

Consumer Dispute Resolution in Financial Markets

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Consumer Dispute Resolution in Financial Markets

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1. First Moments (1)

The Council of the European Union

Notes the rapid development of new forms of marketing of goods and services, in particular through e-commerce, and thereby also an increase in cross-border consumer transactions which is further enhanced through the introduction of the euro.

Reaffirms its concern as regards strengthening consumers' confidence in the functioning of the internal market and their capacity to take full advantage of the opportunities it offers.

Considers that, to this end, in addition to improved access to justice, as also envisaged, the development of practical, efficient and inexpensive procedures for the extra-judicial settlement of consumer disputes should be promoted at national and, in an appropriate form, at Community level.

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1. First Moments (2)

FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries (the European Union Member States plus Iceland, Liechtenstein and Norway) that are responsible for handling disputes between consumers and financial services providers, i.e. banks, insurance companies, investment firms and others. This network was launched by the European Commission in 2001.

Within FIN-NET, the schemes cooperate to provide consumers with easy access to out-of-court complaint procedures in cross-border cases. If a consumer in one country has a dispute with a financial services provider from another country, FIN-NET members will put the consumer in touch with the relevant out-of court complaint scheme and provide the necessary information about it.

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1. First Moments (3)

- Generally, in Germany the impression of the consumer as inhabitant changed over the time: from the adult person to the one, which has to be protected.
- The consumer is, according experience, only in a limited way able to understand the daily flood of information.
- In the field of financial markets, there is the problem of the so-called “financial analphabetism” of very much consumers.
- Besides this, there are a lot of bad experiences of which banks and insurance companies offered to several clients.
- Besides consumer protection unions and churches there is - in the field of financial services - also the German Federal Financial Supervisory Authority (BaFin) involved in the idea to protect the consumers.

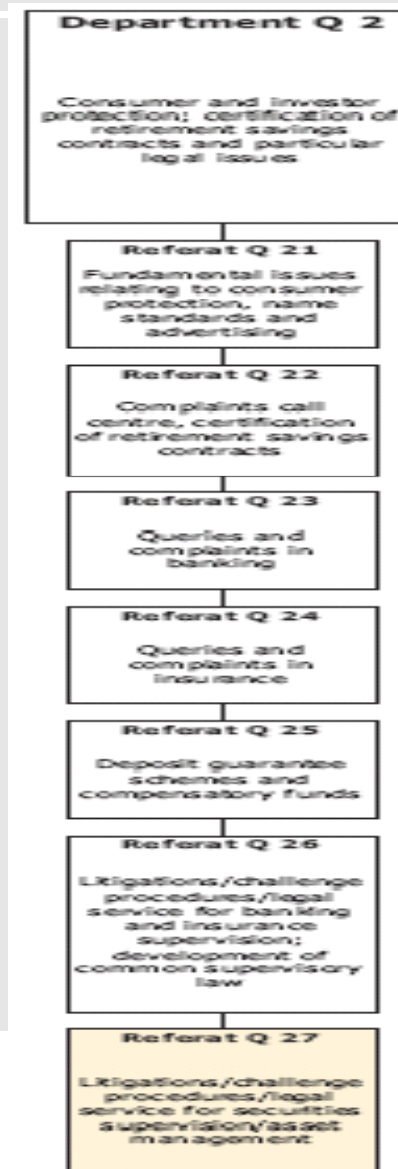
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2. § 6 German Banking Act (KWG) - Tasks and Functions of BaFin

- (1) The Federal Financial Supervisory Authority (BaFin) exercises supervision over institutions in accordance with the provisions of this Act.
- (2) BaFin shall counteract undesirable developments in the banking and financial services sector which may endanger the safety of the assets entrusted to institutions, impair the proper conduct of banking business or provision of financial services or involve serious disadvantages for the national economy.
- (3) BaFin may, as part of its brief, issue instructions to the institution and its managers that are appropriate and necessary to prevent or overcome undesirable developments at the institution which could endanger the safety of the assets entrusted to the institution or could impair the proper conduct of its banking business or provision of financial services.

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2. § 6 German Banking Act (KWG) - Tasks and Functions of BaFin



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3. Customer Complaints (1)

Out-of-court complaint schemes normally cover service providers which operate in and from the country where the scheme exists. This means that if a consumer complains about a foreign financial services provider, his/ her complaint will normally be handled by a complaint body which operates in the country where the financial services provider is located.

A consumer having a complaint against a financial services provider located in another country may:

Use this website to identify the relevant out-of court complaint scheme in the country of the financial services provider and contact that body directly.

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3. Customer Complaints (2)

Complaints often clue BaFin into irregularities at institutions. This is why it investigates every complaint, assessing whether or not supervisory measures should be taken. In order to gain a full insight into the situation, BaFin often asks the affected companies to comment on the issue in question. BaFin helps individual customers, to the extent possible, by prompting companies to correct mistakes or by explaining the legal situation in a comprehensive manner. BaFin acts solely in the public interest, which means that it cannot become involved in the private legal concerns of individual complaints.

