* |
| **Estonia** | |
| 18 | Tarbijavaidluste Komisjon  
*Consumer Disputes Committee* |
| **Ireland** | |
| 19 | An tOmbudsman Seirbhísí Airgeadais agus Pinsean  
*Financial Services and Pensions Ombudsman (FSPO)* |
| **Greece** | |
| 20 | Ελληνικός Χρηματοοικονομικός Μεσολαβητή – Αστική Μη Κερδοσκοπική Εταιρεία Εναλλακτικής Επίλυσης Διαφορών (EXM-ΕΕΕΔ)  
*Hellenic Financial Ombudsman – Nonprofit Alternative Dispute Resolution Organisation (HFO – ADRO)* |
| **Spain** | |
| 21 | Departamento de Conducta de Mercado y Reclamaciones (Banco de España)  
*Market Conduct and Claims Department (Banco de España)* |
| 22 | Servicio de Reclamaciones de la CNMV  
*CNMV’s Complaints Service* |
| 23 | Servicio de Reclamaciones de la Dirección General de Seguros y Fondos de Pensiones (DGSFP)  
*Complaints Service of the Directorate-General of Insurance and Pension Funds* |
| **France** | |
| 24 | Médiateur de l’Autorité des Marchés Financiers (AMF)  
*AMF Ombudsman* |
| 25 | Le Médiateur de l’Assurance  
*Insurance Mediator* |
| 26 | Médiateur de l’Association française des Sociétés Financières (ASF)  
*Mediator of the French Association of Specialised Finance Companies* |
| **Croatia** | |
Centar za mirenje pri Hrvatskom uredzu za osiguranje
*Mediation Centre at the Croatian Insurance Bureau*

Centar za mirenje pri Hrvatskoj Gospodarskoj Komori
*Mediation Centre at the Croatian Chamber of Economy*

**Iceland**

Úrskurðarnefnd í vátryggingamálum
*Insurance Complaints Committee*

Úrskurðarnefnd um viðskipti við fjármálaafyrirtæki
*The Complaints Committee on Transactions with Financial Firms*

**Italy**

Arbitro Bancario Finanziario (ABF)
*ABF – Banking and Financial Ombudsman*

Conciliatore Bancario Finanziario
*Banking Ombudsman*

Istituto per la Vigilanza sulle Assicurazioni (IVASS)
*IVASS – Insurance Supervisory Authority*

Arbitro per le Controversie Finanziarie (ACF)
*ACF – Securities and Financial Ombudsman*

**Liechtenstein**

Schlichtungsstelle zur Beilegung von Streitigkeiten bei der Ausführung von Überweisungen
*Arbitration Board for the Settlement of Disputes concerning Cross-border Credit Transfers*

Liechtensteinischer Bankenombudsmann
*Bank Ombudsman*

**Lithuania**

Valstybinė vartotojų teisių apsaugos taryba/Lietuvos bankas
*State Consumer Rights Protection Authority/Central Bank of Lithuania*

**Luxembourg**

Commission de Surveillance du Secteur Financier (CSSF)

**Hungary**

Budapesti Békéltető Testület
*Arbitration Board of Budapest*

Pénzügyi Békéltető Testület (PBT)
*Financial Arbitration Board (FAB)*
Malta

41  Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji
    *Office of the Arbiter for Financial Services*

Netherlands

42  Klachteninstituut Financiële Dienstverlening (Kifid)
    *Financial Services Complaints Institute (Kifid)*

Norway

43  Finansklagenemnda (FinKN))
    *Norwegian Financial Services Complaints Board*

Austria

44  Gemeinsame Schlichtungsstelle der österreichischen Kreditwirtschaft
    *Joint Conciliation Board of the Austrian Banking Industry*

