

Protection of client and consumer of financial services in European Union and Polish law

Proteção do cliente e consumidor de serviços financeiros na União Europeia e lei polaca

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Abstract

Article presents main assumptions of the Act on the processing of complaints by financial market participants as well as the Financial Commissioner (Journal of Laws from 2016, item 892), regarding the means of protection of financial services clients. In the first part, the author analyzes the circumstances of entry into force of the Act. Then performs a comparison of the Act to normative acts regulating analyzed matter before the entry into force of the Act. At the end the author assesses the scope, importance and legal nature of solutions introduced in the Act to protect the interests of clients of financial services.

Keywords: Client. Financial Ombudsman. Consumer. ADR procedure.

Abstrato

O artigo apresenta os principais pressupostos da Lei sobre o processamento de reclamações por participantes do mercado financeiro, bem como o Comissário Financeiro (Journal of Laws de 2016, item 892), sobre os meios de proteção dos clientes de serviços financeiros. Na primeira parte, o autor analisa as circunstâncias da entrada em vigor da lei. Em seguida, realiza uma comparação da Lei aos atos normativos que regulam a matéria analisada antes da entrada em vigor da lei. No final, o autor avalia o escopo, importância e natureza jurídica das soluções introduzidas na Lei para proteger os interesses dos clientes de serviços financeiros.

Palavras-chave: Cliente. Ouvidoria Financeira. Consumidor. Procedimento de ADR.

1 Introduction

The special nature of financial services, including the inequality of the economic position of the service provider and the recipient, importance of the contract to the parties and the often highly complex nature of the content of the legal relationship, make the law impose high requirements on entrepreneurs providing financial services, in particular as regards information obligations and customer loyalty¹. The national legislator and the European legislator, in addition to substantive standards² (including the so-called “MiFID I and MiFID II Directives”³) introduce into the legal system procedural regulations aimed at the effective implementation of their rights. The procedural regulations that specifically protect financial service customers are contained in the Act of 5 August 2015 on dealing with complaints by financial market entities and on the Financial Ombudsman⁴. The aim of this publication is to conduct a thorough analysis of procedural solutions, contained in the MiFID I and II Directive and Financial Ombudsman Act, aimed at securing the interests of financial services customers towards entities providing these services, in particular compared to protection measures contained in normative acts regulating this matter before the time when Financial Ombudsman Act has entered into force.

- 1 SÓJKA, T. Obowiązek lojalności wobec klienta, *In: Współczesne problemy prawa zobowiązań*. Warsaw: Wolters Kluwers, 2015, p. 22.; TERSZKIEWICZ, P. *Obowiązki informacyjne w umowach o usługi finansowe*. Warsaw: Wolters Kluwers, 2015, p. 55-57; RUTKOWSKA-TOMASZEWSKA, E. *Ochrona prawna klienta na rynku usług bankowych*. Warsaw: LEX a Wolters Kluwer business, 2013, p. 326.
- 2 RUTKOWSKA-TOMASZEWSKA, E. *Ochrona prawna klienta na rynku usług bankowych*. Warsaw: LEX a Wolters Kluwer business, 2013, p. 632.
- 3 “Markets in Financial Instruments Directive I” consists of three European Union Acts: Directive 2004/39/EC of the European Parliament and of the Council of April 21, 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, (OJ EU L 145 of April 30, 2004) - hereinafter referred to as Directive 2004/39/EC; - Commission Directive 2006/73/EC of 10 August 2006 introducing measures for the implementation of Directive 2004/39/EC of the European Parliament and of the Council with regard to organizational requirements and operating conditions for investment firms and concepts defined for the purposes of this Directive (OJ L EU Directive L: 241/26 of September 2, 2006) (implementing act), hereinafter referred to as Directive 2006/73/EC; - European Commission Regulation No. 1287/2006 of 10 August 2006 introducing implementing measures for Directive 2004/39 / EC of the European Parliament and of the Council with regard to the obligations of investment firms to maintain registers, transaction reports, market transparency, the admission of financial instruments to marketing and concepts defined for the purposes of this directive, Directives 2006/48 / EC and 2006/49 / EC (OJ L 0 of 241/1 of September 2, 2006). “Markets in Financial Instruments Directive I” is known as Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance (OJ L EU 173 of June 12, 2014, p. 349–496).
- 4 WARSAW. Act of 5 August 2015 on handling complaints by financial market entities and on the Financial Ombudsman. *Journal of Laws of the Republic of Poland*. item 892. 2016. Disponível em: https://rf.gov.pl/pdf/rozporzadzenie_RF_27_pazdziernik_2017_EN.pdf. Acesso em: 13 março 2019.

