

ABI response to the EC
consultation on ADR and
FIN-NET

23 february 2009

5.1 - Membership of FIN-NET

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

As we are well aware of the need and importance of strengthening the FIN-NET network both in terms of adhesion of all Member States as well as an instrument able to resolve disputes concerning all financial services, we believe that the Commission should further support adhesion to the network by way of institutional campaigns and public events in which testimonials on its functions are offered.

To this end, out-of-court settlement bodies could provide the European Commission and the various competent authorities with data related to resolved disputes in order to furnish Community users with solid knowledge of case records and of the quality of the instrument. This would help generate and/or improve a sense of confidence on the possibility to use, even for cross-border disputes, a system which enables investors to effectively protect their position by resorting to this channel as an alternative to the regular judicial channels. Moreover, it would be useful to hold Forums on a regular basis on the matter both at a European level and national level so as to raise awareness, at a local level, regarding the importance of joining FIN-NET.

Should action be taken at EU level? If yes, what form should it take? Binding? Nonbinding?

We believe that involving Member States can be effectively accomplished by way of issuing non-binding measures, such as setting up meetings with the ADRs part of the FIN-NET network, and also inviting countries not currently members as well issuing a communication urging Member States to consider the opportunities offered by this mechanism as a means to lighten court dockets and offer clients a settlement instrument which is efficient and inexpensive.

5.2 - Creation of ADR schemes

Q.I. What action need to be taken to encourage the creation of ADR schemes, where they do not exist?

Member States should be encouraged to undertake the necessary steps to introduce into their framework, alternative dispute resolution mechanisms for financial services in a global sense (see, for example, what is established in art. 53 of the MiFID, according to which "Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate"). The organization, procedure and funding of ADR schemes must be entrusted to each Member State (if public) or parties promoting it (if

private). Moreover, it is well known, also in light of the costs of these initiatives, not all EU countries – nor the intermediaries established therein – are in a position to set up an ADR system.

To develop alternative dispute resolution methods, it is however necessary that ADRs possess specific requisites able to persuade parties operating in the European market place to recourse to them as they are viewed as reliable and well functioning vis-à-vis their purpose for potential users. Essential requisites must include, for example, transparency of the procedure and organizational efficiency.

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

In this context as well, we believe that that any action should be preferably undertaken through non-binding instruments.

5.3 – Adherence to ADR schemes

Q.I. 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?

Adhering to an alternative dispute resolution system should be optional if the subject matter of the dispute is investment service (as currently contemplated in Italy); if it were made obligatory, then it should also be obligatory for foreign intermediaries operating in the relevant State.

Q.II. Should action be taken at EU level? If yes, what form should it take? Binding? Non binding?

We believe that it is too early for a measure by the Commission.

5.4. Information to consumers about ADR schemes and FIN-NET

Q.I. 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?

Client awareness on the possibility to resolve disputes by means of an alternative channel with respect to the judicial channel is essential to establishing a climate of confidence in the client/intermediary relationship.

A similar awareness also inclusive of “cross border” disputes could boost investor confidence in the single market and in purchasing financial instruments from intermediaries of different Member States. We believe that such information should be provided to clients.

In the category of available ADR systems, there seems no reason to exclude reference to FIN-NET.

Q.II. Should action be taken at EU level? If yes, what form should it take? Binding? Nonbinding?

Member States should encourage the diffusion of a similar awareness amongst clients of financial intermediaries. A similar result could be achieved also by promoting self-regulation.

Q.III. 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? Other?

Clients should be informed of the instruments he/she could use to file complaints at the moment they enter into an agreement with an intermediary.

5.5. Awareness of FIN-NET and of its member ADR schemes

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?

Action aimed at diffusing knowledge of FIN-NET and its functions would clearly contribute to boosting the confidence level of consumers operating in the cross-border financial services sector. To achieve this goal, those institutional channels of communication able to reach consumers should be activated (by the Community, governments, and competent authorities) in the context of wider “financial education” programs.