45  Schlichtung für Verbrauchergeschäfte
    *Arbitration Board for Consumer Businesses*

Poland

46  Rzecznik Finansowy
    *Financial Ombudsman*

47  Bankowy Arbitraz Konsumencki (Związek Banków Polskich)
    *Banking Ombudsman (Polish Bank Association)*

48  Sąd Polubowny przy Komisji Nadzoru Finansowego
    *Arbitration Court at the Polish Financial Supervision Authority*

Portugal

49  Centro de Arbitragem de Conflitos de Consumo de Lisboa
    *Lisbon Arbitration Centre for Consumer Conflicts*

50  CMVM - Comissão do Mercado de Valores Mobiliários
    *CMVM - Portuguese Securities Market Commission*

Slovakia

51  Bankový ombudsman Slovenskej bankovej asociácie (SBA)
    *Banking ombudsman of Slovak banking association (SBA)*

52  Slovenská asociácia poistovní *
    *Slovak Insurance Association*

Finland
53 Kuluttajariitatalautakunta
Consumer Disputes Board

54 Pankkilautakunta – secretariat c/o Vakuutus- ja rahoitusneuvonta
Finnish Banking Complaints Board c/o Finnish Financial Ombudsman Bureau

55 Sijoituslautakunta – secretariat c/o Vakuutus- ja rahoitusneuvonta
Investments Complaints Board c/o Finnish Financial Ombudsman Bureau

56 Vakuutuslautakunta – secretariat c/o Vakuutus- ja rahoitusneuvonta
Finnish Insurance Complaints Board c/o Finnish Financial Ombudsman Bureau

Sweden

57 Allmänna reklamationsnämnden (ARN)
National Board for Consumer Disputes

United Kingdom

58 Financial Ombudsman Service
### Annex 2 — Coverage of the Financial Sector by FIN-NET Members

<table>
<thead>
<tr>
<th>Country</th>
<th>Banking</th>
<th>Payments</th>
<th>Insurance</th>
<th>Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Belgium</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET(*)</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Cyprus</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Denmark</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Estonia</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Finland</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>France</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Croatia</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Germany</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Greece</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Hungary</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Iceland</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Ireland</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Italy</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Latvia</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td></td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Lithuania</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Malta</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Netherlands</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Norway</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Poland</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Portugal</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Romania</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Slovenia</td>
<td>FIN-NET</td>
<td></td>
<td>FIN-NET</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Spain</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>Sweden</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
<td>FIN-NET</td>
</tr>
</tbody>
</table>

(*) life insurance only
ANNEX III – ADDITIONAL CROSS-BORDER CASES

Case 4:

A consumer, resident in Belgium, requested his Belgian Bank to make an international bank transfer to an account in Portugal;

As the transfer was not concluded in due time (although the amount had been withdrawn from its account), the claimant lodged a complaint with the Belgian Bank, and did not obtain a conclusive answer on the destination of the transferred amount;

As a result of the mediation process, the transfer was concluded.

Case 5:

The consumer, who was a resident of Hungary concluded a unit linked life insurance contract with a German insurance company in 2006. At the conclusion of the contract he allegedly was offered a high yield product with capital guarantees. It was after paying the premiums for decades when he realised that a high percentage of his payments were spent on fees and other costs, and he would be entitled even less than what he paid in premiums throughout the years. After submitting a complaint that was turned down by the financial service provider, the consumer turned to the Hungarian Financial Arbitration Board. The Board contacted the insurance company that decided to undertake to submit itself to the procedures of the Board. During the procedure, the petitioner complained of not having received proper information on costs and annual index-linking prior to signing the contract, the cost and fee structure of the contract was not transparent for him or he obtained knowledge of it only years later. He also objected to not having been informed upon concluding the contract of the fact that upon investing the recurring premium the financial service provider applied cost deduction to the premium increment at the same rate as if he had concluded a new contract, and he also complained of not having received proper information on the status and yield of his investments. During the procedures the financial service provider refused to recognise the legitimacy of the petitioner’s claim, but in the case, it made a settlement offer with a view to the amicable resolution of the case. In the settlement offer it undertook to reimburse the premiums paid by the petitioner under the contract and to terminate the contract. The petitioner accepted the financial service provider’s settlement offer, and the Board approved their settlement agreement with a resolution.