2 Historical background

The Financial Ombudsman Act entered into force on October 11, 2015, with Art. 62 of the Act (concerning the principles of transformation of the Office of the Insurance Ombudsman into the Office of the Financial Ombudsman) entered into force on September 11, 2015, and the provisions of Chapter 4 of the Act (regarding extrajudicial proceedings to resolve disputes between the client and the financial market entity) entered into force on 1 January 2016. Prior to the entry into force of the Act, complaints of entities for whom financial services were provided in relation to service providers were regulated by: “Rules regarding the process of handling complaints by financial institutions” (hereinafter referred to as “Rules”), which were to be introduced for legal transactions under the resolution of the Polish Financial Supervision Authority No. 192/2015 of May 26, 2015⁵ and even earlier “Guidelines on principles of considering complaints by financial institutions” constituting an annex to the resolution of the PFSA of May 10, 2011, No. 116/11⁶. The Act was initially not intended to replace and supplement the “Rules regarding the process of handling complaints by financial institutions”, as evidenced by the fact that the Rules were to enter into force on January 18, 2016, just after the entry into force of the Act, were prepared by KNF in parallel with the work over the Act, and, as a result, did not come into force, as it was annulled by the resolution of the KNF No. 626/2015 of November 17, 2015⁷, which became effective as of December 30, 2016, eighteen days before the planned entry into force of the Rules. It is difficult to determine what was the reason for such a decision of the supervisory authority over the financial market in Poland. Issues regarding the legal basis, the moment of entry into force and the moments of derogation of specific normative acts regulating the principles of settlement of complaints and complaints from consumers of the financial market in Poland are presented in Table 1.

5 WARSAW. Rules regarding the process of handling complaints by financial institutions. Attachment: *Journal of Laws of the polish financial*. Item 614. Warsaw. June 18, 2015.

6 WARSAW. *Resolution of the PFSA of 10/05/2011 No. 116/11*. Journal of Law of the Polish Financial Supervision Authority, No. 5, item 16, June 21, 2011, and WARSAW. Guidelines on principles of considering complaints by financial institutions. *Journal of Law of the Polish Financial Supervision Authority*, No. 5, item 16, June 21, 2011.

7 WARSAW. Resolucion KFN No. 626/2015 of November 17, 2015. *Journal of Laws of the Polish Financial Supervision Authority*. Item 64. Warsaw. December 29, 2015.

Name	Entry into force	Basis of entry	Derogation	Basis of derogation
Guidelines on “Principles of handling complaints by financial institutions”	June 21, 2011	PFSA Regulation from May, 10 2011, No 116/11 in accordance to Art. 2 and Art. 4 point 1.2 of the Act from July 21, 2006 on supervision of financial market (Journal of Laws No. 157, item 1119 with amendments) - no <i>vacatio legis</i>	January, 18 2016	§ 3 regulation No 192/2015 from May 26, 2015 (Journal of Laws of PFSA, item 32 from June 18, 2015 r.) - 6 months <i>vacatio legis</i>
Rules regarding the process of handling complaints by financial institutions	January 18, 2016	Regulation PFSA no. 192/2015 from May 26, 2015 (Journal of Laws of PFSA of 2015, item 32, from May 18, 2015) in accordance to Art. 11 point 1 and Art. 2 oraz Art. 4 point 1.2 of the Act of July 21, 2006 on supervision of financial market (Journal of Laws of 2015, item 614)	December 30, 2015	Regulation PFSA no. 626/2015 from November 17, 2015 (Journal of Laws of PFSA of 2015 r., item 64 from December 29, 2015) - brak <i>vacatio legis</i>
Act of August 5, 2015 on dealing with complaints by financial market entities and on the Financial Ombudsman	October 11, 2015	Journal of Laws of 2015, item 1348 with amendments from 10 September, 2015 - 30 days <i>vacatio legis</i>	none	none

Table 1. Normative acts regulating the proceedings of the so-called complaints on the financial market in Poland. Own study.

Particularly interesting is the fact that the rules adopted by the KNF to a much greater extent guaranteed the protection of recipients on the financial market in relation to entities providing financial services, rather than the Act. First of all, the Principles should include every customer of a financial institution, not just natural

