

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



Recommendation for Establishing a Bank Ombudsman in Romania

SPI Project on the Bank Ombudsman

Project Objective

To prepare a formal recommendation to the banking industry that a Bank Ombudsman be created in Romania, backed by evidence of benefits for banks and consumers in the experience of other countries.

Project Working Group

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Meetings

November 30, 2006 - Convergence Technical Workshop

February 2, 2007 - 1st PWG Meeting

February 15, 2007 - 2nd PWG Meeting

March 1, 2007 - 3rd PWG Meeting

March 9, 2007 - 4th PWG Meeting

March 15, 2007 - 5th PWG Meeting

**RBA Board and General Assembly Meeting
March 22, 2007**

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Abstract

The first SPI Committee Meeting of September 14, 2006 gave its endorsement to the project proposal on the “Bank Ombudsman”, with the objective of *preparing a formal recommendation to the banking industry that a Bank Ombudsman is created in Romania based on evidence of potential benefits for banks and consumer*”.

The project has been placed under the ownership of Mr. Radu Negrea, on behalf of the Romanian Banking Association. The project working group gathered representatives of banks and the National Bank of Romania. The National Authority for Consumer Protection was also consulted at various stages of the project. Five project working group meetings have been held between November 30, 2006 and March 15, 2007.

The project has benefited from technical assistance received from the Convergence Program Country Senior Advisor Shkelqim Cani, who prepared a comprehensive background study on the establishment of a Bank Ombudsman scheme in Romania. The paper constituted an important reference for the project working group on the importance, mandate, organization principles, and procedures of a Bank Ombudsman and the relevant EU experience on the matter.

Likewise, the working group has benefited from the advice received from the project peer reviewer, Mr. David Thomas, Principal Ombudsman, Financial Ombudsman Service, UK, whose recommendations represented an important guidance in shaping up the working group recommendation.

The present document outlines the recommendation formulated by the project working group for the establishment of a Bank Ombudsman scheme in Romania that identified two possible options (extensively described in the document) that could be considered by the relevant stakeholders:

- 1) a voluntary, private and independent scheme and
- 2) a compulsory, public and independent scheme.

The project working group recommends the adoption of the first option – a voluntary, private and independent scheme. It has concluded that this option would better serve the purpose of a timely implementation of the Bank Ombudsman scheme given the relatively simple setting up procedure and the quick mobilization of the necessary operating resources. This option presents the advantage of being flexible, as it could be adjusted and improved as necessary. The voluntary and private scheme could constitute a transition phase towards a compulsory and public scheme (as witnessed by other countries’ experience), if this is made necessary by its unsatisfactory functioning as seen from the retail client’s perspective.

I. Recommendation for establishing a bank ombudsman in Romania

In the context of the rapid development of the retail banking services in Romania, the bank ombudsman is a modern solution for a prompt and unbiased resolution of disputes between banks and customers, with undoubted benefits for both parties (outlined below).

Based on the potential benefits for banks and consumers and on the EU best practices, the SPI project working group recommends that a bank mediator scheme is created in Romania, in one of the following two forms:

1. a private, voluntary and independent scheme or
2. a public, compulsory and independent scheme.

II. The options for establishing a bank ombudsman in Romania

After analyzing the characteristics of the EU bank ombudsman schemes and considering the specificities of the Romanian legal and institutional framework, the project working group has discussed in depth pros and cons of the following two options, which are deemed to be feasible for a bank mediator scheme in Romania (the two options are presented in greater detail in Appendix 1):

Option 1: A voluntary, private and independent bank mediator scheme

- **set up** as an association of public interest (based on GO 26/200)
- **open** to all interested credit institutions
- **financed** by banks' annual fixed contributions or calibrated according to their retail market share or the number of complaints handed over to the bank mediator (the costs for setting up the bank mediator scheme and for its first year of operation are estimated at about RON 500 thousand)
- **overseen** by a Trust Council aimed at nominating the bank mediator and ensuring its independence (made up of representatives of banks, NBR and NACP) and an Steering Committee (made up of representatives of participant banks and of the NBR and NACP) with administrative and operational duties
- **operated by a bank mediator** appointed by the Trust Council from the list of authorized mediators according to Law 192/2006 with legal background and an impeccable reputation
- **covering** all bank products and services
- **servicing at no cost** all participant banks' clients, potential clients or other eligible categories
- **size award** of at most EUR 50,000

Advantages:

- Rapid implementation, as the initiative is private
- Quick mobilization of the necessary sources for setting up and running the institution
- Flexibility in adjusting the scheme's features as it evolves, including subsequently bringing it under a law and transforming it into a compulsory scheme if deemed necessary (see case of UK)

Disadvantages:

- Possible lack of confidence of the public in the bank mediator independence and objectivity

Possible ways to mitigate the disadvantages:

- The transparent selection of the bank mediator from the list of authorized mediators
- The selection of the bank mediator by the Trust Council, in which banks have only a minority participation, and where NBR and consumer protection organizations are represented
- The ombudsman activity is under the Mediation Council's supervision, that evaluates the observance of the Ethics and Professional Code for mediators
- The transparency of the mediation activity.

Option 2: A compulsory, public and independent bank mediator scheme

- **set up** through amendment of the Banking Law or a special law as a public institution
- **compulsory** for all credit institutions
- **financed** either exclusively by banks contributions or state budget contributions or by a mix of the two (the costs for setting up the bank mediator scheme and for its first year of operation are estimated at about RON 400 thousand)
- **overseen** by a Board made up of representatives of banks, NBR and NACP, which are equally represented
- **operated by a bank mediator** appointed by the Trust Council from the list of authorized mediators according to Law 192/2006
- **covering** all bank products and services
- **servng at no cost** all participant banks' clients, potential clients or other eligible categories
- **size award** of at most EUR 50,000

Advantages:

- Presumed higher confidence of the public in the bank mediator and its independence
- Previous experience in setting up public institutions

Disadvantages:

- Long implementation due to the complex enactment process and out of the hands of the private initiative
- The initial project objective could be distorted in the long enactment process
- Uncertainties on the resources mobilization in case of state budget (co)financing
- Banks could be bounded to participate in the scheme and to obey by the bank mediator resolution
- Banks could be forced to give full access to the bank mediator to all information and documents
- Lack of flexibility in doing further adjustments to the operating framework established by law and regulations

Possible ways to mitigate the disadvantages:

- Constant and sustained involvement of the law initiator (Ministry of Justice)
- Shorter implementation if promoted through emergency government ordinance
- Mobilize only banks' resources for financing for an operative setting up
- Greater flexibility if bank mediator set up by Order of Ministry of Justice subsequently to the Banking Law amendment.

III. The project working group recommendation

The project working group recommends the adoption of the first option – a voluntary, private and independent scheme, taking into consideration the following:

- a. this option would better serve the purpose of a timely implementation of the Bank Ombudsman scheme given the relatively simple setting up procedure and the quick mobilization of the necessary operating resources;
- b. this option presents the advantage of being flexible, as it could be adjusted and improved as necessary;
- c. if deemed necessary, the voluntary and private scheme could constitute a transition phase towards a compulsory and public scheme (as witnessed by other countries' experience).

The project working group submits this recommendation for the consideration of the RBA Board. In turn, the RBA Board will submit its own recommendation to the RBA General Assembly for voting. This recommendation is being sent in parallel to the other institutions represented in the SPI Committee.

The RBA General Assembly decision with respect to the preferred option for setting up the Bank Ombudsman, together with the positions expressed by the other SPI Committee stakeholders, will be part of the SPI Committee final deliberation regarding the preferred implementation option for this institution.

Upon SPI Committee endorsement of the project recommendation, the project working group proposes to proceed with the following implementation schedule.

IV. Implementation Schedule

Following the decision of the SPI Committee on the preferred bank mediator option, the next steps should be followed to enable a prompt implementation of the bank ombudsman scheme in Romania¹:

- ⇒ **Early April 2007:** The preferred option (as deemed by the RBA General Assembly) is presented to the SPI Committee, together with a detailed implementation plan, in order to get the approval of other relevant stakeholders, i.e. National Bank of Romania, National Authority for Consumer Protection;
- ⇒ **May 2007:** Depending on the final choice made by the relevant stakeholders, the project working group will support the initiator of the bank mediator establishment (RBA Board / Ministry of Justice) to pursue with this initiative, by preparing the any required documentation on the scheme setting up, i.e. constitutive acts / draft proposed legislative initiative, proposals for logistics, administrative and organizational issues, etc.;
- ⇒ **June 2007:** A full proposal for the bank mediator establishment, together with all necessary background documentation, is submitted to the relevant decision making bodies (RBA Board / Ministry of Justice – Parliament) for a formal approval of the scheme;

¹ The timeframe established for the Bank Mediator setting up depends on the timely implementation of the operational framework for the Mediation Council, established based on Law 192/2006.