Case 6:

An Austrian consumer held units of a German closed-end real estate fund set up and to be managed in accordance with the AIF-Directive. The consumer, represented by the Chamber for Workers and Employees of Tirol, went directly to the German Ombudsman Scheme for Funds and complained that the holding was sold to him without any information about the inherent risks but with the express warranty that the financial product is absolutely risk-free and will be profitable in any case. The consumer wanted to withdraw from the holding and claimed for damages. The management company offered the consumer an amicable settlement right after having been given opportunity to make representations by the Ombudsman Scheme. The consumer agreed.
Case 7:

A Swiss consumer held units of a German open-ended mutual stock fund set up and to be managed in accordance with the UCITS-Directive. The consumer went directly to the German Ombudsman Scheme for Funds and complained about the German investment management company having invested in stocks of a corporation which at the time of purchase was under suspicion of fraudulent accounting and subject to preliminary investigations by public prosecution. The stock price continued to lose value significantly after the stock had been purchased for the fund. The consumer argued that the management company had acted grossly negligent buying this stock and claimed for damages to be paid into the fund as if the stock has never been purchased. The complaint was without merit. The consumer had not invested in an actively managed fund but in a passively managed exchange-traded index fund where the underlying index contained amongst others this specific stock. The index composition was provided by a German stock exchange due to pre-defined criteria. Therefore, the management company had to buy this stock according to the fund statutes to fulfil its contractual obligation towards its investors to exactly follow the performance of the index agreed on.

Case 8:

A consumer from Ireland addressed a German Arbitration Board via FIN-NET-document asking for support concerning lack of contact to his German bank. The problems were part of heavy growth and high increase of business of this young online banking start up. Meanwhile the bank increased its communication infrastructure as well as its overall compliance to consumer rights.

Case 9:

Material damage not covered by car insurance while complainant thought it was taken up in the contract. The broker did not concomitantly complete the needs assessment document when modifying the contract (new car to ensure), which happens to be a Word document that has never been signed by the insured. Moreover, the broker did not send any reminder in that regard.

However, it is not possible to establish that the broker duly fulfilled his obligations at the very moment without a pre-contractual needs assessment document. It is indeed hardly acceptable that a broker agreed on covering a new vehicle without drawing his client’s attention on the importance or the risks of having no total guarantee.

The professional liability insurance consequently intervened in this dispute by compensating the complainant.

Case 10:

The Austrian customer held an account with a German online-bank. Due to problems with his debit card, he tried to solve the problem via the bank’s telephone hotline but
failed several times, mostly because of technical issues. Therefore, the telephone costs incurred to solve the problem amounted up to 439.56 Euro.

The bank offered the possibility to get an overdraft facility on its website. The customer wanted to make use of this possibility but did not succeed due to technical error. He queried the bank about that matter and was told that he would not comply with the required specifications. At last the bank terminated his account.

Asked for a statement, the bank declared that they had given proper notice of the termination according to their general terms and conditions and that the costumer had not complied with the requirements for an overdraft facility. Furthermore, they expressed that there was no legal obligation to refund the telephone costs.

Concerning the termination of the account and the refusal of the overdraft facility the arbitrator did not upheld the complaint. She stated that the bank’s right of termination was legally agreed between the parties because the general terms and conditions were part of the account agreement. She also pointed out that an obligation for the bank to lend an overdraft facility to a customer does not exist.

Concerning the refund of the telephone costs, she suggested a compromise. She stated that the bank has a partial obligation to refund the customer. If a bank offers a telephone hotline only, it has to take organisational measures that the customers can get in connection in reasonable time. On the other hand, the customer should have been aware that he must accept higher telephone costs if he opens an account with a bank in a foreign country - thus more as his mobile agreement contained no flat rate for calls to other countries and he had no landline. The arbitrator therefore suggested that the bank should refund half of the costs, i.e. 220 Euro. Both parties accepted the Arbitrators settlement proposal.