persons, as the Act does. Secondly, the term “financial institution” adopted in the Principles of its scope included a larger number of entities providing financial services (each entity providing financial services and subject to the supervision of the PFSA) than the term “financial market subject” adopted under the Act (*enumerus clausus* entities in the Act). Thirdly, the Principles were to adopt a broader definition of “complaint” than the concept of “complaint” adopted in the Act (the complaint was to be understood as every instance of the client, including a complaint). Fourthly, the rules should contain general guidelines on how to process the complaint (see § 2 of the Rules), which are missing in the Act. Fifth, under the Principles, the obligation of financial institutions to accept the “Procedure for handling complaints” (see § 3 and 4 of the Rules) was to be introduced, which is missing from the Act. Sixth, the Principles specify the obligation for financial institutions to keep an internal register of complaints (see § 5 of the Rules), which the Act does not specify. Seventhly, the Principle has a broader information obligation at the stage of concluding the contract, rather than the one defined in the Act (see § 6 and § 7 of the Rules and Article 4 of the Act). Eighth, the Rules were to have more detailed requirements regarding the content of the response (for instance: font size, the so-called accessible and understandable method) and how to deal with complaints (objectively, carefully and in a timely manner after analyzing all information), rather than regulating it the procedure for dealing with complaints under the Act (see § 9 of the Rules and Article 5 of the Act). However, on the other hand, the power of the provisions of the universally binding Act should be appreciated as compared to the Principles introduced into legal trading on the basis of a resolution of the PFSA. As well as the fact that the Act introduced two solutions that are particularly important for clients of financial services - silent positive consideration of the complaint after the expiration of the specified date and a shorter maximum deadline for consideration of complaints (60 days instead of 90 days as regulated by the Rules, see § 10 sec. 1 point 3 of the Rules and article 7 point 3 of the Act).

3 Comparison of clients’ protection on the financial market under Polish law

The basic features of the Act regarding the rights and obligations of financial services clients, complaint proceedings and proceedings before the Financial Ombudsman, in comparison to normative acts regulating these issues before its entry into force, are presented in Table 2.

Table 2. Protection of financial services clients' comparison

Criteria	Rules for dealing with complaints by financial institutions of June 21, 2011	Rules regarding the process of handling complaints by financial institutions of June 18, 2015*	Act of August 5, 2015 on handling complaints by financial market entities and on the Financial Ombudsman (Journal of Laws of 2015, item 1348, with amendments)
Definition of „claim”, „complaint”	Claim - any occurrence addressed to a financial institution by its client, who is a consumer, referring to its reservations regarding services provided by a financial institution or its activities.	Complaint - every occurrence of the client, including a complaint, addressed to a financial institution referring to reservations regarding services provided by a financial institution or activities performed by that institution, supervised by the Polish Financial Supervision Authority.	Claim - an instance addressed to a financial market entity by its client, in which the client raises objections regarding services provided by a financial market entity.
Subjective range	Client of a financial institution who is a consumer.	Client - any entity submitting or intending to file a complaint, both individual and institutional, both those who use or use the services of a financial institution, applied for the provision of such services or was a recipient of the marketing offer of the institution.	<p>Client:</p> <ul style="list-style-type: none"> a) being a natural person of the policyholder, insured, beneficiary or beneficiary of the insurance contract, b) a natural person seeking claims based on the provisions of the Act of May 22, 2003 on compulsory insurance, Insurance Guarantee Fund and the Polish Motor Insurers' Bureau from UFG or PBUK, c) a member of a pension fund or an authorized person within the meaning of the Act of 28 August 1997 on the organization and functioning of pension funds, participant in an occupational pension scheme or an authorized person within the meaning of the Act of 20 April 2004 on employee pension schemes, a saver or a person entitled within the meaning of the Act of 20 April 2004 on individual retirement accounts and individual retirement pension accounts, a person receiving a capital pension within the meaning of the Act of November 21, 2008 on Capital Retirement, d) a bank customer, a member of a savings and credit union, a payment institution customer, a payment service client, a customer of an electronic money institution, a customer of a branch of a foreign electronic money institution, a client of a credit institution, a client of a financial institution, a participant of an investment fund, a client of the company investment and the client of the lending institution. <p>Financial market entity:</p> <ul style="list-style-type: none"> a) a payment institution, a payment services office, an electronic money institution and a branch of a foreign electronic money institution within the meaning of the Act of August 19, 2011 on Payment Services (Journal of Laws of 2014, item 873 and 1916), b) domestic bank, foreign bank, foreign bank branch, credit institution branch and financial institution within the meaning of the Act of August 29, 1997 - Banking Law (Journal of Laws of 2015, item 128, as amended), c) an investment fund company and an investment fund within the meaning of the Act of May 27, 2004 on investment funds (Journal of Laws of 2014, item 157, as amended), d) cooperative savings and credit union within the meaning of the Act of November 5, 2009 on cooperative savings and credit unions (Journal of Laws of 2013, item 1450, as amended), e) an investment firm within the meaning of the Act of July 29, 2005 on Trading in Financial Instruments (Journal of Laws of 2014, item 94, as amended), f) a domestic insurance undertaking, a foreign insurance undertaking, a main branch and a branch within the meaning of the Act of September 11, 2015 on insurance and reinsurance activity (Journal of Laws, item 1844), g) a pension fund and pension society within the meaning of the Act of August 28, 1997 on the organization and functioning of pension funds, h) lending institution - an entity that is a lender within the meaning of the Act of May 12, 2011 on consumer credit (Journal of Laws of 2014, item 1497, 1585 and 1662), i) Insurance Guarantee Fund and Polish Office of Motor Insurers.
Obligated entity	Financial institution (lack of definition)	Financial institution - an entity providing financial services subject to the supervision of the Polish Financial Supervision Authority.	

