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*A II. Rákóczi Ferenc Kárpátaljai Magyar Főiskola
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A KÖTET TANULMÁNYAIBAN ELŐFORDULÓ ÁLLÍTÁSOKÉRT MINDEN ESETBEN A SZERZŐ FELEL.



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THE MECHANISM OF PRE-TRIAL RESOLUTION OF FINANCIAL SERVICES CONSUMERS' DISPUTES

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In the article the principle of functioning of the Hungarian Financial Arbitration Board has been disclosed, which was established in 2011. The peculiarities of acceptance and considering of financial services consumers' complaints has been presented, making a special emphasis on the legislative requirements for the correctness of the complaints submission concerning consumer rights' violation. It's generalized that the Financial Arbitration Board does not protect consumers' rights, but it's a means for violated rights protection. Statistical analysis of the Board's activity for the investigated period allows to conclude that it assists to resolve disputes between the parties, which confirms an increasing trend in the proportion of cases settled by amicable agreement between the parties. Introduction of the Hungarian financial arbitration experience in modern Ukrainian realities will help the state's integration into the European Economic Area by implementing the Commission Recommendation 98/257/EC. In the paper is generalized the necessity for implementation of the mechanism of disputes settlement between consumers and financial institutions, which will strengthen confidence in the financial market and is an additional mechanism for protecting the legal rights of these services' consumers.

ABSTRACT

В статті розкрито принцип функціонування Фінансової Арбітражної Комісії в Угорщині, що була створена у 2011 році. Відображено особливості прийняття та розгляду скарг споживачів фінансових послуг, особливий акцент роблячи на вимогах законодавства щодо правильності подачі заяв про порушення прав споживача. Узагальнено, що Фінансова Арбітражна Комісія не здійснює захист прав споживачів, а є інструментом захисту порушених прав. Статистичний аналіз діяльності Комісії за досліджуваний період дозволяє робити висновок про її сприяння у врегулюванні спорів між сторонами, про що засвідчує тенденція зростання частки врегульованих справ шляхом укладення мирової угоди сторонами. Впровадження угорського досвіду фінансового арбітражу в сучасних реаліях України сприятиме інтеграції держави у Європейський економічний простір шляхом імплементації Рекомендації Європейської Комісії 98/257/ЕК. Узагальнення, зроблені в роботі щодо необхідності впровадження даного механізму врегулювання спорів між споживачами на фінансовими установами сприятиме посиленню довіри до фінансового ринку та є додатковим механізмом захисту законних прав споживачів цих послуг.

Problem statement. In present-day conditions is actualized the need to strengthen right protection of non-banking financial services market consumers in Ukraine. The financial crisis that has gripped the non-banking financial services market in 2008-2009, and negative effects of which are felt till now, has indicated the imperfection of the these services consumers' right protection. Taking into consideration that in its

further development Ukraine has chosen the European integration vector, as an indispensable condition for entry into the European Economic Area is an implementation of the relevant EU requirements in different sectors of the economy. No exception to this is the protection of non-banking financial services consumers' rights. According to the European Commission Recommendation 98/257/

EC¹ [5] in each Member State is appropriate functioning of a body, responsible for the resolution of pre-trial disputes between citizens which are consumers of financial services and professional participants, i.e. providers of these services.

Analysis of recent researches and publications. Studies of O. Baranovskiy, Y. Bondarenko, N. Vnukova, O. Vovchak, O. Hamankova, O. Zalyetov, V. Levchenko and others are devoted to the research of national market of non-banking financial services system's state regulation improvement. Studies of C. Goodhart, S. Ingves, Ch. Lentner, E. Nier, D. Tsomokos and others are dealing with the issue of improving state regulation on the example of developed countries.

However, the researches within scientific works of the abovementioned scientists does not allow to conclude about the fullness of their assessment concerning such a mechanism for financial services consumers' rights implementing as a financial arbitration.