Case 11:

Several cases regarding unauthorized use of payment cards in night clubs etc in Europe and rest of the world where the customer stated that he had been drugged and the night club staff had made all the expensive purchases of drinks, champagne etc totalling up to thousands of euros. In cases where it was deemed credible that the customer was a victim of such a merchant, eg where he was able to provide police documents or newspaper articles of such behaviour and the amount and time frame of the purchases were abnormal, the Complaints Board ruled that the merchant had not adequately checked the cardholders right to use the card even though the merchant had been able to provide receipts of said purchases and had stated that the customers had made the purchases themselves. In these cases the Complaints Board recommended that the bank cover the losses caused to the customer in full.

Case 12:

The investor, a UK citizen, filed a complaint against a Spanish Bank regarding her investment in an investment fund. The complainant argued about the redemption fee charged for the redemption of the fund that she was not aware of at all.
Her bank branch informed her that they were going to request the refund of the redemption fee charged once the money was paid into her current account. However, and despite the commitment made by the bank branch when she ordered the redemption of the fund, the investor did not receive the refund of the redemption fee.

After claiming the refund of the fee, the bank branch’s Director responded: “We are waiting for the formal authorisation in order to proceed. We will refund the money in a couple of days.” However, one month later, they informed her that it was not possible to refund the fee.

The entity considered that there was no guarantee that the redemption fee charged would be refunded, and that it was not obliged to refund the claimed fee.

The Complaints Service Department considered that, according to the emails provided, an authorisation for the refund may have been deemed as being pre-approved when the bank branch’s Director informed her that he was waiting for the formal authorisation and that the refund would be made in a couple of days. Therefore, it was considered that the entity engaged in bad practice since false expectations were created about the refund of the redemption fee of the investment fund.

Therefore, the case was settled in favour of the complainant.

Case 13:

The two cases described below are related not only because they had both been filed by the same person but the reason for the complaints was, in both instances, the refusal by the bank to open a basic payment account. In the first case, the complainant lodged the complaint as director of a company. In the second case, the complainant lodged a complaint in his own name.

In the first complaint, the complainant, in his capacity as director of a company established in Malta, lodged a complaint against the bank claiming that it had refused to open a basic payment account for the company in terms of Directive 2014/92/EU.

In summary, the complainant claimed that he had an export-oriented mining company in a third country and, given exchange control restrictions in that country, he had decided to set up a company in Malta. He approached one local bank for the purpose of opening an account and provided it with information as part of the due diligence process.

During a meeting he held with bank officials to go through such information, the bank asked the complainant several questions including why he had not held any personal bank accounts elsewhere. He claimed that he did not require one as he used his wife’s bank account for his personal needs and that if he had used a personal account for his company, all transactions into that account might appear as income for the company, which would be taxed accordingly. The meeting, according to the complainant, did not take more than 10 minutes. Some days later, he was informed that the bank had declined the application without providing specific reasons.
He exchanged further correspondence with the bank from which he learnt that the refusal seemed to have been based on an internet article which contained information in his regard that was libellous and defamatory. He also contested the bank’s allegations that he was intending to use the account to forward payments from other jurisdictions, which the bank claimed were high risk.

As a remedy, he requested the bank to open a basic payment account for the company and provide him with a written apology for the way it had treated him.

In its reply, the provider claimed that the said EU directive applies only to physical persons and does not apply to commercial companies. It also stated that, following the due diligence process it had conducted, it resulted that it could not open an account for the company, and this for a number of reasons.

It claimed that, as part of its due diligence process, it had asked the complainant to explain why he had not held a bank account elsewhere when the customer’s operations spans four jurisdictions, with no personal bank account being held in any of these jurisdictions where he is a national, resident or effectively managing a company.

It could neither accept a bank reference issued by a foreign banking institution in regard to the name of a company with which the complainant was a director as it did not refer to the natural beneficial owner, namely the complainant.

As to the article, the bank claimed that it had ignored it altogether as its contents could not be proven through other reliable sources.

