

Consumer Panel response to DG Markt consultation document: Alternative Dispute Resolution in the area of financial services

The Financial Services Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

This is the Panel's response to DG Markt's consultation paper on Alternative Dispute Resolution (ADR) in the area of financial services. The Panel has previously raised concerns about fragmentation of cross-border ADR and therefore we very much welcome this initiative by DG Markt. We believe that this should be a priority area for action by the Commission so that rights to provide financial services cross-border are accompanied by obligations and mechanisms to deal with complaints from consumers when problems arise.

ADR schemes provide a valuable safety net for financial services consumers and we strongly support the work of the UK's Financial Ombudsman Scheme and the key role that the Ombudsman Service plays in FIN-NET. We would like to see ADR schemes covering all financial services available in all Member States. We acknowledge that the schemes that currently exist within Member States are diverse in nature. However, we believe that this diversity can be accommodated within the Commission's set of principles and further, binding requirements that should ensure a consistent standard of access, scope and ADR performance for consumers.

Q: what steps need to be taken to make FIN-NET a comprehensive network, covering all Member States and financial services sectors?

Q: should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

We would like to see binding action taken at EU level to ensure that all Member States have an ADR scheme or schemes that cover all financial services market sectors, and that all ADR schemes become members of FIN-NET. Schemes should comply with the standards set by the Commission and those standards should be reviewed and enhanced as necessary. ADR processes should be accessible to all consumers, with the assistance of FIN-NET where necessary.

Q: what action needs to be taken to encourage the creation of ADR schemes, where they do not exist?

Q: should any action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

The Commission should not hesitate to propose a mandatory ADR requirement on Member States. Fragmentation of and inconsistencies between ADR schemes across the EU will discourage consumers from shopping cross border.

Q: should adherence to an ADR scheme be mandatory to all financial services providers? If yes, should the financial services providers be obliged to adhere to the ADR scheme only in the country where they are established or to all the ADR schemes in Member States where they provide services?

Q: should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

There should be binding action at EU level requiring mandatory adherence to an ADR scheme for all financial services providers. This should apply to schemes in all Member States both in and from which the firm provides services.

Q: should financial services providers be obliged to inform customers about the possibility to resolve disputes through an ADR scheme? Should this obligation be applicable also with regard to FIN-NET?

Q: should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

Q: when should the financial services provider inform its customer about the possibility to address the complaint to an ADR scheme? As part of the contractual information? At the moment when the dispute arises and it cannot be settled between the provider and the customer bilaterally? Both? Either?

Again, we support binding action at EU level. Information about access to an ADR scheme should be provided at the point at which it is needed – when a dispute arises. That is when a consumer is most likely to retain and make use of the information. Generally, it would be helpful if information could also be provided in the pre-sale and/or point-of-sale documentation, but we do have concerns about consumers being overwhelmed with information at this point and consequently not paying sufficient attention to it. This should not be an alternative to providing the information at the dispute stage.

Q: is there a need to promote FIN-NET and its member ADR schemes? If yes, what would be the best way to do so?

It is important that consumers are aware of the availability of ADR if they are to feel confident about shopping for financial services cross-border. However, as we have already stated, while we see some value in pre-sale/point of sale information, the best way to promote ADR schemes is to provide consumers with information about them when it is needed, ie when a dispute arises. We do not think that there is a

need for FIN-NET itself to be promoted, other than to those working in ombudsmen, regulatory, enforcement and advice bodies in the Member States, but rather the ADR schemes themselves.

A handwritten signature in black ink that reads "Adam Phillips". The signature is written in a cursive style with a long horizontal flourish at the end.

Adam Phillips
Acting Chairman
Financial Services Consumer Panel

27 February 2009