ARTYKUŁY NAUKOWE

NICOLA SOLDATI
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# The new Italian Insurance Ombudsman

*This article critically examines the new Insurance Arbitrator (AAS), which is the most recent Italian alternative dispute resolution (ADR) tool in the insurance sector, introduced in implementation of European directives on consumer protection and insurance distribution. After reconstructing the relevant European regulatory framework – in particular Directives 2013/11/EU, 2014/65/EU, and 2016/97/EU – the author examines the transposition of these Directives into Italian law and, in particular, into the Private Insurance Code and the secondary regulations of IVASS (Istituto per la Vigilanza sulle Assicurazioni).*

*The author highlights how, from a systematic point of view, the AAS assumes a function of indirect market regulation, promoting uniform practices and contributing to the reduction of litigation. The construction of a body of precedents and consolidated guidelines will strengthen legal certainty, improve the transparency of contractual relationships, and facilitate compliant behaviour by operators. In conclusion, the author goes so far as to say that the AAS represents a significant step forward in the evolution of consumer protection in the insurance sector, consolidating the role of ADRs as effective and rapid alternative dispute resolution tools capable of influencing market dynamics through increasingly relevant interpretative and conformative activities.*

**Keywords:** Ombudsman, insurance, insurance contract, ADR, disputes

## Introduction

In Italy, the resolution of insurance disputes has traditionally relied on the ordinary judicial authority; however, recourse to the courts entails high costs, long delays and often burdensome procedures for the consumer, who has to deal with a complex and specialised system. This can discourage customers from asserting their rights, especially in low-value disputes, eroding overall confidence in the insurance system.

Add to this the fact that the insurance market is characterised by increasing regulatory and contractual complexity. Such complexity, coupled with the often technical and specialised nature of the products offered, can generate significant information asymmetries between companies, intermediaries and customers, which, in turn, can lead to disputes concerning the interpretation of contracts, the amount of compensation, the fairness of operators' conduct, or the quality of services offered.

It is against this backdrop that the need, increasingly felt at European and Member State level, to develop and strengthen ADR instruments comes into play.

ADR procedures aim to provide faster, less expensive and more accessible solutions than traditional litigation, while preserving the impartiality and "quality" of decisions in a system based on the principles of speed, cost-effectiveness and effectiveness of protection, and further reducing the risk of inconsistent decisions that may, for that matter, lead to an increase in the rate of litigation. ADR will therefore enable undertakings and intermediaries to adapt their operations to the guidelines issued during the arbitration process, following on from what has already occurred in Italy, first with the Banking and Financial Ombudsman (ABF)[1] and then with the Securities and Financial Ombudsman (ACF)[2].

Therefore, alongside pure judicial instruments of an adjudicative nature, such as ordinary justice and arbitration, out-of-court dispute resolution tools play a crucial role and have seen a continuous evolution in recent years, both in the direction of protection of small – and medium-sized enterprises, and for the protection of consumers, either in an exclusively consumer sphere (most recently, Directive 2013/11/EU on ADR in consumer disputes)[3] or in other areas of law enforce-

1. Marinari, *L'Arbitro bancario finanziario nel quadro europeo e nel contesto delle reti ADR. Lezioni sul piano ordinamentale, processuale e di merito*, in *La tutela giurisdizionale effettiva dei diritti*, a cura di Bertolissi, Lamandini e Nania, Milano, 2024, p. 602; Tucci, *L'Arbitro Bancario Finanziario fra trasparenza bancaria e giurisdizione*, in Liber amicorum *Guido Alpa*, a cura di Capriglione, Milano, 2019, p. 605; Lener, *L'Arbitro per le Controversie Finanziarie presso la Consob: genesi, struttura e funzione. Differenze rispetto al modello dell'ABF*, in *Le controversie bancarie e finanziarie. – Trattato di diritto dell'arbitrato*, diretto da Mantucci, vol. XV, Napoli, 2019, p. 281; Cosma, *La gestione dei reclami nelle banche e l'Abf: nuove evidenze e strategie organizzative – Customer Complaining Management in Italian banks, a new trends and strategies*, in *Bancaria*, 2018, n. 74, p. 76; Auletta, *...il sole e l'altre stelle: è la giurisdizione quella del 'sistema' dell'ABF?*, *Banca, borsa, tit. cred.*, 2018, p. 794; Liace, *L'arbitro bancario finanziario*, Torino, 2018; Rossi Carleo, *L'arbitro bancario-finanziario: anomalia felice o modello da replicare?*, in *Riv. arb.*, 2017, p. 21; Stella, *Lineamenti degli Arbitri Bancari e Finanziari (in Italia e in Europa)*, Padova, 2016; Pierucci, *L'arbitro Bancario Finanziario: l'esperienza applicativa*, in *Giur. comm.*, 2014, p. 811; Minervini, *L'Arbitro Bancario Finanziario. Una nuova "forma" di ADR*, Napoli, 2014; Crispino, *L'evoluzione dell'ABF: tra tutela e vigilanza*, in *Riv. trim. dir. econ.*, 2013, p. 30.