In his deliberations, the Arbiter contended that:

1. Directive 2014/92/EU, as transposed in Maltese subsidiary legislation, grants a right for consumers to open and use payment accounts with basic features in Malta. “Consumer” is defined as “any natural person who is acting for purposes which are outside his trade, business, craft or profession”. There was no doubt that the directive and regulations wanted to offer a basic payment account to individuals and not to corporate entities. The complainant’s argument that he had a right to open an account for his company in accordance with the directive was not justified.

2. The request for a bank reference of the ultimate beneficial owner of the company was reasonable and necessary.

3. The argument brought forward by the complainant as to why he did not have a bank account in his own name was not convincing and justified. It was justified for the bank to enquire why the complainant did not have a bank account in any of the jurisdictions in which he was involved in by way of nationality, residence or business.

4. The bank’s insistence to request information and documentation as part of its due diligence process did not amount to high handedness.

The Arbiter rejected the complaint. The decision has not been appealed.

In the meantime, the complainant asked the same service provider to provide him with a basic payment account for his personal use.
The service provider asked the complainant to provide information and submit a number of documents, including details relating to the provenance of his salary. The complainant replied that his income would be externally sourced from within the EU and that he was not employed with a Maltese firm.

The bank asked the complainant to respond to three questions relating to his statement that he did not have an account with any other bank and was thus unable to provide a banker’s reference. He replied that he had used his company’s accounts for personal use and as he was setting up a consultancy services company based in the EU, he was in need of a personal account.

The bank found the replies given by the complainant to be generic and inconclusive, and once again asked him to respond to its queries. The complainant eventually answered the questions in which he stated that he had never attempted to open a personal account and that he was self-employed.

The service provider was not satisfied with the answers and refused to open a bank account.

The complainant lodged a complaint against the bank for refusing to open a basic payment account in terms of Directive 2014/92/EU.

In its reply, the bank contended that:

a. The complaint was the result of submissions which the same provider had made in another case instituted by a company (of which the complainant was a director) with the Arbiter in which the provider had stated that commercial partnerships were not entitled to a basic payment account under the same directive.

b. The complainant had refused to answer the various questions that the provider had put to him to satisfy the bank’s duties of due diligence, as imposed by law. It said that questions it had posed to the complainant as to why no bank had accepted to provide him with a bank account, not even those of his own country or where he was resident, remained unanswered.

In his deliberations, the Arbiter held that:

1. The Payment Accounts Directive, as transposed in Maltese law by virtue of Legal Notice 411 of 2016 defined “a framework for the rules and conditions to which Malta is required to guarantee a right for consumers to open and use payment accounts with basic features in Malta”. Although the regulations contained provisions on non-discrimination against consumers legally resident in Malta and the EU by reasons of nationality and residence, and obliges credit institutions not to introduce burdensome procedures that make it difficult for consumers to open a basic payment account, providers were to refuse to open such an account if that would be in breach of anti-money laundering legislation.

2. Although banks should scrupulously follow the norms established by the directive to facilitate the opening of basic payment accounts, they could not overlook their duty of proper due diligence of prospective clients.
3. The information required by the bank was in no way burdensome or bureaucratic and did not use the due diligence process to discriminate or to serve as a pretext not to open an account.

4. The complainant had refused to comply with the bank’s requirement and the stubbornness he had shown in his email replies to the bank were not conducive to a smooth business relationship between him and the bank.

The Arbiter rejected the complaint. The decision has not been appealed.

Case 14:

In 1991, the complainant purchased from the provider a 25-year endowment assurance with profits and accidental death benefit life policy, which was to mature in July 2016.

The provider had bound itself in writing that the “estimated maturity value for this policy was approximately Lm10,104”. That would equate to around €23,535.

However, in June 2016, the provider had informed the complainant in writing that the policy maturity value was to be “just” €14,161; it had “justified” the shortfall by referring to the “underlying investment performance” which had deteriorated over the years.

The complainant was therefore requesting to be accorded the amount promised when purchasing the policy, plus interest.

In his deliberations, the Arbiter noted that:

1. In accordance with established case law, the provider’s absence from the proceedings was not to be interpreted as an admission but as a challenge to the complainant’s contentions.