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General obligations	The financial institution should provide the client with the possibility of submitting a complaint in a way that does not create unnecessary barriers. The process of dealing with complaints by a financial institution should be carried out without delay, and should be characterized by reliability, insight, objectivity and respect of generally applicable laws and good manners.	The financial institution should provide the client with the opportunity to submit a complaint in a manner that does not impose undue hardship. The process of reviewing a complaint by a financial institution should be taken immediately after receiving a complaint and carried out reliably, carefully and in a timely manner, with objectivity and with respect for generally applicable laws and good manners.	None
Claim formalities	None	In writing. Determined, adopted and implemented and monitored by the governing body of a financial institution.	None
Internal register of complaints	None. The financial institution should adequately take into account applicable law, record and store complaints, so that it is possible to reproduce (read or listen to) its content and the content of the answer given to the complaint. In the case of oral complaints realized by financial institutions immediately, the obligation to register them exists only at the request of the client.	Conducted in a reliable manner; taking into account applicable laws and ensuring an adequate level of security of data collected and processed. The financial institution should properly take into account the applicable legal provisions, keep the documentation regarding the complaint in order to be able to reproduce (read or listen to) its full content and the full content of the response to the complaint. The documentation storage period should be 5 years.	None

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Obligation to inform about the possibility of lodging a complaint or complaint	<p>Information concerning the possibility of a customer submitting a complaint to a financial institution should:</p> <ul style="list-style-type: none"> - be passed on to the client at the stage of concluding the contract in writing <p>It is advisable that the information be:</p> <ol style="list-style-type: none"> a) published on the website of a financial institution, b) at the client's request, also directly transferred by an employee of a financial institution. <p>The information should include the following indications relating to the procedure for submitting and considering complaints:</p> <ol style="list-style-type: none"> a) the acceptable form of lodging a complaint (eg fax, e-mail, telephone, a form posted on the website), b) place of lodging a complaint, c) the deadline for replying to a complaint, d) the manner of notification about the consideration of the complaint. <p>The information should also include:</p> <ol style="list-style-type: none"> a) an indication that the financial institution is subject to the supervision of the Polish Financial Supervision Authority, b) in the case of consumers, an instruction on the possibility of requesting help from the Municipal and Poviát Consumer Ombudsmen and the Insurance Ombudsman (concerns the pension and insurance market), c) instruction on the possibility of an amicable settlement of the dispute, if the financial institution provides for the possibility of such a solution. 	<p>Information concerning the possibility of a client submitting a complaint to a financial institution should:</p> <ul style="list-style-type: none"> - be passed on to the client at the stage of concluding the contract in the form in which the contract is concluded or in writing, and indicate how detailed information is provided - be published in an easily accessible form (eg in brochures, regulations, standard forms or financial documents used by a financial institution) and made available through the website and in organizational units of a financial institution providing customer service. <p>The information should be current, precise and formulated in a comprehensible way and include in particular: 1) financial complaint form accepted by the financial institution: written (eg letter, fax, e-mail, form available on the website enabling filing of an application by electronic means) or verbal (eg telephone notification, direct contact with a representative of a financial institution); 2) indication of contact details enabling filing a complaint in accordance with the forms adopted by a financial institution; 3) the scope of contact details that should be provided by the client in order to efficiently conduct the complaint handling process in the event that the financial institution does not have such data; 4) the manner of confirming the impact of the complaint; 5) deadline for replying to the complaint; 6) the manner of notification of the complaint's consideration, including the form of the response and the method of its delivery.</p> <p>The information should additionally indicate: 1) that the financial institution is subject to the supervision of the Polish Financial Supervision Authority; 2) the form of out-of-court resolution of any disputes accepted by the financial institution, if the financial institution provides for such a possibility.</p> <p>The information should also indicate that filing a complaint immediately after the client has made a complaint will facilitate and accelerate a thorough review of the complaint by the financial institution, unless this circumstance does not affect the way of proceeding with the complaint.</p> <ul style="list-style-type: none"> - In writing and in at least one other form (fax, e-mail, electronic form on the website, orally or by phone). - At the head office, in any organizational unit of a financial institution dealing with customer service or in the unit of the entity responsible for handling the complaint based on the contract concluded with the financial institution. - Directly or via postal operator, courier or messenger. - Also by a proxy holding a power of attorney granted in ordinary written form. 	<p>The financial market entity inserts in the agreement with the client the following information regarding the procedure for submitting and considering complaints:</p> <ol style="list-style-type: none"> 1) place and form of lodging a complaint; 2) the date of consideration of the complaint; 3) the method of notification about consideration of the complaint. <p>With regard to clients who have not concluded an agreement with a financial market entity, the information referred to in para. 1, should be delivered within 7 days from the day on which the customer's claims against the financial market entity were filed.</p> <ul style="list-style-type: none"> - no written requirement - no additional rigors as to the content and quality of information.