- ↪ **July 2007 – September 2007:** The Bank Mediator scheme is set up through the necessary legal procedure. The bank mediator overseeing bodies develop the rules of the new service, policy and practices (manuals, procedures, etc.), make decisions on the appointment of the bank mediator and other staff, logistics, etc;
- ↪ **October 2007:** The Ombudsman hires staff and starts staff professional and management training;
- ↪ **November 2007:** Official launch of the new Bank Mediator scheme;
- ↪ **December 2007:** The new scheme makes application to become a FIN-NET member.

APPENDIX 1

The two options proposed for the establishment of a bank mediator scheme in Romania (short form)

		Option 1	Option 2
1.	<i>Scheme governance</i>	Voluntary set up as an association whose activity is governed by the Law on mediation	Compulsory set up through the amendment of the Banking Law or a special law
2.	<i>Legal Powers</i>	Pursuant to articles of association with provision to continue operations under the auspices of specific Laws that may be promulgated later (to make seamless transition to Option 2 possible)	Pursuant to new Law and accompanying regulations when promulgated and issued
3.	<i>Participants/ coverage</i>	Interested credit institutions	All credit institutions
4.	<i>Oversight</i>	Trust Council composed of 4 representatives of the public interests (NBR, NACP, etc), one of which serves as Chairperson, and 3 representatives of banks (appoints the bank mediator, proposes the budget of the scheme, the salary of the bank mediator, approves the annual report); a Steering Committee gathering 5-15 representatives of banks, NBR and NACP with operational and administrative duties	A Board gathering 3 members out of which one from banks, one from the National Authority for Consumer Protection and one from the National Bank of Romania
5.	<i>Financing</i>	Banks' individual annual fixed contributions Option 1: fixed and equal contributions Option 2: contributions depending on the retail market share of each participating bank (or possibly the number of complains)	Option 1: Banks' individual annual fixed contributions Option 2: Banks' individual annual fixed contributions plus state budget Option 3: State budget only
6.	<i>Products covered</i>	All bank products and services	All bank products and services
7.	<i>Eligible complainants</i>	Individuals, clients of the participant credit institutions, as well as potential clients or other designated categories	Individuals, clients of credit institutions
8.	<i>Power of decision</i>	Recommendation. The experience of other countries shows that banks comply in a vast majority of cases with the ombudsman resolution.	Recommendation
9.	<i>Limits on the size of binding</i>	EUR 50,000	EUR 50,000

		Option 1	Option 2
	<i>award</i>		
10.	<i>Service to customers</i>	Free	free
11.	<i>The average time to handle a complaint</i>	60 days	60 days
12.	<i>Requirements for the Ombudsman</i>	1. to be authorized by the Mediation Council according to the Law 2. to have legal background 3. reputable person	1. to be authorized by the Mediation Council according to the Law
13.	<i>Ombudsman appointment</i>	The Administrative Council will select the Ombudsman out of the list of authorized mediators	The Board will select the Ombudsman out of the list of authorized mediators
14.	<i>Initiative</i>	The interested credit institutions – for the association Ministry of Justice - for the amendment to the Banking Law, necessary for allowing the delivery of documents and information to the bank mediator without being considered a break of the banking secrecy	National Authority for Consumer Protection for the establishing law
15.	<i>Estimated budget (setting up and 1st year)</i>	RON 507,132	RON 378,792
16.	<i>Similar international experience</i>	Austria, France, Germany, Greece, Italy, Poland	UK
17.	<i>Advantages</i>	<ul style="list-style-type: none"> • Rapid implementation, as the initiative is private • Quick mobilization of the necessary sources for setting up and running the institution • Flexibility in adjusting the scheme's features as it evolves 	<ul style="list-style-type: none"> • Higher confidence of the public in the bank mediator and its independence • No amendment to the Banking Law is needed if the establishing law embeds the necessary provisions in respect of the bank secrecy • Previous experience in setting up public institutions
18.	<i>Disadvantages</i>	<ul style="list-style-type: none"> • Possible lack of confidence of the public in the Ombudsman independence and objectivity • The amendment of the Banking Law may be necessary 	<ul style="list-style-type: none"> • Long implementation due to the complex enactment process and out of the hands of the private initiative • The initial project objective could be distorted in the long enactment process • Uncertainties on the resources mobilization in case of state