Paper objective. The conducted research is aimed to assess the functioning of the Financial Arbitration Board in Hungary as an alternative forum of the financial services consumer's right enjoyment in order to protect their legitimate interests. Tasks set in the paper consist in the disclosure of the functioning and decision-making peculiarities of this body and general evaluation of its activities since its creation.

Paper main body. The Institution of financial arbitration in Hungary is relatively new, as its implementation was launched on July

1, 2011 by adoption in the previous year the Act on the Hungarian Financial Supervisory Authority² which later, in 2013, joined to the National Bank of Hungary³. This Act also laid the foundations of the functioning of Financial Arbitration Board (FAB), as an institution of pre-trial settlement of disputes between financial services' consumers and providers. It should be noted that according to the Act⁴ consumers are identified as individuals that purchase financial services to meet their own needs. Not considered as consumers sole enterprises, individual entrepreneurs, legal entities, nonprofit organizations, condominium associations, and thus they can not apply to the FAB to resolve the arising problems. Financial arbitration is a form of consumers' rights protection, an alternative forum of (pre-trial) disputes resolution that is exclusively citizen oriented.

It should be mentioned that FAB does not protect the rights of financial services consumers, but only helps it by exercising consumers' right for pre-trial settlement of disputes.

The FAB's terms of reference cover disputes arising between citizens and financial institutions as the result of providing by the latter financial services to the former. Under FAB are banks and other credit institutions, insurers, saving banks, credit unions, investment funds and other institutions listed in the Article 39 of the Act on the National Bank of Hungary (NBH)⁵.

The primary goal of financial arbitration is to achieve agreement between the parties of

¹ On the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes: Commission Recommendation of 30 March 1998 No. 98/257/EC [Electronic Resource]. – Link: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998H0257:EN:NOT>.

² A Pénzügyi Békéltető Testület tájékoztatója a 2012. évi tevékenységéről. – [Electronic Resource]. – Link: http://felugyelet.mnb.hu/data/cms2387078/PBT_eves_jelentes_2012_web.pdf.

³ 2013. évi CXXXIX. Törvény A Magyar Nemzeti Bankról. – [Electronic Resource]. – Link: <http://www.complex.hu/kzldat/t1300139.htm/t1300139.htm>.

⁴ Ugyanott.

⁵ Ugyanott.

the dispute, and in case of its failure – adopt a rapid, cost-efficient and effective solution to protect consumers' rights.

FAB is a fully independent body as from institutional point of view and the professional competence as well. FAB operates independently from the NBH, although it belongs to the structure of the National Bank of Hungary. Independent functioning of the body is ensured by a number of laws. The most important feature of the body's independent functioning is that the FAB's Chairman and its members in no way can be dependent in the performance of their authorities and duties. Furthermore there are several additional tools and legislative regulations that ensure FAB's independent and objective decision-making in each case. One of these rules, which promote maximally objectivity in decision making, is the requirement to FAB's member inform about the existence of such events or conditions that may undermine its impartiality or query the objectivity of decisions taken by FAB. Against body member can be filed a motion on his partial objectivity in the existence of suspicions about it. Such motion should be sent to the FAB's Chairman in writing with providing evidences in order to support the party's suspicion for 3 days after disclosure of the dispute investigation commission. The decision to exclude such member makes the FAB's Chairman after open discussion with the involvement of the commission's head formed for a specific dispute.

The commission formed to a certain dispute consists of three persons, the complement of which is determined by the commission in the course of work following maximum objectivity, completeness and fairness.

The main condition for the procedure initiation in the FAB is the consumer's intention to resolve a dispute with a financial institution. This intention should be reflected in the com-

plaint submitted to the FAB. Without this confirmation the complaint will be returned and refused its adjudication. Another condition for a financial arbitration procedure beginning is the lack of implementation of other forms of judicial (pre-trial) solution concerning particular dispute. So that if the issue is already adjudged in the Arbitration Court or courts of general jurisdiction, the consumer has no opportunity to use this mechanism. About the absence of such procedures the complainant must mention in his claim.

