

Memorandum of Understanding on a Cross-Border Out-of-Court Complaints Network for Financial Services

1. Objectives of the Memorandum

The present Memorandum of Understanding (MoU) is a declaration of intent on cross-border co-operation between the Parties under the framework of the Directive on consumer Alternative Dispute Resolution 2013/11/EU (ADR Directive)¹ and the Regulation on on-line dispute resolution for consumer disputes (ODR Regulation).² The Memorandum outlines the mechanisms and other conditions according to which the Parties intend to co-operate in order to facilitate out-of-court settlement of cross-border disputes between European consumers and providers in the area of financial services.

The provisions of this MoU are intended to support cooperation on a 'best efforts' basis between FIN-NET members or, where appropriate, FIN-NET affiliates under this MoU.³

2. Definitions

Under the present MoU, the following definitions will apply:

“Out of court settlement” is a procedure for resolution of cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts in the area of financial services between a trader and a consumer through the intervention of a FIN-NET member or, where appropriate, a temporary FIN-NET member or affiliate which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.

“Cross-border dispute” means a contractual dispute arising from a sales or service contract in the financial services area where, at the time the consumer orders the goods or services, the consumer is resident in a European country other than the European country in which the trader is established.

¹ Directive 2013/11/EU of the European Parliament and of The Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. [At time of writing, enactment of this Directive is under negotiation with the countries in the European Free Trade Area (EFTA)].

² Regulation of the European Parliament and of the Council of 21 May 2013 on on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

³ Note that the provisions of this MoU are not legally binding on the Parties and the MoU does not therefore create or grant any legal rights or obligations to the Parties or any third party.

"*FIN-NET members*" are bodies responsible for the out-of-court settlement of consumer disputes that are listed in accordance with Article 20(2) of the ADR Directive, which contribute to the out-of-court settlement of cross-border disputes in the area of financial services under this Memorandum.

"*FIN-NET temporary members*" are bodies adhering to FIN-NET prior to 9 January 2016 who have not yet been notified by their national competent authorities under Article 20(2) of the ADR Directive. These bodies can continue in their roles for a maximum of two years following the MoU's entry into force on 16 May 2016. Non-notified bodies will cease all of their FIN-NET functions after this transitional period.

"*FIN-NET affiliates*" are bodies from European countries where the ADR Directive is not applicable (e.g. Switzerland, The Channel Islands), but which respect at a minimum the principles of Commission Recommendation N° 98/257 of their own initiative.

"*ODR platform*" is the European Online Dispute Resolution platform established by the Commission as a result of the ODR Regulation,⁴ which can be found at <http://ec.europa.eu/odr>. The ODR platform deals with disputes regarding products or services purchased online, and transmits disputes only to ADR bodies who are listed in accordance with Article 20(2) of the ADR Directive.

"*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*"⁵ 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.

3. The parties to the MoU

Access to the MoU is open to any body responsible for the out-of-court settlement of consumer disputes in the area of financial services which meets the criteria to be a FIN-NET member or FIN-NET affiliate. The Commission shall provide secretarial services for the group (such as the organisation of steering and plenary committee meetings for the exchange of best practices) without acting as a member or participant or executing any tasks in relation to the out-of-court settlement and other follow-up on disputes.

⁴ Regulation (EU) No 524/2013 of the European Parliament and the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

⁵ The nearest scheme might in certain instances also be competent to deal with some cases even though the service provider is situated abroad.

Parties to the MoU will be listed on the FIN-NET website (<http://ec.europa.eu/fin-net>). The Commission will update the website whenever necessary and notify all parties to the MoU periodically of the new FIN-NET members and affiliates inducted over that period.

4. Scope of co-operation

Co-operation will aim to ensure that consumer complaints with regard to cross-border disputes are dealt with effectively and in the interest of supporting a cross-border market in financial services through recourse to high-quality out of court settlement. It will also aim to identify and share best practices between participating schemes e.g. through training, staff exchange or familiarisation visits.

Each participating scheme cooperates in areas which it normally covers according to its terms of reference and/or its legal obligations. They also cooperate and act in accordance with the ADR Directive and other relevant legislation or recommendations.

The Commission services will convene at least one meeting of the participating entities annually in Brussels or other cities, in which it will discuss FIN-NET related issues, including best practice.

