


Home country ombudsman scheme.  
Cooperation with other national ADRs  
through Fin Net



**Workshop on Consumer Dispute  
Resolution in Financial Markets**

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# Key points

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- Ombudsman scheme – a general approach;
- Key characteristics of the Ombudsman scheme;
- Differences from other ADR types (mediation and arbitration);
- Framework of compensation scheme;
- Conditions and extent of coordination between Fin Net members;
- Guiding principles of cooperation;
- Standards of work



# Ombudsman Scheme as a Form of ADR

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- ADR as a generic term; the most common and widely used forms of ADR;
- When is the Ombudsman most appropriate as a procedure?;
- Why choose the Ombudsman but not the other form of ADR



# Instituting the Ombudsman scheme

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- Operational independence of the Ombudsman; *on the other hand;*
- Ombudsman is closely controlled by the establishing authority - at least to the extent that the establishing authority:
  - elects the chairman of the Ombudsman;
  - approves the annual budget of the Ombudsman;
  - makes the rules governing the Ombudsman jurisdiction

# Instituting the Ombudsman scheme (continued)

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- Other decisions taken by the establishing authority with respect to the Ombudsman's activity:
  - defines eligible claimants and the maximum amount of monetary awards;
  - specified maximum of *enforceable* monetary award that an ombudsman can make;
- Justification for the existence of such strong links



# Ombudsman's Key Features

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- The key conditions that an Ombudsman scheme should meet (as early as in its establishment);
- Some other necessary features of the Ombudsman:
  - should be accessible to consumers;
  - the arrangements he offers should be comprehensive in their coverage;
  - he must be capable of making binding decisions

# Other Key Characteristics of Ombudsman Scheme

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- The Ombudsman must be:
  - consistent in the approach to the provision of redress;
  - transparent and accountable; flexible, simple and prompt; efficient;
  - with a minimum performance standards;
- The Ombudsman can only make costs awards against services providers for costs reasonably incurred by the complainant;
- Access to the Ombudsman is free at the point of entry for complaints;
- Can groundless claims be deterred?

# A few more Peculiarities of Ombudsman's Scheme

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- The Ombudsman must:
  - provide appropriate feedback to the establishing authority (regulator);
  - has at his disposal broad (but not absolute) statutory immunity from liability in damages for actions and inaction of its officials;
  - be able to require parties to disputes to provide information;
- Ways of funding the Ombudsman



# Similarities/Differences Between Ombudsman, Arbitration and Mediation

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- The **Ombudsman's awards** are binding on services providers *but not* on complainants; *whereas*;
- **Arbitration** is binding on both parties;
- Other differences between the two types of ADR:
  - the way of forming the decisions; the procedure of taking the decisions; confidentiality/publicity of decisions;
  - The fact that both sides to a dispute agree to let the case to a third party (the arbitrator) - **similar to Mediation**

# What is Specific about Ombudsman's Decisions?

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- ❑ The Ombudsman issues money awards which are enforceable through the courts; *alternatively/additionally* – he can issue directions to services providers
- ❑ The consequences to the services provider who fails to comply with an award/direction – possible disciplinary proceedings on the part of establishing authority (regulator);
- ❑ Ombudsman's acts are an object of judiciary review



# Some Debatable Questions Concerning Ombudsman's Scheme

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- Whether to provide a single point of entry for financial services complaints: advantages/disadvantages;
- Whether to be established as a statutory scheme or to be industry-run type: advantages/disadvantages



# Compensation Scheme. Specific Features of This Type of Scheme

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- Similarities with Ombudsman in terms of institutional structure, governance and accountability mechanisms;
- What is necessary so that Compensation scheme can work as a safety net for consumers;
- Peculiarities of funding the Scheme;
- Enforceability of Compensation scheme decisions

# MoU Signed Between Participants in Fin Net

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- MoU – a basis for cooperation between the national dispute resolution schemes (ADRs);
- What was agreed to be solved through MoU;
- What can be solved through Fin Net, respectively, what Fin Net cannot be used for;
- Conditions for Fin Net membership

# Guiding Principles of Cooperation Agreed on FIN-NET Members

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- In case of a dispute with a financial services provider based in another country:
  - Who is the competent Ombudsman for a dispute settlement;
  - Who is the competent Ombudsman the consumer has to address;
- How the members of Fin Net will cooperate in order to help the consumer to be able to identify which Ombudsman he should address



## Other Practical Problems with Cross-Border Complaints Which Require Cooperation

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- Practical cooperation between Fin Net members when searching for/providing information related to a respective cross-border complaint. Information sharing;
- Referral of cross-border complaints. 'Signposting role' of all members of Fin Net

# Do Fin Net Members Have to Work to the Same Standards

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- All Fin Net members must assure the European Commission that they comply with certain minimum standards (subject to EC Recommendation 2001/310/EC and EC Recommendation 98/257/EC);  
*on the other hand;*
- Different ADRs have no common uniform standards of dealing with the complaints filed. Autonomy of Fin Net members





## How FIN-NET Members Work Together on a Practical Level

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- Cooperation in individual cases; *as well as*;
- Work on enhancing the 'visibility' of Fin Net (increasing people's awareness of and access to the network);
- Work on the comprehensiveness of the network (covering the gaps resulting from different national dispute resolution scheme);
- Cooperation between the Ombudsman/other ADR and the establishing regulatory authority, as well as with the financial regulator



## What Is the Future Vision for FIN-NET?

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- Fin Net's role of 'sounding board' especially in the early stages of framing EU legislation;
- Fin Net's role in promoting cross-border cooperation and communication in cross-border dispute-resolution;
- Fin Net has no dispute-resolution competence, but he can help consumers across Europe to get to the right ADR to resolve their financial disputes



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