According to the Hungarian legislation, which governs the relevant segments of the financial market, the financial institution must provide all facilities for consumer's address submission both verbally (in person or by telephone) and written (in person or by transmission of documents by another person, mail, fax, e-mail) forms. Oral address of citizens is carried out by recording of the consumer's conversations on electronic media that later on can be an argument for the financial arbitration procedure starting.

In the case of oral complaint, the financial institution immediately investigates the issue and possibly solves it. If the consumer doesn't agree with the proposed method of solution, a record on the complaint must be drawn up which includes position of the financial institution as well. One copy of the record should be delivered (sent) to the consumer. If the dispute can not be resolved promptly, the financial institution during considering has to draw up a record and send it to the consumer. Response to written complaints should be directed to the consumer within 30 days. Financial institutions have to store for 3 years the received complaints and submitted replies and if necessary must present them at the National Bank of Hungary's request. Each financial institution shall establish its own rules concerning consumer complaints settlement. For disputes settlement surcharge is not taken.

There are frequent cases when financial institutions only formally adjudicate consumers' complaints or offer unconstructive ways to resolve disputes, and as a result complaints are not satisfied, even if it's a hackneyed and simple problem. The legal requirement to financial institutions is that they have to fully contribute to disputes settlement with consumers in a pretrial order.

If the consumer's complaint is rejected by the financial organization, the complainant should be informed in the rejection letter (record) about the existing ways of realization of his rights. If the complaint involves the protection of consumer rights, the complainant can initiate a right defense procedure as a consumer of the National Bank of Hungary's services. If the financial organization's complaint rejection concerns to contract procedures for financial services providing, its competence and validity or consequences arising from the contract, then consumer in order to protect his rights can turn to the courts of general jurisdiction or to the FAB. This possibility should be pointed out in the financial institution's written response with indication of FAB's mailing address.

The procedure of adjudication in the FAB is carried out at the request of the consumer, as FAB is an alternative forum of disputes resolving between consumers and financial institutions, therefore the financial institution is not entitled to apply to the FAB. Consumers' complaints may be submitted in paper form in person or by mail and electronically through specialized online system.

The complaint should contain:

- 1) the name and the address of the complainant;
- 2) the name and the address of the financial institution against which the complaint is directed;
- 3) a short description of the problem with supporting facts and documents;

4) consumer's statement about his attempts to resolve the issue with the financial institution;

5) report on rejection of consumer's complaints settlement by the financial institution;

6) consumer's statement about the absence of initiated alternative measures for his rights protection (cases in courts of general jurisdiction, cases in arbitration courts, etc.);

7) consumer's arguments that prove his rightness.

The complaint must be appended by the representative's power of attorney in the case of involvement of a third person to represent the consumer's interests.

The commission investigates the complaint and attached documents within 15 days, and if there are formal inaccuracies, the complaint could be returned to the consumer for correction. The complaint will be rejected if finding out that at the moment of complaint submission on the case a settlement was already launched or taken in the FAB, courts of general jurisdiction or tribunal.

From the moment of final acceptance of the complaint the procedure in the FAB takes no more than 90 days, but in some cases may be extended up to additional 30 days on the basis of the FAB Chairman's decision. Thus the maximum term does not include the period of complaint's return for revision.

In the case of acceptance of the complaint, the commission directs to the parties a notice about the beginning of the case and appoints sessions in a period not exceeding 60 days. The notice will include the name of commission members, which will adjudicate. The session can be held by correspondence, but both parties should agree it. If one party does not agree with this, the session should take place in the full-time form.

According to the legislation⁶, both parties have a responsibility to maximize integrity. Within this frame the consumer must submit a properly prepared complaint and by the FAB's demand all the necessary documents. Also the consumer must be present at the proceedings in person or by proxy. Violation of this obligation entails the FAB's refusal to settle the dispute, leaving it without investigation or decision. Financial institution within its duty of cooperation shall send a reasoned response to the complaint, submit supporting documents and attend the sessions. In the case of process braking the FAB may publish the name and address of the financial institution that refuses to establish the full truth in a particular case concerning the rights protection of financial services consumers. In this case the National Bank of Hungary may impose sanctions: from reprimand up to fining of the financial institution.