- See also handout of annual report of BaFin 2008, p. 211 ff -

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3. Customer Complaints in the Field of Banking Services (1)

	2005	2006	2007	2008	2009
All together	3.642	3.451	3.643	5.330	6.027
From this: only for information	360	451	532	462	481
From this: successful	664	573	567	633	1.024
From this: compromises	355	295			
Phone contacts	outsourced, around 5.500 calls p.a.				
Petitions via German Parliament	43	48	43	37	38

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3. Customer Complaints in the Field of Banking Services (2)

Due to financial crises, the number of requests and complaints on the sale of loans by credit institutions continued to increase. Borrowers were made insecure by reports in the media, which indicated a risk of unauthorised sanctions by the purchaser of a loan or advance. Many people who contacted BaFin were specifically concerned about how they could protect themselves from interference by the purchaser of the loan in the contractual relationship and from unauthorised sanctions.

During the year under review, customers again complained that they could only access the equivalent value of deposited checks only after the end of a specific period, often ten bank working days.

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3. Customer Complaints in the Field of Insurance Services (1)

	2005	2006	2007	2008	2009
All together	15.716	15.225	15.425	15.111	14.274
From this: only for information	773	846	732	844	730
From this: successful	3.960	3.639	5.053	5.017	4.758
Phone contacts	outsourced, around 11.000 calls p.a.				
Petitions via German Parliament	114	102	101	90	100

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3. Customer Complaints in the Field of Insurance Services (2)

Traditionally, the largest proportion of complaints in the field of insurance services related to claims settlement in life and non-life insurance (ca. 40 %).

This was followed by complaints on contract handling at (ca. 30 %), on contract termination (ca. 20 %) and on business conduct when negotiating contracts (ca. 10 %).

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3. Customer Complaints in the Field of Securities Trading (1)



Year	2005	2006	2007	2008	2009
Sum	589	669	734	1.169	ca. 1.000
Phone contacts	outsourced, around 3.000 calls p.a.				

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3. Customer Complaints in the Field of Securities Trading (2)

Above all, investors frequently asked about the professionalism of certain authorised companies. BaFin may not make any statement in this regard.

Investors frequently complained that banks would later reverse over-the-counter (OTC) transactions with certificates, which were advantageous for them.

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4. System of Ombudsman (1)

- An ombudsman in Germany is, following the Scandinavian idea, a person who has been appointed to look into complaints about an organization. Using an ombudsman is a way of trying to resolve a complaint without going to court.
- Looking to the field of financial services, there are now since ten to fifteen years ombudsmen in the different banking- and insurance companies associations of Germany.
- The ombudsman's job is to investigate cases of maladministration. This means the way in which banks or insurance companies had dealt with a situation or reached a decision.

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4. System of Ombudsman (2)

- The procedure for starting the investigation by the ombudsman means, that people do not need to use an application form. People can contact ombudsmen in Germany with the following information:
 - the name and address of the person making the complaint
 - the name and address of the bank/insurance company the complaint is being made about
 - details of what the complaint is about, that is, what did the bank/insurance company do wrong or fail to do
 - what personal injustice, financial loss or hardship was suffered
 - what the bank/insurance company should do to put the situation right
 - details of how the complaint has been followed up before people contacted the ombudsman
 - the date when people first identified the event you are complaining about.
- Copies of any paper-work relevant to the complaint should also be sent.

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4. System of Ombudsman (3)

- An Ombudsman has, knowing that he and his team is embedded in the different associations of banks/ insurance companies, strictly to be neutral and independent. His decisions are obligatory for the banks/ insurance companies up to € 5.000,-- (not for the private clients).



- According long-running experience, the system of ombudsmen is help- and successful for the clients: there is an average success up to 50 % p.a.!

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5. German Civil Code (1)

Why some regulation for consumer protection in Germany?

- In the long run, in Germany the impression of the consumer as inhabitant changed over the time: from the self-responsible person to the one, which has in different cases to be protected.
- Also in German consumer is, according experience, only in a limited way able to understand the daily flood of information.
- In the field of financial markets, there is the problem of the so-called “financial analphabetism” of very much German consumers.
- Besides this, there are a lot of bad experiences of which banks and insurance companies offered several clients (see points above).

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5. German Civil Code (2)

- Embedded in the above described circumstances, there are in Germany today some regulations dealing with the idea of customer protection; also in the field of financial services.
- During the time, several single laws in Germany were enacted with the target to help the consumers/inhabitants. So, from case to case there were enacted like:
 - Regulation concerning house-door businesses,
 - Contracts concerning electronic businesses,
 - Regulation to discounts,
 - Protection in the case of lodging (monthly hire),
 - Protection in the field of credit business

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5. German Civil Code (3)

- Due to the fact, that there was over the time a “mixed pickled” of various consumer protection regulations, the German government decided to put all this together and to include it into the German Civil Code (January 2002).
- Besides this, there is - separately regulated - the possibility for private insolvency since January 1999.

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6. New: Planned Banking Instruction Label in Germany

Since 2009 there are first credit institutions in Germany offering banking instruction labels.



Just one third of all German clients thinks today, not to be “analphabet” in the field of financial services and products. In opposite to this, a majority prefers to be served/ supported by a qualified banking expert, but as well a majority has doubts about the trustworthiness of such employees.

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Thank you very much for your kind attention!

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