

## ORGANIZATIONAL AND LEGAL ASPECTS OF OMBUDSMAN'S ACTIVITY IN INSURANCE

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**Abstract.** Every year, more and more countries around the world involve the public and independent experts in regulating the activities of institutions, including the insurance market. The purpose of the article is to study the legal and organizational aspects of the ombudsman in insurance. To solve this goal, the method of systematization of criteria was used; historical method for the chronology of the creation of ombudsmen in the financial market; identification of models for organizing the activities of ombudsmen in the insurance market. In the European Union, there are two models of organizing the work of the ombudsman in the financial market, including the insurance market: the British and the German. Based on the study of nominative acts of the European Union, the main criteria that must be met by the institution that provides alternative dispute resolution (ombudsman), namely: accessibility; professionalism, independence, impartiality; transparency; efficiency; justice (impartiality); freedom. It is established that the competent authorities of individual states must compile lists of ABC institutions that meet the requirements set out in the Directive and make this information publicly available.

**Keywords:** financial market, insurance market, pre-trial dispute resolution, consumer, ombudsman.

**JEL classification:** G22, G52

**Formulas:** 0; **fig.:** 0; **tabl.:** 1; **bibl.:** 2

**Introduction.** A significant role in protecting the rights of consumers of insurance services in most countries is played by the state in the form of bodies regulating insurance markets, or specialized government agencies and agencies, which have a wide range of regulatory, control and law enforcement powers to protect consumer interests. In addition to these powers, such state institutions also perform the functions of reviewing appeals and complaints from consumers.

The world's leading countries are actively involving not only government agencies in the regulation of these issues, but also strengthening the role of institutions that deal with alternative dispute resolution between consumers and insurance companies.

**Literature review.** On 21 May 2013, the European Parliament and the Council adopted the Directive on Alternative Dispute Resolution with Consumer Involvement and amending Regulation (EC) №2006 / 2004 and Directive 2009/22 / EC (hereinafter - the Alternative Dispute Resolution Directive) [1-2].

Among the reasons for its adoption are: consumers and sellers do not know about the mechanism of out-of-court compensation for damages with a fairly low percentage of citizens who know how to file a complaint to the institution of alternative dispute resolution (ABC); the level of quality of complaints handling by ABC institutions differs significantly; cross-border disputes are often considered unsatisfactory. Inequality in the scope of alternative dispute resolution, its quality and awareness of Member States creates a barrier to the internal market.

The aim of the Directive is to achieve a high level of consumer protection in order to contribute to the proper functioning of the internal market by enabling consumers to submit complaints against sellers on a voluntary basis to institutions offering independent, impartial, transparent, efficient, fast and fair alternative dispute resolution procedures.

This Directive is an indication to EU Member States of how a system of consumer protection should be built on the basis of an alternative dispute resolution mechanism. It approves harmonized requirements for both ADR institutions and ADR procedures so that, once implemented, consumers have access to high-quality, transparent out-of-court redress mechanisms, regardless of where they live in the EU. At the same time, Member States are allowed to deviate from the approved requirements if they provide a higher level of consumer protection [2].

Some of the requirements laid down in the Directive are those which Member States must comply with, while others are subject to national rules at their discretion. The Directive does not define a specific model of an alternative dispute resolution mechanism according to the criteria of the subject of creation, methods of financing, territorial or sectoral affiliation.

The Directive applies to out-of-court settlement procedures for domestic and cross-border disputes concerning sales contracts, the provision of services between an EU seller and an EU consumer, in all sectors of the economy, with some exceptions. For example, this Directive does not apply to health services, higher education, non-economic services.

**Aims.** The purpose of the article is to study the legal and organizational aspects of the ombudsman in insurance.

**Methods.** To solve this goal, the method of systematization of criteria was used; historical method for the chronology of the creation of ombudsmen in the financial market; identification of models for organizing the activities of ombudsmen in the insurance market.

**Results.** The history of the ombudsman as an alternative dispute resolution is more than 200 years old. The ombudsman's mechanism or office provides an independent, impartial, fair, timely, efficient and informal external dispute resolution process between the consumer and the seller of the goods (service provider, contractor, etc.), which is free of charge for consumers.

This form of alternative dispute resolution is also widely known as external dispute resolution (ADR). It does not depend on the companies they complain about and does not depend on them [1-2].