			<p>budget (co)financing</p> <ul style="list-style-type: none"> • Banks could be bounded to participate in the scheme and to obey by the bank mediator resolution • Banks could be forced to give full access to the bank mediator to all information and documents • Lack of flexibility in doing further adjustments to the operating framework established by law and regulations
19.	<i>Ways of mitigating the disadvantages</i>	<ul style="list-style-type: none"> • The transparent selection of the bank mediator from the list of authorized mediators • The selection of the bank mediator by the Trust Council, in which banks have only a minority participation, and where NBR and consumer protection organizations are represented • The ombudsman activity is under the Mediation Council's supervision, that evaluates the observance of the Ethics and Professional Code for mediators • The transparency of the mediation activity. 	<ul style="list-style-type: none"> • Constant and sustained involvement of the law initiator (Ministry of Justice) • Shorter implementation if promoted through emergency government ordinance • Mobilize only banks' resources for financing for an operative setting up • Greater flexibility if bank mediator set up by Order of Ministry of Justice subsequently to the Banking Law amendment.
20.	<i>Monitoring and Evaluation</i>	<ul style="list-style-type: none"> • Performance under this option will be monitored to decide whether transition to Option 2 is warranted. Indicative performance criteria will be as follows: <ul style="list-style-type: none"> ○ number of complains solved by the bank mediator (not further pursued with courts) ○ satisfaction surveys show an excellent level of parties satisfaction with the way in which the bank mediator solved the cases brought to his/her attention ○ there are no funded complains about the activity of the bank mediator and the way in which it handles and solves the complains ○ evaluation performed by the Trust Council based on annual activity reports is favorable to continuing the activity under this arrangement. 	

The necessity of a bank ombudsman

A study performed by the Convergence Program² shows that in Romania there is no specialized and impartial institution to prevent and address adequately and effectively individual consumer's complaints against financial service providers, in accordance with EU standards.

According to the findings of a survey with banks and relevant authorities (a description of the findings can be found in the Convergence study):

- Bank's internal dispute resolution systems are rated as partially efficient to provide satisfactory resolution of their customer complaints in terms of the European protection standards: customer's awareness, system accessibility, quickness to provide response, and fairness given the compensation amount.
- Consumer protection bodies and industry lack effective complaint tracking system in the financial area.
- Consumers' financial literacy is inadequate.

Therefore, in view of:

- i) Considerable flaws in the current Romanian consumer protection
- ii) Romania's EU membership
- iii) Benefits of scheme creation from user's and supplier's perspective

The project working group endorsed Convergence's recommendation that: *In order to ensure that Romanian consumers are served fairly and well across Romania, "an independent and effective Bank Ombudsman scheme is established modelled after the European schemes examined by the study"*.

The Ombudsman will be a solution for prompt and unbiased resolution of complaints that customers have been unable to resolve satisfactorily with their banks. It will ensure that consumers of such services are protected from negative financial consequences and are warranted an informal, easily accessible alternative to other inconvenient, bureaucratic and time-consuming remedies, such as court proceedings. At the same time, the bank ombudsman will bring important benefits for banks, as outlined below.

² "Establishing a Bank Ombudsman in Romania – A Background Study Prepared for the SPI Committee" by Shkelqim Cani, Convergence Country Senior Advisor, November 2006. The study findings and recommendations were presented in a technical workshop in Bucharest (with a broad participation of the banking industry, National Bank of Romania, National Authority for Consumer Protection, and the Ministry of Public Finance), on November 30, 2006 with the aim to provide support to the project working group in charge of the SPI project on "Ombudsman and consumer education" and gather feedback.

The benefits of a bank ombudsman

As outlined by the study performed by Convergence, as well as by the extensive international experience, the establishment of a bank ombudsman carries important benefits for both providers and consumers of financial services, as follows:

1. Benefits for banks:

- **Improving the public image of banks** – Starting from the idea that “conciliation is better than litigation”, the informality and confidentiality of the out-of-court procedures is more encouraging for the bank/financial industry as the negative publicity generated by court proceedings could be extremely damaging to the business’s bottom line.
- **Enhancing consumer confidence in banks** - an impartial, objective and transparent of the out-of-court mechanism boosts consumer confidence to do more financial services business.
- **Better customer retention rates** - banks have a chance to learn more about the customer needs and views, thus being able to further improve its products and services and the relationship with customers.
- **Lower costs for complains resolution** - the costs that banks usually pay to the bank ombudsman per case are likely to be much less than the legal costs that might otherwise be involved in defending a claim in court and the potential reputational risks that could incur³.
- **An ongoing educational process** - for both providers and consumers of financial services as bank ombudsman schemes encourage complain prevention through the publication of case studies, which can serve as useful reference for consumers and bank/financial industry alike.

