

LUISS Guido Carli
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Dottorando: Vittorio MIRRA

Dissertation: The management of disputes in the financial and banking sector, between consumer protection and supervisory purposes: "facilitating" mechanisms and an outlook on a possible reform

The analysis carried out herein is focused on the characteristics of the main Alternative Dispute Resolution systems (ADR) operating in Europe within the banking & financial field, on the results achieved by the latter, as well as the evolution of the legislation about the ADR, so to achieve a primary goal: ensuring a high level of consumer protection.

Such results have been “reinterpreted” according to a systemic perspective, researching potential improvement, rationalization and reforms, reducing the currently existing gap among the States and further increasing the benefits for all the parties involved in the sector.

An evidence-based approach has been adopted so to attain the aforementioned purposes, and it evaluates the present experience on both a domestic and an international level (through the analysis of the main ADR systems), valuing the recent law provisions entered into force at European level (i.e. Directive on consumer ADR: Directive 2013/11/EU; Regulation on online dispute resolution for consumer disputes: Regulation (EU) n. 524/2013) and consequently in our Country, in which the need for an efficient Alternative Dispute Resolution system – mainly in the banking & financial sector – is increasingly actual and a catalyst of studies and interests.

During the 21th century the perception of these ADR “tools” made available to the consumers evolved from “static” to “dynamic”; such dynamism has wiped out the ancient “rivalry” with the national judicial schemes, now fully favourable to an evolution of the system. There is no more aversion against the ADR mechanisms; their increase (both from a quantitative and qualitative perspective) has revealed that the community is generally prone in accepting a decision made by entities which can be “controlled” through the quality of interaction with the staff and the evaluation of the services rendered overall by means of several tools (dispute management, procedural fairness, accountability’s mechanism).

The present essay means to demonstrate that the deflationary aim historically assigned to the ADR mechanism has actually a secondary value and significance.

The data and the experience of the ADR systems active in Europe (particularly with respect to the highly evolved reality in the banking & financial sector: i.e. the United Kingdom, analysed in detail with specific focus) leads to positive assumption with optimistic consideration for the future even from a systemic point of view.

The policies and trends arising from the intermediaries' daily activities have been tangibly influenced by the approach carried out by the ADR entities managing the disputes between said intermediaries and their clients.

The final result does not imply an increase in the number of disputes, it actually grants solidity to the system by matching the functions of the ADR systems (through their decisions) and the approaches adopted by the intermediaries' compliance offices.

Creating an environment based on trust is crucial to the expansion of the single market in the banking and financial sector: it is necessary that companies know they can fruitfully carry out their activities across borders and that consumers have the certainty of having their interests protected for transactions made in these areas. Effective ADR mechanisms seem therefore necessary to ensure the development of cross-border transactions, being able to rely on a "solid" point of reference for all possibly "damaged consumers" by default or unlawful conduct of the provider of financial services.

Studies and analysis of law and economics have confirmed the above, also with the help of cognitive sciences, emphasizing how trust is created in such systems and is fostered through cooperation, compliance and acceptance of decisions also on the business/entrepreneurs side.

It is therefore demonstrated how the introduction of the ADR mechanisms has "consolidated" the relationships between customers and financial intermediaries, improving the supervisory approaches of the competent vigilance Authorities, strengthening the intermediaries' policies and increasing transparency and confidence in the system itself.

Indeed, the agility, the flexibility and the authority of the ADR entities allow intermediaries (and, indirectly, also the supervisory Authority) to adapt more quickly and effectively to the changes and evolution of the society, and the tools available to the financial community.

In conclusion, I will show how the ADR Directive should not be interpreted as an end in itself, but as a "starting point" required to reach a turning point, with a practical and dynamic approach, which aims at overcoming different methodologies used in the past to face "substantial" problems about contractual relations between subjects operating in the financial markets, who have - at least - slowed the evolution and have undermined the intelligibility, clarity, accessibility and trust in the banking and financial system.