2. The provider’s note of final submission was not the proper legal means through which it could add new evidence or raise defences at this stage.

3. In the quotation initially provided to the complainant as well as in a subsequent letter dated 3 October 1991, the policy maturity value is constantly qualified by the term “approximately”, thereby implying that the final maturity value would actually be reasonably close to this amount.

4. In a letter dated 6 September 2016, the provider had explained at length the reason(s) why the underlying investment performance had a bearing on the final maturity value; such explanation – intended mainly to justify its position – should have been delivered at the policy purchase stage. There was no evidence that this had been done.

5. The Arbiter had no reason(s) to doubt the complainant’s contention that the provider’s representative had not informed him about the premium investment and that the maturity value would be prejudiced if such investment failed to perform properly.
6. The Arbiter was morally convinced that the complainant would not have purchased the policy unless he had been assured and was certain he would be getting the promised maturity value.

7. It was not reasonable nor was it equitable that – in selling the policy to the complainant – the provider’s representative focused solely on its positive features without mentioning any possibly negative aspects.

8. The relationship between the provider and the complainant was governed by the principle of utmost good faith whereby each party respected the duties it had assumed. On its part, the complainant had dutifully paid the required premium over the 25-year span of the policy.

9. When an expectation – as in this case – had been created, it had to be honoured. The complainant had every right to expect the promised maturity value at this late stage of his life.

In the light of the forgoing, the Arbiter upheld the complaint. While noting that the maturity value had been indicated at approximately Lm 10,000 (equivalent to €23,293), he established the amount of €20,000 as the reasonable and equitable compensation that the provider had to pay to the complainant.

The Arbiter’s decision was appealed. However, the Arbiter’s decision was fully upheld and confirmed by the Court of Appeal (Inferior Jurisdiction). In its deliberation, the Court commented that the Arbiter had addressed satisfactorily all the issues brought by the provider in the proceedings and that his decision was well motivated.

**Case 15:**

In summary, the case goes as follows:

In 2011, the complainant and her husband took out a capital protected policy from a life insurance company authorised in an EU member state. Her husband died a few months later and, upon notification, the life insurance company transferred the policy in favour of the complainant.

Around mid-2013, the life insurance company transferred its entire portfolio of life insurance policies – including the complainant’s policy – to a life insurance company in Malta within the same holding group.

The complainant claimed that when she surrendered her policy a few weeks prior to its maturity in 2015, the bank delayed transferring her money with interest to her chosen bank account. Following exchanges of communication with the bank spanning a few months enquiring why her funds were being withheld, the bank informed the complainant that it would be withholding half of the policy’s proceeds as, according to a law in the husband’s birthplace (a Middle Eastern country), the heirs of her husband could have a claim on half of such policy proceeds.

The provider’s legal counsel indeed informed the complainant’s legal counsel that although the bank would immediately release half of the proceeds to the complainant, it would retain the other half as this portion could be claimed by the husband’s heirs. The
complainant was informed that her husband’s heirs had until January 2018 to make a claim on such funds, following which the funds would be devolved to her.

During a hearing in January 2018, the parties informed the Arbiter that the capital had been paid to the complainant but she insisted on being paid the interest for the entire period of time the bank had withheld the funds.

The Arbiter held the view that the retention of proceeds by the provider until 2018 was unjustified for a number of reasons:

1. The assertion made by the provider’s attorneys that the heirs of the complainant’s late husband would have a claim on half of the policy proceeds was not based on a specific law dealing with joint-policy holders of the late husband’s birthplace. Their opinions were made on the premise that a court in such country could make an analogy with provisions of a joint bank account. The advisers did not produce any case law to substantiate their opinion and the advice was based on the presumption that the courts in such Middle Eastern country could possibly make such an analogy.

2. Although the service provider’s right to guard its legal interest was not disputed, the Arbiter said that the interests of the client should likewise be safeguarded. Balancing differing interests might not be easy but service providers ought to ensure that they act fairly, which in this case they did not.

