

ABSTRACT

Over the last years, also due to the deep crisis that involved the whole international economic and financial system, national and (especially) EU and international supervisory authorities focused on providing effective remedies and protections for bank's and financial intermediaries' customers.

The reason must be mainly sought in the need of maintaining and enhancing a fair relationship between banks and financial institutions and their relative customers as, ideally, a greater customer confidence in the system implies its improved stability. The latest financial regulations indeed regard the customer protection as a direct and primary purpose of the supervisory activity.

Hence it is arisen the need to provide both effective remedies for the banking and financial intermediaries' customers and effective alternative instruments for settling disputes arisen vis-à-vis banking and financial intermediaries (so-called Alternative Dispute Resolution or ADR).

The ADR systems enable to settle quickly and in a cost - effective manner any dispute arisen with the intermediary, and at the same time aim at reinforcing the fairness in the legal relationships between the intermediaries and their customers and at enhancing clients' confidence in the financial system: in fact, customers are aware that, should they be wronged by the intermediary, a sanction and/or a compensation would follow.

This paper begins with the analysis of the banking and financial alternative dispute resolution systems in force in the main EU countries (in particular, UK, Germany, France and Spain, so showing the most variegated approaches to the same issue) and afterwards moves to a much more punctual and specific examination of the main Italian ADR systems concerning banking and financial disputes.

It has been firstly analyzed the institution of the Ombudsman-Giurì Bancario, a banking and financial alternative dispute resolution system, having a private-law nature and established in 1993 on the initiative of some banks and financial intermediaries.

Secondly the attention has been focused on the Camera di Conciliazione e Arbitrato, established with Consob (*i.e.* the public Italian supervisory authority on the financial system) by the D.Lgs. 8 October 2007, n. 179 (implementing the enabling provision of Article 27, L. 28 December 2005, n. 262), and on the procedure for settling disputes between retail clients and banks and/or other financial intermediaries,

concerning the fulfillment of their obligations of fairness, transparency and of their obligations to provide information under contracts for investment services or collective asset management.

Lastly, the paper has examined the institution of the Arbitro Bancario Finanziario, established according to article 128-*bis*, TUB (introduced by L. 28 December 2005, n. 262) and operating under Banca d'Italia (*i.e.* the public Italian authority on the banking system) aegis, aimed at alternatively resolving dispute arisen between the banking and financial intermediaries and their customers, concerning banking and financial transactions and services (including payment services).

The analysis showed that in Italy coexist ADR systems specialized in banking and financial disputes, characterized by very different features (for example, some systems have purely private law nature and have been established by the intermediaries' initiative, while others have been instead introduced by law and work under the public supervisory authorities' aegis) but having the common purpose of offering quick, inexpensive and effective instruments of "private" justice to the users of banking and financial services, thus concurring to ensure the fair relationship with the intermediaries, which constitutes an essential and indispensable element for the financial system stability in the current business context.