2. Benefits arising from consumers’ perspective:

- **Enhanced customer protection** – as bank ombudsman ensures protection especially in the wake of development of new complex products that combine various financial services, which expose the consumer more to risks and require more sophistication.
- **Improved access to justice** – as out-of-court procedures facilitate consumer access to justice with their quickness, informality and fee-free handling of conflicts. They usually remedy certain problems associated with court procedures, such as expensive fees, time-consuming, cumbersome procedures and inconvenience.
- **A fair, impartial, accessible, fast and free dispute resolution system** - the ombudsman scheme is advantageous over the court as it offers specialized knowledge and uses mediation and investigation of facts and provides an incentive to consumers to pursue with small amount complaints, which are not economically viable to be brought to courts due to costs offsetting the benefits. Likewise, the scheme provides a quick

³ The practical experience of banks proves that the time needed to solve the litigations through courts can be up to three years. Likewise, the court proceedings imply important costs for banks in term of human resources allocated and other expenses, such as court taxes, etc.

dispute resolution system at no cost for the economically weaker party (the consumer) and puts the parties on par.

- **A less bureaucratic and jargon-free way of handling complaints** – as the ombudsman scheme with its experts is dealing cases brought by consumers and small businesses who suffer from a lack of information, time and relevant expertise.

EU best practices

The study prepared by Convergence shows that the Romanian banking industry faces the challenge to be tuned with EU's recent developments in the financial consumer protection area and to strengthen its compliance with EU's Financial Services Action Plan, FIN-USE and FIN-NET policies⁴.

The experience of several EU Member States examined in the study shows that alternative mechanisms for the out-of-court settlement of consumer disputes have become effective and reputable mechanism for both consumers and banks/service providers, by reducing the cost of settling consumer disputes and the duration of the procedure, provided that certain essential principles are respected (see Box 1).

Box 1. Ombudsman's Governing Principles

a. Objectivity and independence

Are the main governing principles of the Ombudsman scheme and are guaranteed by the institution's organizational structure, which operates generally at arm's length from the government, member banks, and other financial service providers.

b. Accessibility

Ombudsman service is available to everyone as per its terms of reference. In the vast majority of European schemes examined services are offered free of charge, thus ensuring wide accessibility.

c. Consistency

As compared to a court dispute handling, the ombudsman judgment ensures both the customer and the service provider similar treatment for similar concerns throughout the system.

d. Timeliness

The average time to handle a complaint for most European schemes is from 2 - 12 months at maximum.

e. Courtesy

Every consumer is treated with respect, courtesy and professionalism.

f. Reasonableness, clarity and accuracy

All communications with consumers are clear and terminology-free to be easily understood by a normal person. Any information and direction provided by the Ombudsman office is accurate. Ombudsman makes public its knowledge, experience and assistance.

g. Confidentiality

The Ombudsman's dispute resolution process is confidential. The scheme protects from disclosure for all purposes the personal and company information recorded in Ombudsman files. Ombudsman does not publish the names of businesses or consumers subject of a certain complaint.

h. Quickness

Due to heavy caseload, the Ombudsman service has to be practical and business-like in terms of producing a fair outcome quickly.

⁴ For more information on these, see Convergence study.

i. Informality

The service is an informal alternative to the courts. The ombudsman approach is very flexible, non-bureaucratic and completely different from the court.

In most of the cases analyzed the schemes were established by the industry as a self-regulatory initiative as *privately* organized institutions, *voluntarily* established by the Bankers' Associations. Their common characteristic is their creation at the initiative of Banking Associations based on a voluntary agreement between members of the association. Voluntary arrangements imply voluntary participation, usually developed and designed primarily in the interest of the industry itself. Such examples are **Austria, Italy, Germany, Poland, Greece⁵ and Switzerland.**

Public and compulsory schemes can be found in the **UK⁶, Spain** (scheme owned and run by the Central Bank of Spain, responsible for bank supervision), **Luxembourg** (scheme set up by law and run by the supervisory authority of financial sector), and **Czech Republic** (the Financial Arbiter has been elected by the Chamber of Deputies to harmonize Czech legislation with EU directives according to the Act on the Financial Arbiter). In the case of statutory regulations, all respective scheme participants are legally bound to comply with the decisions of the ombudsman.