Hereby, each of the parties is interested in the highest possible integrity, as the consumer may lose the right to the truth, and the financial institution may bear additional financial responsibilities in the form of penalty.

A special feature of financial arbitration procedure is that the financial institution may apply to the FAB with a notice about the implicitly enforcement of the award adopted by the body. In such notice the financial institution may limit its maximum liability or range of questions that will be taken at the session. The FAB keeps a register of such notices /commitments. If at the contract conclusion on financial services providing the institution noted that it will execute the FAB's decision, it's regarded that the FAB is authorized to take a decision, execution of which is obligatory for the financial institution, even if it hasn't sent to the FAB a general message of such a nature.

Despite the fact that the financial institution at its own discretion decides to submit notices /commitments to the FAB, the lack of such notification does not acquit the financial institution from the obligation of maximum integrity. Thus the obligation of decision execution is not binding, but maximum integrity is required.

First of all, the FAB tries to resolve the dispute between the parties on a voluntary basis. If a consensus is installed between the parties, which comply with legal requirements, the Commission approves it in its decision. Hitherto the process is considered as amicable with an adjustment. In the absence of a consensus the process continues and is realized like litigation, with the function of truth establishment and finding of violated rights. The outcome of the legal investigation may be twofold: if the financial institution sent a notice /commitment, the FAB decides binding and it must be executed; if such a notice /commitment was not sent, the FAB takes a recommendatory decision.

The commissions' sessions are not open, but if both sides agree then such meetings become open. Taking into consideration that created by the FAB commission on proceedings is a collegiate body, the decision is taken by the majority of votes (3: 0, 2: 1). The procedures performed by the FAB are free of charge.

FAB's decision is binding and must be executed within a period of 15 days from the announcement of the decision. If the decision is not made by the financial institution within the term, according to the Hungarian Act on the Organisation and Administration of the Courts⁷ [7], the consumer can turn to the courts of general jurisdiction for the issuance of a court order

⁶ 2013. évi CXXXIX. Törvény A Magyar Nemzeti Bankról. – [Electronic Resource]. – Link: <http://www.complex.hu/kzldat/t1300139.htm/> t1300139.htm.

⁷ 2011. évi CLXI. Törvény a bíróságok szervezetéről és igazgatásáról. – [Electronic Resource]. – Link: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100161.TV

on the basis of the regulatory decisions of the Commission. Decision execution is made by the court's Bailiff Department according to the place of consumer's residence.

As stated above the Financial Arbitration Board of Hungary operates from 2011 and during that time settled a wide range of cases concerning professional participants of financial services markets (Table 1).

cial services market in Hungary in the face of the National Bank of Hungary, whose impact on professional market players increased and doubled the latter's responsibility before consumers. These led to the reduction of customer dissatisfaction by the services. Enhancement of the body's work quality towards improving the level of servicing by financial institutions of their customers and strengthening of the body's role in disputes resolution is explained

Table 1. General information about the activities of the Financial Arbitration Board of Hungary during 2011-2014 *

№	Indicator	Years				Change for the period, %:		
		2011	2012	2013	2014	2012/ 2011	2013/ 2012	2014 2013
1	Total submitted cases	1196	3534	4692	4181	195,5	32,8	-10,9
2	Number of rejected cases	418	1296	1655	1519	210,0	27,7	-8,2
3	Share of rejected cases in total submitted, %	34,9	36,7	35,3	36,3	1,7	-1,4	1,1
4	Total number examined cases	778	2238	3037	2662	187,7	35,7	-12,3
5	Number of cases settled by way of consensus	214	847	1185	1422	295,8	39,9	20,0
6	Share of cases settled by way of consensus, %	27,5	37,8	39,0	53,4	10,3	1,2	14,4

* Compiled and calculated by the author based on the data: ^{8,9,10,11}.