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Form of submission (complaint/claim)	<p>- In written or other form indicated in the information document provided to the client.</p> <p>- At the head office, in every organizational unit of a financial institution dealing with customer service or unit of the entity responsible for handling complaints on the basis of an agreement concluded with a financial institution.</p> <p>- By mail, messenger or in person.</p> <p>- Also by a proxy holding a power of attorney with a simple written form.</p> <p>In the case of lodging a complaint in a way other than by post or courier, the financial institution should, at the client's request, provide him with confirmation of making a complaint in the mode agreed with him.</p>	<p>- In writing and in at least one other form (fax, e-mail, electronic form on the website, orally or by phone).</p> <p>- At the head office, in any organizational unit of a financial institution dealing with customer service or in the unit of the entity responsible for handling the complaint based on the contract concluded with the financial institution.</p> <p>- Directly or via postal operator, courier or messenger.</p> <p>- Also by a proxy holding a power of attorney granted in ordinary written form.</p> <p>At the request of the client, the financial institution should confirm in writing or otherwise agreed with the client the fact that he lodges a complaint.</p>	<p>- In writing - in person, in the entity of the financial market entity servicing clients, or by post within the meaning of art. 3 point 21 of the Act of November 23, 2012 - Postal Law (Journal of Laws of 2012, item 1529);</p> <p>- Oral - by phone or in person to the record during the client's visit to the customer service unit;</p> <p>- In electronic form with the use of electronic communication means, provided such funds have been designated by the financial market entity for this purpose.</p> <p>A complaint may be filed with each unit of a financial market entity servicing clients.</p>
Limitations	<p>The financial institution should not impose restrictions on the deadline for submitting complaints in a manner different from those provided for by applicable law. At the same time it is justifiable for the financial institution to indicate to the customer the necessity to submit a complaint immediately after obtaining information about the existence of circumstances raising concerns, in order to allow a reliable consideration of the complaint.</p> <p>Lodging a complaint by a client in each organizational unit of a financial institution should be tantamount to submitting at its headquarters as to the beginning of the period for considering the complaint.</p>	<p>A financial institution may not impose restrictions on the time limit for submitting a complaint, unless such a restriction would result from the applicable provisions of law.</p> <p>The deadline for the complaint to be dealt with by the financial institution begins from the day after the day the complaint is received by the financial institution or entity responsible for dealing with the complaint under an agreement with the financial institution.</p>	None
Sposób rozpatrzenia	<p>Claim should be considered in a manner that ensures issuing an independent and objective solution to the problem contained in the submitted complaint.</p>	<p>A complaint submitted to a financial institution should be considered in a reliable, insightful and timely manner, after analyzing all information and documents provided in the complaint, as well as information and documents held by a financial institution and, if necessary, information and documents held by others. entities. The complaint handling process should be organized in such a way as to ensure that the allegations raised in the complaint are objectively resolved.</p>	Lack of particular guidelines