2. Providenti, *L'Arbitro per le controversie finanziarie nel quadro europeo e nel contesto delle reti ADR. Lezioni sul piano ordinamentale, processuale e di merito*, in *La tutela giurisdizionale effettiva dei diritti*, a cura di Bertolissi, Lamandini e Nania, cit., p. 638; Alunni e Sibilla, *Arbitrato per le controversie finanziarie: replica felice di un ADR di natura controversa*, in *Il giusto processo civile*, 2019, p. 903; De Mari, *Prime riflessioni intorno alla competenza dell'Arbitro per le Controversie Finanziarie*, in *Giur. comm.*, 2018, p. 275; Mirra, *Il nuovo sistema ADR in ambito Consob: l'Arbitro per le Controversie Finanziarie, tra alte aspettative e primi riscontri operativi*, in *Riv. arb.*, 2018, p. 615; Franza, *L'arbitro per le controversie finanziarie e àmbito di competenza. Osservazioni preliminari alla sua entrata in attività*, in *Riv. dir. banc.*, 2016, p. 1; Percoco, *Le procedure di ADR nel settore finanziario: dalla Camera di conciliazione e arbitrato presso la CONSOB all'Arbitro per le controversie finanziarie*, in *Riv. arb.*, 2017, p. 191; Dolmetta e Malvagna, *Sul nuovo «ADR Consob»*, in *Banca borsa tit. cred.*, 2016, p. 251.

3. Mancaleoni, *La risoluzione extragiudiziale delle controversie dei consumatori dopo la Direttiva 2013/11/UE*, in *Eur. dir. priv.*, 2017, p. 1065; Angelone, *La «degiurisdizionalizzazione» della tutela del consumatore*, in *Rass.*

ment and, in particular, with reference to the banking, financial and insurance sector, Directive 2014/65/EU (MiFID II Directive[4], which strengthens the use of out-of-court instruments, with a direct involvement of the European Securities and Markets Authority, ESMA[5]), as well as insurance (Directive 2016/97/EU on insurance distribution)[6].

The introduction of the Insurance Ombudsman (*Arbitro Assicurativo*, hereafter, AAS) in Italy fully meets this need, taking the form of a specialised body for the out-of-court settlement of disputes between customers and insurance operators[7].

*dir. civ.*, 2016, p. 723; Gioia, *L'uniforme regolamentazione della risoluzione alternativa delle controversie con i consumatori*, in *Contr. imp./Europa*, 2016, p. 501; Marino, *La risoluzione alternativa delle controversie tra mercato interno e tutela del consumatore*, in *Dir. UE*, 2015, p. 779; Luiso, *La direttiva 2013/11/UE, sulla risoluzione alternativa delle controversie dei consumatori*, in *Riv. trim. dir. proc. civ*., 2014, p. 1299.

4. In legal theory on the MiFID Directive: Buscemi, Di Meo e Evangelisti, *Recepimento delle direttive MiFID: regole di condotta degli intermediari a tutela degli investitori; sistemi di risoluzione stragiudiziale delle controversie*, Milano, 2011; Sabatini, *Il bilancio della MIFID a due anni dalla sua entrata in vigore*, in *Banche e banchieri*, 2010, p. 209; Irace e Rispoli Farina, *L'attuazione della direttiva MIFID: Decreto legislativo 17 settembre 2007, n. 164*, Torino, 2010; Frediani e Santoro, *L'attuazione della direttiva MIFID*, Milano, 2009; *L'attuazione della MIFID in Italia*, a cura di D'Apice, Bologna, 2009.

5. The European Securities and Markets Authority (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. ESMA is an independent EU authority and, since 1 January 2011, it has been responsible for supervising the European financial market. The authority, which replaces the Committee of European Securities Regulators (CESR) and is based in Paris, involves all the banking supervisory authorities in the European Union.

6. Cerrato e De Santis, *La risoluzione delle controversie in materia di servizi di investimento*, in *Il Testo Unico Finanziario*, a cura di Cera e Presti, Bologna, 2020, p. 940; Sirena, *I sistemi di ADR nel settore bancario e finanziario*, in *Nuove leggi civ.*, 2018, p. 1370; Rispoli Farina, *Sistemi alternativi di soluzione delle controversie nel settore finanziario. Pluralità di modelli ed effettività della tutela*, in *Atti dei seminari celebrativi per i 40 anni dalla istituzione della Commissione Nazionale per la Società e la Borsa*, a cura di Mollo, Roma, 2015, p. 299.