In other countries (**France, Finland, Belgium, Norway, Estonia**) we see some sort of *hybrid schemes* that are jointly run through agreements among various stakeholders. They are established as separate legal entities, governed by boards consisting of representatives from bank associations, central bank, finance, investment and/or mortgage associations, financial regulators, or/and Consumers' Associations/Administrations. They are all funded through cost – sharing formulas by the industry.

In terms of governance of the ombudsman schemes, in most private and voluntary schemes established by the Board or General Assembly of Bankers' Associations (Italy, Germany, etc.), the Association enacts a regulation, which constitutes the by-laws of the Ombudsman. In Italy, terms of reference are replaced by Inter bank Agreements.

In comprehensive and large schemes (UK, Canada, Australia, etc.), where the Ombudsman is incorporated and registered as a separate legal entity, the By-laws (articles of association) of the Ombudsman and the Terms of Reference set out the governance structure of the organization in greater details. In case of public schemes, the bylaws are approved by the respective authority, which appoints the governing body of the Ombudsman (Board or Council) and Terms of Reference are generally approved by the Board.

As for participation, the Convergence study shows that ombudsman scheme participants are: all credit institutions in Austria; all member banks and financial firms of the German Banking Association in Germany and Italy (95% of banks in the country); all members of French Association of Finance Companies (AFC) in France; all banks, mortgage banks, pension,

⁵ The Greek bank ombudsman scheme was subsequently merged with the Investment Ombudsman to operate as a single, self-regulatory, non-profitable, civil partnership covering member banks of the Greek Bank Association and brokerage firms and investment companies.

⁶ The FOS was incorporated in 1999 to consolidate into a single statutory body the complaints handling and ombudsman services formerly provided by a number of statutory and voluntary schemes.

insurance, security and investment companies, credit unions in UK; members of the Polish Bankers' Association and 11 small cooperative banks on voluntary agreement in Poland.

The rights and obligations of scheme members as defined in the Terms of Reference or Interbank Agreement are outlined in Box 2.

Box 2. The rights and obligations of bank ombudsman scheme members

The member banks are entitled to:

- (i) act within the Ombudsman's Terms of Reference, according to Rules and Procedures for Complaints Handling;
- (ii) abide by law (Germany) or/and provisions of the industry's self-regulatory standards, such as the Banking Practice Code, Consumer Credit Code or Electronic Funds Transfer Code (where applicable), etc.;
- (iii) create Complaint Units/Offices at their banks;
- (iv) provide to the Ombudsman any information required. The Ombudsman may request the bank to submit information that it reasonably considers necessary for, or of assistance in, exercising the dispute resolution powers;
- (v) display notices in a prominent position in all their branches stating that they are part of the Banking Ombudsman scheme and if available, make copies of the Code of Banking Practice available; Compile and make readily available brochures or other materials advising customers of complaint procedures and train staff to provide the necessary information;
- (vi) comply with requests made by the Ombudsman in line with Terms of Reference and Operational Procedures;
- (vii) pay within the specified timeframe the annual membership fee or/and service fees (whichever is applicable) in the amount determined by the Ombudsman Board for schemes funded by members;
- (viii) if the member bank has agreed to take certain actions to resolve a dispute, or has been required by an Ombudsman's determination to take such action, it must do so promptly within the time frame agreed upon by the parties.

The member banks shall not:

- (i) resort to litigation while a complaint is being dealt with by the Ombudsman unless the Ombudsman gives his/her written approval on the application of a bank whose rights would otherwise be prejudiced;
- (ii) prevent a customer who would otherwise be eligible to use the services of the Ombudsman from doing so through the use of an arbitration clause in a contract;
- (iii) provide the Ombudsman with any misleading information or answer;
- (iv) provide any customer with any misleading information regarding the operation of the Ombudsman scheme.

