5. ISSUES FOR STAKEHOLDER CONSIDERATION

5.1. Membership of FIN-NET

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

Despite efforts at an EU level, in particular the creation of FIN-NET, the handling of cross-border consumer complaints in the field of financial services still remains problematic. A new set of tools is required to optimize internal market and complement the existing acquis, including the encouragement of greater co-operation between national ombudsman schemes and ADR mechanisms through FIN-NET. In order to make FIN-NET a comprehensive network, covering all Member States and financial services sectors, the following steps need to be taken:

- Member States should be obliged to ensure that alternative dispute resolution schemes (ADR) are in place.
- Providers should be obliged to adhere to an ADR scheme.
- All the ADR schemes established should cover all financial services.
- All existing and new ADR schemes established in all Member States should be encouraged to join FIN-NET.

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

ADR schemes need to be tailored to national circumstances to meet the needs of consumers and the providers who primarily operate in the home market and be compatible with local law and practice in consumer protection and other areas. At an EU level Member States should be encouraged to
ensure that their ADR schemes become members of FIN-NET, where they are not already members.

5.2. Creation of ADR schemes

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

ADR schemes for financial services do not exist in all Member States. It is crucial that different actors in the field of consumer protection work together to develop and promote ADR. In order to encourage the creation of ADR schemes where they do not exist, the following actions need to be taken:

- Further efforts made at an EU level for the promotion of ADR schemes in all the Member States. Member States that have not yet set up any ADR schemes should be encouraged to do so, in compliance with the principles of extra judicial procedures as set forth in the Commission’s Recommendations.
- Awareness campaigns to inform consumers and financial services providers of the advantages of ADR schemes. ADR schemes should not be regarded as a poorer alternative to judicial proceedings—agreements reached by mediation are dependent on the goodwill of the parties for their enforcement.
- Comprehensive evaluation and monitoring of the existing ADR schemes and use of the experience of other Member States in the implementation of these schemes.

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

Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes (ADR schemes). However, any such actions for the
promotion of ADR schemes in all Member States should also be taken not only at a national, but also at an EU level. Probably the enactment of EU legislation on ADR, which would integrate and strengthen the present Recommendations, would prove a more effective way towards the establishment of such schemes in all MS.

5.3. Adherence to ADR schemes

♢ 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 provideservices?

Financial services providers could be obliged to adhere to an ADR scheme to improve consumer protection, which does not inherently rule out recourse to the courts if the ADR procedure fails. If all financial services providers are obliged to adhere to an ADR scheme, then consumers’ confidence in the retail financial services in the EU would certainly be enhanced. One suggestion would be that financial services providers be obliged to adhere to the ADR scheme only in the country where they are established; ADR schemes are usually tailored to national circumstances to meet the needs of consumers and providers who primarily operate in the home market and be compatible with local law and practice in consumer protection and other areas. Therefore, from a practical point of view, mandatory adherence of financial services providers to all the ADR schemes in the Member States where they provide services, would be considered as inappropriate.

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

On the one hand, one may suggest that action at EU level would lead to a convergence and consistency between various ADR schemes, however, on
the other hand full harmonization of ADR schemes across Europe could be detrimental to users rather than of benefit. This could run the risk of interfering with local ADR schemes that are working efficiently and meeting the needs of domestic users of retail financial services.

Maybe non-legislative action at EU level to encourage financial services providers to adhere to ADR schemes would be more appropriate.

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

♦ 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?

Financial services providers should include details of the ADR scheme that applies to the services they provide when giving information to consumers. This would certainly lead to greater certainty and enhance consumers’ confidence in using cross-border financial services. This obligation should also be applicable with regard to FIN-NET. If consumers are granted clearly defined rights, which can be relied upon before an ADR scheme and be reassured about access to redress in the case of cross-border financial transactions, then consumers’ confidence in seeking out best deals to meet their needs, regardless of the location of the services provider will be enhanced.

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

Maybe non-legislative action at EU level to encourage financial services providers to inform customers about the possibility to resolve disputes through and ADR scheme would be more appropriate.
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?

The financial services providers should inform its customer about the possibility to address the complaint to an ADR scheme as part of the contractual information, as such a clause would enable the parties to try and find an amicable solution, while leaving open the possibility of legal action in the event of failure. Thus, financial services providers would be in a way obliged to adhere to and ADR scheme, while the customer would feel more confident and safe in using cross-border financial services.

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

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

FIN-NET is not yet used optimally because it is not sufficiently well known. FIN-NET therefore needs to publicize its existence and activities both to Member States and to European consumers. Better communication would build confidence and encourage the development of cross-border business in financial products and services. FIN-NET could approach Member States that do not yet belong to the network and encourage them to join. Non-legislative action to support the ombudsman network and ensure FIN-NET works effectively should therefore be encouraged. Member States should be encouraged to ensure that their out-of-court redress arrangements become members of FIN-NET, where they are not already members.