5. Guidelines for the procedure in the complaints network for out-of-court settlement of cross-border disputes

The following model outlines the guidelines which, in general, should govern co-operation in case of a cross-border complaint.

- 5.1 The nearest scheme will make, where possible, an initial assessment and give to the consumer all the necessary and appropriate information about the complaints network, about the competent scheme and about the ODR platform, where appropriate. This information should cover at least the issues outlined in paragraph 7.1.
- 5.2 Where appropriate, the nearest scheme will remind the consumer of the advisability and necessity of first addressing complaints to the financial services provider directly, since this is often a precondition which must be fulfilled before dispute settlement bodies are able to take on board complaints. The nearest scheme will also warn the consumer that there may be a time limit for submitting the complaint to the competent scheme and possible time limits for any legal actions before the courts.
- 5.3 The nearest scheme will:
 - a) transfer the complaint to the competent scheme or
 - b) advise the consumer to contact the competent scheme directly or

- c) if the financial services supplier has accepted the jurisdiction of the nearest scheme, or if the legal obligations of the nearest scheme oblige it to do so, resolve the complaint itself within the limits of its rules of procedure.
- 5.4 Once the competent scheme has received a cross-border complaint it is its responsibility to try to resolve the dispute between the service provider and the consumer according to the rules laid down in its terms of reference and/or in its legal obligations, and in accordance with the ADR Directive or, where appropriate, the Commission Recommendation N° 98/257, including the applicable law.
- 5.5 The model described above is to be regarded as the basic co-operation procedure in the network. Parties to the MoU can, however, always agree to an alternative method of co-operation in the interest of settling the dispute more efficiently.
- 5.6 Where a complaint cannot be addressed by a FIN-NET member directly, the nearest scheme will identify and direct the consumer toward:
- i. the ODR platform (where appropriate) or another body responsible for the out-of-court settlement of consumer disputes that is listed in accordance with Article 20(2) of the ADR Directive
 - ii. or, in the last instance, to temporary FIN-NET members or affiliates which cover the relevant area of the consumer's complaint.

6. Language of the dispute settlement

If the consumer does not choose to deal with the competent scheme in the usual working language of the scheme, he may deal with it in one of the official EU languages either:

- of his contract with the financial services supplier; or
- in which he normally dealt with the financial services supplier.

7. Exchange of information

- 7.1 The parties will provide the Commission services promptly with the following information about their scheme, and any changes as regards the scheme:
- i. Contact information
 - name
 - e-mail address
 - postal address
 - website address
 - phone number
 - ii. Fees, if applicable

- iii. The types of disputes covered by the scheme
 - iv. The sectors and categories of disputes covered
 - financial institutions covered
 - financial products covered
 - whether intermediaries are covered
 - v. Organisation
 - whether the scheme is public/private and statutory/voluntary
 - who runs the scheme
 - who funds the scheme
 - vi. The language or languages in which complaints can be submitted and the out-of-court settlement can be conducted in addition to Point 6;
 - vii. The binding or non-binding nature of participation in and the outcome of the procedure
 - viii. Typical times for handling complaints
 - ix. Limits
 - any limit on amount of complaint or award
 - any time limits in bringing the complaint to the scheme
 - any time limits, where legally ascertained, in bringing the complaint to the court and whether the filing of the complaint to a body responsible for the out-of-court settlement of consumer disputes will stop the time running.
 - x. For FIN-NET members, the location of the annual activity report required under Article 7(2) of the ADR Directive (and in which languages it is available).
 - xi. Whether the scheme has been listed in accordance with Article 20(2) of the Directive on consumer Alternative Dispute Resolution 2013/11/EU.
- 7.2 The Commission services will make this information available to participating schemes and to consumers by putting it on the web-site available at: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/consumer-financial-services/financial-dispute-resolution-network-fin-net/fin-net-network/members-fin-net-country_en

8. Data protection

If the nearest scheme intends to transfer the complaint to the competent scheme, the nearest scheme will inform the consumer that any appropriate personal data will be

transferred to the competent scheme in compliance with relevant EU and Member State laws on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

9. Sharing information on the Network's activities

The parties will provide the Commission services annually with statistics on cross-border cases that they have handled and their comments on the functioning of the co-operation network.

Where a participating scheme identifies increased or unusual cross-border disputes sharing a similar theme and hinting at systemic failings in cross-border sales, it will alert the Commission, the relevant national competent authorities and other participating schemes as necessary.