One of the first in the field of financial services was the Insurance Ombudsman of Great Britain (1981), the purpose of which was to protect the rights of policyholders. Today, the UK Financial Ombudsman Service is an independent public out-of-court settlement of financial services disputes established by Parliament under the Financial Services and Markets Act (2000). The UK Financial Ombudsman Service's competence extends to consumer relations. banks, including mortgage, mortgage intermediaries, investment intermediaries, pension funds, insurance companies, credit unions, securities intermediaries.

In the world, dispute resolution organizations in the field of financial services are created as:

- universal institutions operating in the financial market as a whole (the scope applies to all financial services, including insurance);
- separate institutions operating in parallel on its separate segments.

Universal organizations also include the National Council for Consumer Complaints in Sweden, the Committee for Complaints on Transactions with Financial Firms in Iceland, the Joint Conciliation Council in the Austrian banking sector, the Czech Financial Arbitration Service, and the Office of the Financial Ombudsman of Poland [2].

In contrast, in Belgium, in addition to the organization of the Financial Ombudsman, which is responsible for resolving disputes related to the provision of most financial services, there is also an Insurance Ombudsman, designed to protect the rights of consumers in the field of insurance and pensions.

In Denmark, there are five bodies - the Danish Securities and Brokerage Complaints Board, the Insurance Complaints Board, the Danish Investment Fund Complaints Board, the Danish Banking Complaints Board, and the Danish Mortgage Complaints Board. which intersects in some cases.

In Germany, in addition to delimiting the competence of organizations that ensure the rights of clients in the field of financial services in the areas of banking services, insurance and investment support, there is also a parallel operation of individual organizations within the banking sector.

Lithuania The law defines the institutions that have the right to consider and resolve pre-trial disputes between consumers and service providers, in particular, the Lithuanian Insurance Supervision Commission considers complaints of consumers of insurance services.

In Poland, the Institute of the Financial Ombudsman was established in 2015 on the basis of the Insurance Ombudsman, which has been operating since 1995.

As we can see, there are different options for the formation and operation of organizations that care about consumer protection in the field of insurance. There are also a variety of mechanisms for dealing with customer complaints, which have become widespread in the world. However, the activities of these organizations in the field of consumer protection in the field of insurance, regardless of the country in which they are established, comply with the principles set out in the Recommendation of the European Commission of 30 March 1998 № 98/257/EC.

The main advantages of using the alternative dispute resolution mechanism are:

- availability of legal protection,
- speed of problem solving,
- small costs,
- efficiency from the standpoint of loading ships,
- the possibility of reaching a compromise solution.

In world practice, there are usually two main models of financial ombudsmen: British and German (table 1) [2].

**Table 1. The main models of financial ombudsmen: British and German**

British model	German model
<p>1) in 1981, the institute of financial ombudsman was established in Great Britain at the initiative of private business;</p> <p>2) since 2000, the status of the institution of financial ombudsman has been enshrined in law in the United Kingdom;</p> <p>3) not only an individual but also an organization or charitable foundation with an annual turnover of less than £ 1 million can lodge a complaint;</p> <p>4) Prior to applying to the Financial Ombudsman Service, the client must try to resolve the dispute with the financial institution on his / her own, for which purpose he / she should send a complaint there. After receiving a final response from the financial institution or after 8 weeks, the dissatisfied consumer may contact the Financial Ombudsman Service;</p> <p>5) disputes are resolved by conciliation of the parties, only every tenth case is referred to the ombudsman for a final decision;</p> <p>6) term of consideration of the case - from 6 to 9 months;</p> <p>7) the cost of services for the applicant is free;</p> <p>8) the decision of the ombudsman taken at the end of the investigation is binding on the financial institution if the consumer agrees with the decision of the ombudsman.</p> <p>9) the maximum amount of the binding decision of the ombudsman is £ 100,000, but in some cases the ombudsman may recommend that the organization pay the consumer an amount greater than this amount;</p> <p>10) the service of the financial ombudsman is financed by membership fees of private companies. English banks pay in proportion to the number of accounts opened, and also pay for each complaint sent.</p>	<p>1) the scope of out-of-court procedure extends to all subjects of the financial market;</p> <p>2) the ombudsman works at branch business associations;</p> <p>3) only complaints of individuals are considered;</p> <p>4) financial institutions enter into an agreement on the recognition of regulatory acts of the financial ombudsman;</p> <p>5) the complaint is accepted for consideration if:</p> <ul style="list-style-type: none"> <li>- the dispute is not considered or has not been considered in court or an amicable agreement has not been concluded;</li> <li>- the case is or has been the subject of extrajudicial proceedings by another body;</li> <li>- the statute of limitations for the transfer of the case to the ombudsman has not expired;</li> </ul> <p>6) the decision of the ombudsman is binding if the amount of the dispute does not exceed 5 thousand euros, and if more than this amount, then the decision of the ombudsman is not binding on both parties;</p> <p>7) after the decision is made, the parties must agree with him;</p> <p>8) term of consideration of the case - 2-3 months;</p> <p>9) Complaints are borne by financial institutions.</p>