APPENDIX 5

Key features of the ombudsman schemes in selected EU countries

		Austria	France	Germany	Greece	Italy	Poland	UK
1	Scheme governance	private, voluntary	private, voluntary	private, voluntary	private, voluntary	private, voluntary	private, voluntary (self-regulatory)	public, statutory (previously voluntary, contractual until 2001)
2	Year established	upgraded in January 1st, 2006	May 1995	July 1992	March 1999, in July 2005 merged to create the Hellenic Ombudsman for Banking, Investment Services	set up in April 1993, upgraded features in January 2006	March 2002	set up in 1986, upgraded and expanded in 2001
3	Scheme coverage/participants	credit institutions	member companies of French Association of Finance Companies (AFC)	membership to banks affiliated to German Banking Association (GBA) only - big banks, regional banks, private banks, private mortgage banks and branches of foreign banks	all member banks of BA until March 2005	membership to all banks (domestic and some foreign) and financial firms operating in Italy and members of the Italian Banking Association (ABI)	members of the Polish Bankers' Association (PBA) and 11 small cooperative banks	all banks, mortgage banks, credit unions, insurance, pension companies, securities, investment, etc.

4	Scheme running	banking industry (two-tier scheme: Joint Conciliation Board for cross-border + Ombudsman of BA)	independent ombudsman	members of GBA (the Board of the Association elects the Ombudsman) as a self-regulatory entity	independent ombudsman elected by the General Assembly of BA	run by ABI, but ombudsman enjoys several self-governing elements, including an independent Board	PBA runs the organizational and administrative aspects of Ombudsman. The Board of PBA appoints the Ombudsman	Financial Ombudsman Service (FOS); The Board of FOS is appointed by the Financial Services Authority, independent
5	Scheme funding	banks through a fixed fee	funded by AFC	funded by GBA	member banks' contributions to the scheme budget are defined by the General Assembly	Italian Banking Association (ABI) finances the scheme as part of its own budget, sharing cost among its members	member banks of PBA + participating cooperative banks based on the number of respective cases	annual levy on fin. instit. based on their size and industry sector plus case fees; no government funding
6	Type of products covered	products and services of credit institutions + cross-border issues	financial products offered by participating institutions (consumer credit and property loans)	financial products offered by member institutions + domestic and cross-border complaints	financial products offered by member banks	financial products offered by participating banks	financial products offered by participating banks except those related with treasury services and state-subsidized credits	banking, insurance, mortgage, pensions, securities, etc.

**Recommendations of the project peer reviewer (Mr. David Thomas,
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20 February 2007

Dear Ramona-Vali Bratu

PROJECT TO ESTABLISH A BANK MEDIATOR IN ROMANIA

Thank you for your e-mail of 19 February. I will deal first with the three options which have been discussed, and then with a couple of other points that arise.

The three options

1: Which governance option?

Subject to some conditions, I would recommend starting off with option 1 – a private/voluntary scheme – even if the ultimate objective were a public/compulsory scheme.

I say that because it is inevitable that the new scheme will require modifications in its early years, in the light of experience and local conditions. That can be done quickly and easily with a private/voluntary scheme. It is much more difficult (and sometimes impossible) to do with a public compulsory scheme.

Although we have a public/compulsory scheme (option 2) in the United Kingdom, this was established on the basis of almost 20 years' experience of private/voluntary schemes. So we had ample opportunity to develop the ombudsman model and make sure it worked effectively before it was underpinned by law.

The conditions relate to the appointment of the mediator etc, as mentioned below at points 3, 12 and 15.

2: Participants/coverage

Membership of the scheme should be open to all banks, including foreign ones, with a place of business in Romania. It should not be restricted to members of the Bankers' Association.

3: Management

If the Board must have a majority of members who are bankers, it cannot appoint the ombudsman – as he/she would not be seen to be independent. The Board should not control the mediator's pay nor the mediator's staff.

There should also be a separate Council – with a minority of bankers and an independent chairman – which is responsible for appointing the mediator, fixing and reviewing the mediator's pay and recommending the scheme budget to the Board.

The staff of the scheme should be appointed by the mediator or the Council, and should report to the mediator, not the Board.

4: Financing

It is usual to start off by financing a scheme entirely from annual contributions. In fairness, these are usually based on the size of the member bank – based on the number of individuals' accounts held in Romania by the members concerned.

In the light of experience, that can be modified over time to reflect the number of cases coming from each member. Our experience is that some banks are much worse and some are much better than average. There are a number of ways this can be done, which I would be happy to discuss.

5: Products covered

“All bank products and services” is fine.

6: Eligible complainants

They may wish to require that the complainant has suffered (or may suffer) loss, distress or inconvenience as a result of the event about which they are complaining. Otherwise, some consumers may complain about things which have not actually affected them adversely.