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Response	<p>Response to the complaint should be:</p> <ul style="list-style-type: none"> - provided in a written form or in another form agreed with the client; - given without undue delay, however not later than within 30 days from the date of receipt of the complaint. In the event of a justified failure to respond within time, the financial institution should: 1) explain the reasons for the delay, 2) indicate the circumstances that must be determined, 3) indicate the expected date of reply, which cannot be longer than 90 days from the date of receipt of the complaint. - made using a font size of at least 10, and at the client's justified request - using a large font, the so-called large print. 	<p>Response to the client's complaint should be:</p> <ul style="list-style-type: none"> - provided in writing, unless another form of reply has been agreed with the client. - given without undue delay, but no later than within 30 days from the date of receipt of the complaint. In case of a justified inability to reply within this period, the financial institution is obliged to: 1) explain the reasons for the inability to meet the deadline; 2) indicate the circumstances that must be determined; 3) indicate the expected date of reply, no longer however than 90 days from the date of receipt of the complaint. - entirely made using a font, the legibility of which corresponds to the readability of the Times New Roman font, 12 points, and on the justified request of the client using a larger font. 	<p>Response should be provided:</p> <ul style="list-style-type: none"> - in paper form or by means of another durable medium of information. A financial market entity can provide a response by email only at the customer's request. - without unnecessary delay, however not later than within 30 days from the date of receipt of the complaint. To meet the deadline, it is enough to send a response before its expiry. In particularly complicated cases, which make it impossible to consider a complaint and respond in a timely manner, a financial market entity: 1) explains the reason for the delay; 2) indicates the circumstances that must be determined for consideration of the case; 3) specifies the expected date of considering the complaint and providing the answer, which may not exceed 60 days from the date of receipt of the complaint. In the event of failure to meet the deadline, the complaint shall be deemed considered in accordance with the will of the client.
Response content	<p>The content of the response should include in particular:</p> <ul style="list-style-type: none"> a) factual and legal justification, unless the nature of the charges raised does not so require, b) comprehensive information on the reported problem with indication of the relevant parts of the contract or contract template and relevant legal provisions, unless the nature of the charges raised does not require it, c) an indication of the person providing the answer with the indication of his / her official position. <p>If the customer's claims are not taken into account, the content of the reply shall also contain an instruction indicating:</p> <ul style="list-style-type: none"> a) the possibility and manner of a possible appeal against the position contained in the response to the complaint, if the institution provides for an appeal procedure, b) the possibility of using the institution of mediation or arbitral tribunal or other mechanism of amicable settlement of disputes, if the financial institution provides for such a possibility, c) the possibility of bringing an action to a common court. 	<p>The response to the complaint should be provided in an accessible and understandable way and contain in particular: 1) information about the result of the complaint; 2) in the event of non-consideration of the client's complaint in any scope, factual and legal justification, unless the nature of the charges raised does not require it; 3) an indication of the person providing the answer with the indication of his / her official position.</p> <p>The response to a consumer complaint should include comprehensive information about the problem reported, indicating the relevant provisions of the contract and applicable legal provisions, and if possible with the citation of their wording, unless the nature of the charges raised does not require it.</p> <p>If the client's complaint is not taken into account, the answer should also include an instruction indicating: 1) the possibility and manner of appeal against the position included in the defense if the institution provides for an appeal procedure; 2) the possibility of using mediation, arbitration or other forms of out-of-court dispute resolution accepted by a financial institution, if the financial institution provides for such a possibility, together with an indication of whether the institution agrees to such proceedings in a given case.</p> <p>If the financial institution does not provide for the possibility of out-of-court resolution of the dispute with the client referred to in paragraph 3, and internal appeal procedures have been exhausted, the institution should indicate to each client the possibility of bringing an action to the common court, and in the case of customers who are consumers also the opportunity to ask for help to the appropriate Ombudsman.</p>	<p>The answer should contain in particular: 1) factual and legal justification, unless the complaint was considered in accordance with the will of the client; 2) comprehensive information on the position of the financial market entity regarding the objections addressed, including the indication of relevant parts of the contract template or contract; 3) name and surname of the person providing the answer with the indication of his / her position; 4) specification of the date on which the claim raised in the complaint considered in accordance with the will of the client will be realized, no longer than 30 days from the date of the reply.</p> <p>If the claims arising from the client's complaint are not taken into account, the content of the reply should also include an instruction on the possibility of: 1) appealing from the position included in the reply, if the financial market entity provides for the appeal mode, and the manner of filing this appeal; 2) use the institution of mediation or arbitration court, or other mechanism of amicable settlement of disputes, if the subject of the financial market provides for such a possibility; 3) submit a request to consider the matter to the Financial Ombudsman; 4) bring an action to a common court with an indication of the entity that should be sued and the court locally competent to hear the case</p>