*Source: developed by the author*

Based on the study of nominative acts of the European Union, the main criteria were systematized. The **basic criteria** to be met by the institution and the alternative dispute resolution procedure include [1]:

- accessibility;
- professionalism, independence, impartiality;
- transparency;

- efficiency;
- justice (impartiality);
- freedom.

Let's focus on the requirements for achieving each of the criteria:

*Accessibility.* Among the requirements for ABC institutions, it is determined that such an institution must:

- have a site with updated information that gives the parties easy access to information about the ABC procedure and the ability to file a complaint;
- provide, if available, the possibility for the consumer to file a complaint offline;
- to take into account both domestic and cross-border disputes (disputes arising from a contract between a consumer and a seller located in different EU Member States).

ABC institutions may agree to maintain or introduce procedural rules that allow them to refuse to consider a complaint on the following grounds:

- the consumer has not previously contacted the seller to resolve the dispute;
- the absence of a dispute or dispute is minor;
- the dispute is or has been considered by another ABC institution or court;
- the size of the requirements exceeds a certain financial threshold. However, these thresholds may not be of such a level that significantly complicates the rapid access of consumers to the complaint by ABC institutions;
- the consumer has filed a complaint for violation of the deadline for its submission, which may not be less than one year from the date of submission of the complaint by the consumer to the seller;
- the dispute cannot be resolved by the ABC.

*Professionalism, independence and impartiality.* Individuals responsible for ABC must meet the criteria of professionalism, independence and impartiality, and this is guaranteed to ensure that they:

- have the necessary knowledge and skills in the field of alternative or judicial dispute resolution, as well as a general understanding of law;
- appointed for a sufficiently long period to ensure the independence of their actions, and may not be relieved of their duties early without good reason;
- do not receive any instructions from any of the parties or their representatives;
- receive a monetary reward that does not depend on the results of the procedure;
- immediately inform the ABC institution of circumstances that may affect (or may be considered as such) their independence or impartiality, or cause a conflict of interest of one of the parties.

*Transparency.* ABC institutions on their websites, and in other convenient ways, should place in a clear and understandable form:

- information on contact details of the institution; individuals responsible for ABC; types of disputes under consideration, including thresholds; procedural rules, etc.;
- annual reports of its activities, which should cover information on internal and cross-border disputes:

- number of disputes accepted and types of complaints;
- systematic or significant problems that often lead to a dispute;
- the number of disputes that were denied and the percentage by type of grounds for refusal;
- the percentage of proposed or adopted decisions in favor of the seller, consumer or disputes resolved under amicable agreements;
- percentage of terminated ABC procedures;
- the average duration of dispute resolution;
- the level of compliance / execution of decisions made by ABC institutions in the dispute resolution procedure;
- interaction of ABC institutions in resolving cross-border disputes.

*Efficiency.* The effectiveness of the ABC procedure must be ensured by compliance with the following requirements:

- ABC procedure is available online and offline for both parties, regardless of their location;
- the parties may participate in the procedure both independently and with the involvement of representatives;
- ABC procedure is free or has a token fee;
- the ABC institution that received the complaint notifies the parties to the dispute when it receives all the necessary documents;
- the decision in the ABC procedure is made within 90 calendar days from the date of receipt of all documents on the complaint. In difficult cases, this period may be extended, as notified by the parties.