Subject to this, they may wish to consider whether there are any non-clients who should be eligible to complain. For example, in the case of banks, we allow complaints by the following non-clients:

- a guarantor of a client's debt;
- the true owner of a cheque, or of the funds it represents, collected by the bank for someone else's account;
- a beneficiary under a trust or dead person's estate of which the bank is trustee;
- a potential customer (e.g. who has been refused service on discriminatory grounds).

We are currently considering whether to extend eligibility to victims of the growing crime of 'identity theft', so that they have a ready way of establishing that a loan was taken out by a fraudster and not by them.

7: Power of decision

In some countries, recommendation is the norm. In the UK, even under the former private/voluntary banking ombudsman scheme, the bank agreed that it would always follow the ombudsman's award.

8: Limits on size of award

'EUR 50,000' sounds fine at this stage.

9: Service to consumers

'Free' is good.

10: Average time to handle a complaint

I am unclear whether this refers to the handling of complaints by banks or by the mediator.

It is usual to provide that:

- Clients cannot take their complaint to the mediator scheme unless they have first complained to the bank.
- There is a time limit for banks to deal with complaints. A bank's final response to the complaint must be in writing.
- The bank's final response must tell the client he/she can refer the complaint to the mediator, if still dissatisfied, but must do so within a set time.

It would be unwise for the mediator scheme to commit itself to a decision within 30 days, as it will often be dependent on receiving information from the client or the bank.

11: Requirements for the mediator

In many countries, the mediator/ombudsman can be a lawyer rather than someone with prior experience of banking. A mediator who has been a banker will be seen as less independent by the public.

12: Mediator appointment

As mentioned above, the mediator will not be independent if appointed by the Board (which has a majority of bankers). He/she should be appointed by a Council (with a minority of bankers and an independent chairman).

13: Initiative

I am not familiar with the details of the Romanian law on banking secrecy. In the UK, it is sufficient for the client who is complaining to sign a complaint form which includes authority for the bank to disclose information to the ombudsman.

14: Similar international experience

Not all of the schemes mentioned under option 1 have qualified for membership of FIN-NET. The current UK scheme is option 2, and not option 3.

15: Advantages

The last 'advantage' is inappropriate. If the mediator is truly independent, the banks should not have any supervisory power over him/her.

16: Disadvantages

As mentioned above, the mediator's independence should be secured by the creation of an independent Council. The existence and membership of this will help consumer confidence. It is helpful to include at least one person who is well-known and generally trusted by the public – who will say, in effect, "It must be OK, because otherwise he/she would not be involved with it".

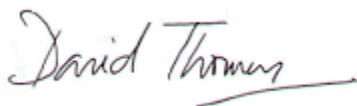
17: Ways of mitigating the disadvantages

See above.

Other points

- A In case it is of help, I attach as annex an outline of the Board and Council arrangements in the former UK private/voluntary banking ombudsman scheme.
- B The minutes refer to a staff of four: a mediator, a deputy mediator, an expert and an assistant. This assumes that almost all of the work will be full cases requiring decision. Here in the UK, only about 1 enquiry in 8 turns into full case. So the Romanians might wish to consider some cheaper staff to deal with enquiries.
- C As I am on the steering committee of FIN-NET, is it alright if I mention to FIN-NET colleagues what is happening in Romania?

Yours sincerely



Annex:
outline of governance of former UK private/voluntary banking ombudsman scheme

Board

- Members: between 5 and 15 bankers.
Qualification: current or former director, general manager or senior officer.
Election: one third per year; automatic re-election unless otherwise decided.
Alternates: nominated by directors and approved by the Board.
Chairman: appointed by Board.
Delegation: Board may delegate to committee.

Council

- Chairman: independent person, appointed by Board with the approval of Council for up to 3 years and eligible for reappointment.
4 members: representative of consumer/public interests, appointed by Council with approval of Board (not to be unreasonably withheld) for 2 years and eligible for reappointment.
3 members: bankers appointed by Board with approval of Council (not to be unreasonably withheld) until removed by Board.
Clerk: appointed by Council, but must not be the company secretary.

Terms of Reference

- Recommended: by the Council.
Approved: by the Board.

Ombudsman

- Appointed: by the Council.
Reappointed: by the Council.
Term: 3 years or (if Board agrees) longer and eligible for reappointment for maximum of 7 years.
Cease: if bankrupt, of unsound mind, resigns or brings scheme into disrepute (in opinion of Council)
Annual report: approved by Council.
Budget: recommended to Board by Council.
Accounts: submitted to Board by Council.