Criteria	Rules for dealing with complaints by financial institutions of June 21, 2011	Rules regarding the process of handling complaints by financial institutions of June 18, 2015*	Act of August 5, 2015 on handling complaints by financial market entities and on the Financial Ombudsman (Journal of Laws of 2015, item 1348, with amendments)
Internal follow-up	None	<p>The financial institution should analyze the data related to the handling of complaints in order to ensure:</p> <ol style="list-style-type: none"> 1) identification of systemic irregularities or systemic irregularities, as well as potential legal and operational risk; 2) identification of the causes of irregularities indicated in the submitted complaints, in particular resulting from the organization of the financial institution and the procedures in force therein, as well as from the design of the products offered; 3) conducting a current analysis of the impact of identified causes of irregularities on other processes or products, including those for which the financial institution did not receive direct complaints; 4) identification of potential and actual conflicts of interest; 5) removing the causes of identified irregularities and conflicts of interest, including in the scope of product construction; 6) provide the competent authorities with information regarding complaints, their consideration and follow-up actions, including in particular reports, in accordance with applicable law. 	<p>The financial market entity annually, within 45 days from the end of the calendar year, provides the Ombudsman with a report on the complaint consideration and the number of clients' instances of client litigation as a result of not considering the complaint according to the wishes of those clients, including:</p> <ol style="list-style-type: none"> 1) the number of complaints; 2) recognized and unaccounted claims resulting from submitted complaints; 3) information on the value of claims filed in lawsuits and amounts awarded by valid court decisions to clients in the reporting period.

Table 2. Comparison of regulations included in the act on dealing with complaints by financial market entities and about the Financial Ombudsman in comparison with the rules for dealing with complaints by financial institutions of June 21, 2011 and rules regarding the complaint handling process by financial institutions of 18/06/2015. Own study.

*Uchylona Uchwałą KNF nr 626/2015 z dnia 17 listopada 2015 r. (Dz. Urz. KNF z 2015 r., poz. 64).

4 Protecting of clients under Financial Ombudsman Act

The Act on the Financial Ombudsman introduces a number of interesting solutions to the universally binding legal order, in particular from the point of view of protecting the client of financial services. The main assumptions of the Act include the introduction of the so-called two-tier system of protection of clients of financial market entities, consisting in granting clients the right to file a complaint to a financial market entity and then - in the case of a negative outcome of the complaint - granting the customer the right to submit an application to the Financial Ombudsperson for undertaking specific actions in the so-called an individual case (Article 24 (1) (1) of the Act). In particular, the fact that the Act introduces precise rules for responding to customer complaints (such as the requirement to justify the answer, providing the data of the preparer, the obligation to complete information about the position, indication of the date of claim fulfillment, or obligatory instruction) deserves the approval of the complaint procedure. customer about further means of implementing his rights, see Articles 5 - 10 of the Act), introducing in the Act a relatively short maximum and non-extendable for the financial market entity 60-day deadline for considering complaints and accepting the principle that the complaint is not dealt with within the statutory deadline adoption of a presumption of positive resolution of a customer complaint (see Article 8 of the Act). In turn, regarding the institution of the Financial Ombudsman, the extension of competences in relation to those held by the Insurance Ombudsman should be considered a huge plus. Both by extending the Financial Ombudsman's cognition outside the insurance market to all types of financial markets and by introducing new, more effective control measures for financial market entities. It should be kept in mind that "The Commissioner examines whether there has been a breach of the client's law or interests" as a result of acting or omitting a financial market entity (Article 24 paragraph 3 of the Act). As a result, after examining the case, the Act equips the Financial Ombudsman with managerial competence in the form of, among others the possibility of initiating the action, imposing a fine on the controlled financial market entity up to PLN 100,000. (see Articles 29 and 32 (1) of the Act) or the possibility of mediation. Importantly, the Financial Ombudsman can take actions both from the office and at the request of the client of the financial market entity (Article 24 paragraph 1 of the Act), and the application to the Financial Ombudsman can be sent only after the client has exhausted the complaint path (or in the event of inaction and the length of time that a financial market entity is handling a case). Subsidiarity⁸ of the application to the Financial Ombudsman should be assessed positively, as it avoids possible applications that are completely unfounded or far behind. On the other hand, the subjective scope of the Act should be critically assessed. The Act grants the

8 By subsidiarity, the author understands the fact that submitting the application to the Financial Ombudsman is possible only when the client initiates the proceedings of the so-called Complaint.

right to lodge a complaint and the right to apply to the Financial Ombudsman only to a client who is a natural person (Article 2 paragraph 1 of the Act) and introduces a restrictive definition of the notion of both “financial market subject” (closed catalog of entities that meet this criterion) and “complaint”. In addition, the departure from the division into retail and professional clients entered into the legal system by the Act of July 29, 2005 on Trading in Financial Instruments (ie, Journal of Laws of 2014, item 94, as amended) should also be assessed negatively. - art. 3 points 39b) and 39c) of this Act. The differentiation of concepts described above is unjustified and introduces unnecessary chaos into the legal system.