3. The Arbiter held the view that upon the death of the complainant’s husband, she became the sole policyholder and beneficiary, and on the day of the policy surrender, she was entitled to receive the full value of the policy.

4. There was no issue in regard to the payment of the first half of the policy value that was paid with profits and interest to the complainant.

On the remaining half, the Arbiter determined that it would be reasonable for the provider to pay annual interest at 5.1% from the date of surrender till the date when this amount was paid. The rate was based on evidence provided by the complainant that she could have invested that capital sum at 5.1% per year. The decision has not been appealed.

**Case 16:**

Complainant stated inter alia in her complaint that:

a. The service provider did not act in her best interests and did not observe its fiduciary obligations.

b. It offered her a high risk and complex product suitable which was not suitable to her.

c. She was asked by the service provider’s representative to sign documents which were only intended to exonerate the service provider from its contractual obligations, apart from the fact that they had not been explained to her.
d. The service provider did not honour its contractual obligations when it failed to disclose the inherent risks related to the product; when it was contractually negligent and was in fact mis-selling the investment.

e. Since the investment product was not in line with her knowledge and experience, she was not in a position to freely decide to make such an investment.

The service provider pleaded that:

a. It was not the legitimate party to the case.

b. The action had been prescribed according to law.

c. There was incompatibility in the complaint which should be rejected.

d. The service provider did not manage the investment and acted only in an intermediary capacity.

e. It acted according to the relevant laws and observed its contractual obligations and allegations of mis-selling were unfounded.

In his deliberations the Arbiter concluded that:

1. The case was not prescribed according to law quoting case law in this respect.

2. The service provider was the legitimate party since it had entered into a contract with the complainant and therefore a juridical relationship existed between the parties.

3. The complainant satisfied the requites of the law and there was nothing null about it. The law establishing the Office of the Arbiter for Financial Services made it amply clear that proceedings were informal, and the Arbiter should look in the substantive merits of the case rather than consider formalities. Moreover, the law did not contemplate nullity of complaints on the basis of lack of formality.

4. The service provider as a licensed service provider had acted as a principal and not as an intermediary. The Arbiter stated that service providers in financial services were regulated by ad hoc rules and regulations which were to be scrupulously observed.

As to the merits of the case, the Arbiter concluded that:

1. An investment suitable only to wholesale and sophisticated investors in another jurisdiction should not have been sold in Malta to retail clients which could have been afforded more adequate protection.

2. The service provider failed to conduct a proper due diligence exercise before offering the product to retail investors because it was evident from public pronouncements made by the investment company that the company had liquidity issues and the fund was suspending payments to investors prior to the sale of the investment to the complainant.

3. The complainant was not an experienced investor and she had only a few bank deposits and a life insurance policy. Since the product was sold on an advisory basis, the service provider was obliged to make an adequate assessment of suitability.
4. From the facts of the case it resulted to the Arbiter that the complainant did not meet the requisites of the suitability test under MiFID and local legislation implementing these rules.

5. The service provider did not honour its fiduciary obligations

6. The documents the complainant was asked to sign were not in plain language as stipulated in art. 47 of the Consumer Affairs Act.

7. The service provider did not act in good faith when offering these documents for the signature of the complainant. Moreover, it did not act honestly, fairly and professionally and in accordance with the best interest of the client and failed to observe rules and regulations aimed at protecting consumer rights in financial services.

8. The product had been mis-sold to the complainant.

The Arbiter ordered the service provider to reinstate the complainant to her financial position prior to the investment, deducting any income the complainant could have received on the investment together with legal interest from the date of decision till the effective payment date. The decision was not appealed.

**Case 17:**

The complainant, a Swiss citizen, requested the payment of a bank-promoted premium regarding his portfolio transfer. The bank rejected the complainant's application on the grounds that he had not used the correct form. The Bank has met the claim in the course of the procedure for reasons of goodwill.

**Case 18:**

In a case involving asset management, a private portfolio manager had invested, within the framework of a discretionary management contract, a significant proportion (88%) of a customer's portfolio into one single structured product indexed on the securities of a company which became insolvent shortly after the investment. The customer notably blamed the professional for having failed its contractual obligation to diversify investments. The customer also blamed the professional for not having informed him of the fact that the professional had received financial inducements for investing in the litigious structured product.