*Impartiality.* To achieve impartiality during the ABC procedure, the parties must be provided with:

- be able to express their point of view, receive from the ABC arguments, documents, facts provided by the other party, conclusions and statements of experts, comment on them;
- be informed about the optional involvement of a lawyer, about the possibility of involving a third party at any stage of the procedure, the ability to contact consultants;
- to receive notifications on the results of the ABC procedure with arguments of the grounds for its adoption.

In procedures where an ABC decision is taken to resolve a dispute (unless the proposed decision is binding on the seller if the consumer has agreed to such a decision), it must be ensured that:

- 1) the parties had the opportunity to withdraw from the procedure at any time if they were not satisfied with the procedure; in cases where, according to national rules, the seller's participation in the procedure is mandatory, the right to refuse the procedure belongs only to the consumer;
- 2) before the parties have to give their consent / refusal with the proposed decision of the ABC body, they are informed that:
  - the parties have the choice to agree with the decision or not, to abide by it or not;

- participation in the procedure does not limit the right to go to court to resolve the dispute;
- the proposed decision may differ from the court decision;
- 3) the parties were notified of the legal consequences of agreeing to the proposed decision and its compliance;
- 4) the parties had a reasonable period of time to respond to the proposed solution or settlement agreement.

*Freedom.* The principle of freedom must be ensured by the following:

- the agreement between the consumer and the seller to file a complaint to the ABC was not binding on the consumer if his right to go to court is restricted;
- the decision proposed by the ABC institution aimed at resolving the dispute may be binding on the parties, if they knew about it in advance and agreed to it. National law may provide that the decision proposed by the ABC is binding on the seller and therefore the seller's consent to the decision is not required.

The Directive also regulates the issues of **informing and interacting with** ABC institutions so that consumers have the opportunity to quickly determine the competence of which ADR entity to resolve the dispute or whether the seller participates in the ABC procedure.

Thus, there is an obligation according to which sellers must inform consumers in an understandable and accessible form (on the website or at the time of concluding the agreement) about the ABC institutions that should be involved in resolving disputes with the consumer.

The EU Commission and the Member States have committed themselves to: disseminating information on how consumers can access ABC procedures; take the necessary measures to encourage consumer and professional organizations to raise awareness of ABC institutions and procedures and to promote the choice of ABC by sellers and consumers.

The competent national authorities must draw up lists of ABC establishments which comply with the requirements laid down in the Directive and make this information publicly available.

The office of the conciliator and the procedure for settling disputes between insurers and consumers of their services shall be established in accordance with the basic requirements laid down in this Directive.

**Discussion.** A less common model is when the ombudsman works for a state institution that regulates the financial market (Bosnia and Herzegovina - banking institutions, Azerbaijan - the Central Bank, Serbia - the National Bank).

The German model is widespread in the world, as the review procedure allows customers to obtain solutions quickly and free of charge. Out-of-court settlement of a dispute is particularly attractive when the value of the dispute is so low that recourse to the court makes no economic sense. Namely, such disputes are usually more.

The practice of different countries shows that the ombudsman makes a decision in favor of the financial institution and customers in an approximate proportion of 50/50. That is why the financial ombudsman is recognized in many countries as an instrument of objective out-of-court dispute resolution.

The principles of the Insurance Conciliator's Office, as a prototype of the Financial Ombudsman, take into account the elements of these global models of this institution.

**Conclusion.** In the article we have studied the legal and organizational aspects of the ombudsman in insurance. To solve this goal, the method of systematization of criteria was used; historical method for the chronology of the creation of ombudsmen in the financial market; identification of models for organizing the activities of ombudsmen in the insurance market. In the European Union, there are two models of organizing the work of the ombudsman in the financial market, including the insurance market: the British and the German. Based on the study of nominative acts of the European Union, the main criteria that must be met by the institution that provides alternative dispute resolution (ombudsman), namely: accessibility; professionalism, independence, impartiality; transparency; efficiency; justice (impartiality); freedom. It is established that the competent authorities of individual states must compile lists of ABC institutions that meet the requirements set out in the Directive and make this information publicly available.

**References:**

1. Directive 2013/11/EU of the european parliament and of the council. Retrieved from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>
2. World experience of insurance ombudsmen. Retrieved from: <https://ipk.org.ua/svitovyy-dosvid>