A special means of protection granted by the Act to clients of financial market entities who are natural persons, i.e. in the vast majority of cases to consumers of financial services, is the possibility of using “extra-judicial proceedings to resolve a dispute” before the Financial Ombudsman. The Act regulates these issues in Chapter 4 of the Act and, in addition, the rules specified therein are specified in the Regulation of the Minister of Finance of 14 January 2016 on extrajudicial proceedings before the Financial Ombudsman (Journal of Laws, 2016, item 92). Institution of the so-called Supported mediation before the Financial Ombudsman replaced the institution of the Court of Arbitration before the Insurance Ombudsman, whose cognition was limited to disputes arising on the business insurance market, and the institution itself was rarely used due to high costs. On the basis of the provisions contained in the Act and the Regulation, the Commissioner is obliged to carry out mediation proceedings if the client-consumer of the financial service asks for it. The Defender has the right only to refuse to conduct proceedings due to the circumstances specified exhaustively in the Act (see Article 36 paragraph 1 and 2 of the Act). The above means that the Ombudsman may, but does not have to refuse to lead mediation because, for example, the client has not exhausted the complaint procedure. In turn, it should be emphasized that the mediation proceedings can only be conducted at the request of the client in accordance with the Act, never from the office or at the request of a financial market entity. If the client refuses to undergo mediation, the Ombudsman is not competent to impose this procedure on him. On the other hand, the financial market entity’s participation in the out-of-court procedure before the Financial Ombudsman is mandatory (Article 37 of the Act). The above makes the Act depart from the fundamental principle of ADR, which is the full voluntariness of both parties to participate and submit to the settlement⁹. Although the result of the mediation is not binding for the parties to the proceedings, as a result the Financial Ombudsman draws up the report after its completion, accompanied by an opinion in the event of failure (Articles 40 and 41 paragraph 3 of the Act), which is an official document within the meaning of art. 244 of the Act of November 17, 1964 - Code of Civil Procedure

9 JAKUBIAK-MIROŃCZUK A. *Alternatywne a sądowe rozstrzygnięcie sporów sądowych*, Warsaw: Wolters Kluwers, 2008, p. 26-28.

(consolidated text - Journal of Laws of 2014, item 101, as amended). The Defender is required to complete the mediation proceedings within 90 days from the date of receipt of the complete application and within this period he is obliged to submit a proposal for resolving the dispute (in particularly complex cases, it is possible to extend this period). The abovementioned features of out-of-court proceedings (as well as other such as: the possibility of holding a meeting, complaints of proceedings, the right to refuse to initiate proceedings for enumerated reasons, exemption from costs) significantly approximate the procedure regulated in Chapter 4 of the Act for conciliation. For the client, it is also important that the Act guarantees an appropriate manner and procedure for conducting proceedings, which should be obligatorily carried out in compliance with the principle of impartiality and independence. In addition, the fee for mediation proceedings before the Financial Ombudsman is relatively low (according to section 38 paragraph 1 it is PLN 50, and the Defender in particularly justified situations may release the client from the obligation to pay it) and should not be a financial barrier for clients services. For the above reasons, the institution of ADR type proceedings before the Financial Ombudsman should be assessed positively. However, there is a risk that mediation before the Financial Ombudsman may be abused by financial services clients as a means of pressure on the financial market entity, so that the dispute settles the dispute without incurring further costs by way of a settlement. Such situations cannot be fully avoided and prevented, however, one should be aware that such events may take place and the Financial Ombudsman should put a burden on counteracting such abuses.

5 Summary

The regulations indicated above - both regarding the complaints' procedure, the Ombudsman's competences in individual cases and the client's right to submit the dispute to the so-called assisted mediation - in principle, it should be assessed very positively, because they fulfill the basic objective of guaranteeing a high standard of protection for clients of financial market entities. In general, European Union authorities recognize the problem of a weaker position of some investors on the financial market and introduce legal regulations in order to solve this inequality in relation to financial institutions. The main role in this area is held by MiFID I and MiFID II, and in particular the duty of the institution to act in the best interests of the client and the obligation to offer products to customers that are appropriate to their knowledge and experience. The EU legislator also notices the fact that not only substantive regulations are important - conferring rights and obligations - but the procedural regulations that actually protect its interests are the most important for the client. In order to properly implement these assumptions, Poland has introduced the

Act on the Financial Ombudsman. The act should be assessed as a rule very positively. Its application shows that the Financial Ombudsman fulfills his obligations and that the interests of clients on the financial market are currently protected in an appropriate manner. In particular, we can see an improvement in the quality of protection in comparison to the pre-legislative regulations, which were not of a generally binding nature and were directed primarily to financial institutions, and not to clients. It seems that, at least in theory, the tools provided for in the Act were introduced in a rational and effective manner for financial services customers into the legal system. However, time will show whether the effective protection of the rights of consumers and clients of financial services will also be adequately secured, that is, will customers be willing and effective in using the complaint procedure and ADR procedures before the Financial Ombudsman and will there be any abuse in this matter?

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