Based on the above table's data till 2013 there was a trend of growth in the number of complaints submitted to the FAB, but in 2014 the number of complaints fell by almost 11%, due to the creation of a mega-regulator at the finan-

by a significant increase of the share of cases settled by consensus, that is not reaching the proceedings at Commission's sessions. For the period of 2011-2014 the share of issues settled by consensus has almost doubled - from 27.5% in 2011 to 53.4% in 2014. So during the period under investigation more than half of the accepted by the FAB cases were resolved by reaching agreement between the parties before Commission's sessions holding.

⁸ Jelentés a Pénzügyi Békéltető Testület éves tevékenységéről 2013. – [Electronic Resource]. – Link: http://felugyelet.mnb.hu/data/cms2419353/PBT_Eves_jelentes_2013.pdf.

⁹ A Pénzügyi Békéltető Testület tájékoztatója a 2012. évi tevékenységéről. – [Electronic Resource]. – Link: http://felugyelet.mnb.hu/data/cms2387078/PBT_eves_jelentes_2012_web.pdf.

¹⁰ A Pénzügyi Békéltető Testület tájékoztatója a 2011. évi tevékenységéről. – [Electronic Resource]. – Link: http://felugyelet.mnb.hu/data/cms2335271/PBT_eves_jelentes_publ.pdf.

¹¹ 2011. évi CLXI. Törvény a bíróságok szervezetéről és igazgatásáról. – [Electronic Resource]. – Link: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100161.TV

The data presented above confirm the effectiveness of this mechanism for the protection of non-banking financial services' consumer rights in Hungary.

It's also reasonable to examine the dynamics and structure of consumers complaints' arrival to the FAB of Hungary broken down by major financial market participants (table 2).

Table 2. Dynamics and structure of complaints consideration by the Financial Arbitration Board of Hungary in 2011-2014 broken down by professional participants*

№	Indicator	Years								Change 2014/2011, % of total
		2011		2012		2013		2014		
		Abs.	% of total	Abs.	% of total	Abs.	% of total	Abs.	% of total	
1	Banking institutions	543	45,4	1726	48,8	2016	43,0	1882	45,0	-0,4
2	Insurance companies	358	29,9	1123	31,8	1670	35,6	1304	31,2	1,3
3	Finance Companies	153	12,8	472	13,4	763	16,3	776	18,6	5,8
4	Credit cooperatives	65	5,4	143	4,0	189	4,0	50	1,2	-4,2
5	Private pension funds	50	4,2	36	1,0	0	0,0	8	0,2	-4,0
6	Other financial institutions	27	2,3	34	1,0	54	1,2	161	3,9	1,6
7	Total	1196	100,0	3534	100,0	4692	100,0	4181	100,0	-

* Compiled and calculated by the author based on the data: ¹²

The largest number of considered complaints concerns to the banking institutions' activity, which during the investigated period accounts 43-49% of all complaints lodged to the FAB of Hungary, but in 2014 was observed some reduction of this share. Along with banking institutions a high proportion of submitted complaints relates to insurance companies, and accounts 30-36% of all submitted complaints. Over the investigated period significantly has increased the proportion of complaints aimed at establishing the truth in matters of services received from financial companies, against which in 2014 was addressed 776 complaints, that is 18.6% of all complaints submitted. Moreover, the proportion of complaints against these financial institutions in 2011 increased from 12.8% to 18.6% in 2014. Complaints against credit cooperatives in 2014 accounted 1.2%, which is by 4.2% less than in 2011.

Conclusions of the research and prospects for further studies. Based on the research we can state about the importance of the Finan-

cial Arbitration Board functioning in rights protecting of financial services' consumers in Hungary, as evidenced by frequent cases settled by amicable agreement between consumers and professional participants of these services. Further studies should be directed to the implementation of the Hungarian experience in the modern system of consumers' rights protection, taking into account the main directions determined in the Strategy of reforming of the state regulation of non-banking financial services markets for the period 2015-2020 and Comprehensive Program of Financial Market Development of Ukraine until 2020.

¹² 2011. évi CLXI. Törvény a bíróságok szervezetéről és igazgatásáról. – [Electronic Resource]. – Link: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100161. TV

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