As regards the complaint concerning insufficient investment diversification, the professional notably argued that the disputed structured product was perfectly adapted to the “dynamic” investor profile chosen by the customer, which meant that the investor had accepted a maximum risk level for his investments in exchange for potentially very high gains. According to the portfolio manager, the customer asked to invest part of his assets into structured products which he knew were risky. The professional also argued that if they had invested in another security, nothing proved that the complainant would not have sustained losses as well, nor that he would have retained the total capital, without any liability of the professional.
The complaint file submitted to the CSSF contained a communication of the private portfolio manager which aimed to inform the investors having invested in the disputed structured product of the performance of their investment. In this investor communication, the private portfolio manager considered that a 3 to 6% concentration on one security was good management. Based in particular on this information the professional had to accept that it had not sufficiently diversified the investments of the complainant’s portfolio and agreed to indemnify the customer.

As regards the complaint about financial inducements the professional would have received, the professional claimed that the complainant had been informed of these remunerations by referring to a prospectus which, according to the professional, had been handed to the complainant at the time he subscribed to the disputed product.

After having analysed this prospectus, the CSSF concluded that contrary to what the professional had claimed, the prospectus did not contain any information regarding possible commissions for the professional. The CSSF thus concluded that the professional could not prove that the complainant had been informed of the inducements the professional received.

The CSSF closed this file concluding that the claims of the complainant were justified. To settle the dispute, the asset management company offered a substantial amount to compensate for the losses he had suffered.

**Case 19:**

A British claimant expresses her disagreement with the sale by the entity of the units corresponding to an investment fund owned by her, which were pledged as security for payment of a multi-currency mortgage loan entered into in 2007.

The Spanish credit institution argued that the deed contains a clause entitled “additional clause on the pledging of funds” in which included the possibility of the enforcement of the pledge arranged as security for the payment, in case of the sole capital had not been paid, i.e. sale of the investment fund units that were pledged on the date on which the mortgage was arranged.

Moreover the entity considers, by virtue of the above, that its actions have been correct and in accordance with good banking customs and practices, given that under the provisions of the mortgage deed, and in view of the default on the mortgage, was fully entitled to enforce the pledge, and carry out the corresponding sale of the investment fund units pledged to this effect, and the claimant is fully aware of such conditions and has shown their agreement with her by signing the mortgage loan.

As a consequence of that, the Market Conduct and Claims Department issued a report against the credit institution as it did not prove that informed the customer in advance of all the financial terms of the mortgage loan that they are to formally execute and, in particular, on the assumption of exchange rate risk and the purpose of purchasing investment funds.
Also, the entity has deviated from good banking practices insofar as it sold units on the settlement of all the payments, without any demand for payment of the same within a specific timeframe with a notice of sale of units if this is not done.

Finally the entity has not provided its customer with due explanations regarding the loan transaction arranged, nor has it properly proven that it can legitimately enforce the pledge and sell the units of the two investment funds.

Case 20:

An Italian consumer, who lives in the UK, complained of an unauthorised transaction on a debit card, issued by an Italian financial intermediary. On the day of the transaction, the consumer visited the card issuer’s Facebook page to complain about certain previous transactions. The consumer was immediately contacted, via the social network’s instant messaging system, by a person who appeared to be legitimately working for the card issuer. The consumer then disclosed his detailed information, including his security credentials, which were used by the attacker to conclude the unauthorised transaction. The consumer filed a complaint with an Italian ombudsman. The ombudsman deemed that the consumer had fallen victim of a phishing fraud, despite the intermediary’s protection system (based on “strong authentication”) was compliant with the obligations under the PSD2 Directive and the intermediary had repeatedly informed its clients not to share their security information. The ABF rejected the complaint, arguing that the consumer had ultimately breached his obligations under the above mentioned Directive by negligently disclosing his security credentials to a stranger.