7. La Fata, *La risoluzione stragiudiziale delle controversie nei contratti di assicurazione a seguito dell'istituzione dell'Arbitro assicurativo*, in *Dir. merc. ass. e fin.*, 2025, 1, p. 112; Soldati, *Il terzo pilastro ADR presso le autorità indipendenti: l'arbitro IVASS*, in *Assicurazioni*, 2023, I, p. 75; Romagnoli, Lener, Landini, Corrias, Candian, Galanti e Carriero, *L'arbitro per le controversie assicurative*, in *Diritto del mercato ass. e fin.*, 2021, p. 163; Candian, *L'Arbitro per le Controversie assicurative*, in *Le controversie bancarie e finanziarie. – Trattato di diritto dell'arbitrato*, a cura di Mantucci, vol. XV, Napoli, 2021, p. 497; Bartolomucci, *L'Art. 187* ter *c. ass. e l'istituzione di un organismo di risoluzione alternativa delle controversie assicurative*, in *Nuove leggi civ.*, 2021, p. 400; Candian, Carriero, Corrias, Galanti, Landini, Lener e Romagnoli (a cura di) *L'arbitro per le controversie assicurative*, Napoli, 2019; Candian, *L'Arbitro per le Controversie assicurative*, in *Le controversie bancarie e finanziarie. – Trattato di diritto dell'arbitrato*, a cura di Mantucci, vol. XV, cit., p. 497; Nervi, *L'arbitrato nei rapporti assicurativi finanziari*, in *Le controversie bancarie e finanziarie. – Trattato di diritto dell'arbitrato*, a cura di Mantucci, vol. XV, cit., p. 475; Soldati, *La Insurance Distribution Directive: verso un ulteriore sistema di risoluzione delle controversie presso l'IVASS*, in *Federalismi.it*, 18 dicembre 2019.

## 1. The European regulatory framework

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013[8], which aims to harmonise the rules on ADR entities and procedures in the European context[9], finds application in out-of-court dispute resolution proceedings, both domestic and cross-border, concerning contractual obligations arising from sales or service contracts between traders established in the Union and consumers residing in the Union through the intervention of an ADR entity, which proposes or imposes a solution or brings the parties together with a view to facilitating an amicable solution[10].

Alongside the Directive, Regulation (EU) no. 524/2013 of the European Parliament and of the Council[11]was enacted, which instead applies to the *extra*-judicial resolution of disputes concerning contractual obligations arising from *online* sales or service contracts between a consumer residing in the Union and a trader established in the Union through the intervention of an ADR entity.

At a later stage, with specific reference to insurance matters, Directive (EU) 2016/97 of the European Parliament and of the Council[12] was enacted, with the aim of providing minimum

8. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) published on the Official Journal of the European Union 18 June 2013, L. 165/63.
9. Incorporated into Italian law by Legislative Decree No. 130 of 6 August 2015, published in the Official Gazette No. 191 of 19 August 2015, laying down «Attuazione della direttiva 2013/11/UE sulla risoluzione alternativa delle controversie dei consumatori, che modifica il regolamento (CE) n. 2006/2004 e la direttiva 2009/22/CE (direttiva sull'ADR per i consumatori)».
10. The first *Whereas* states, in fact, that «Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.».
11. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) published on the Official Journal of the European Union 18 June 2013, L. 165/1, p. 63; followed by Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, published on the Official Journal of the European Union 02 July 2015, L. 171/1. In legal theory: Stefanelli, Online dispute resolution. *Regolamentazione europea ed evoluzione normativa*, in *La tutela giurisdizionale effettiva dei diritti*, a cura di Bertolissi, Lamandini e Nania, cit., p. 579.
12. Directive (Eu) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), published on the Official Journal of the European Union 2 February 2016, L. 26/19, in which Article 15 states that: «1. Member States shall ensure that adequate and effective, impartial and independent out-of-court complaint and redress procedures for the settlement of disputes between customers and insurance distributors concerning the rights and obligations arising under this Directive are established in accordance with the relevant Union legislative acts and national law, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable, and the relevant body's competence effectively extends, to insurance distributors against whom the procedures are initiated. 2. Member States shall ensure that the bodies referred to in paragraph 1 cooperate in the resolution of cross-border disputes concerning rights and obligations arising under this Directive.».

harmonisation of national disciplines without, however, going so far as to affect the stricter regulations that may be in place in the Member States to protect consumers, provided that such provisions are consistent with EU law[13].

The European legislator itself stated that the application of Directive 2002/92/EC had shown that a number of provisions required further clarification, both to facilitate the exercise of insurance distribution and to better protect consumers. In order to achieve these objectives, the scope of application of this Directive was extended to all sales of insurance products, as it is appropriate that insurance undertakings which directly sell insurance products be included in the scope of application of this Directive in the same way as insurance agents and brokers.

As is well known, recent financial turmoil has highlighted how important it is to ensure effective consumer protection in all sectors, including the insurance sector: therefore, the European legislator deemed it appropriate to strengthen consumer confidence and to make regulations concerning the distribution of different insurance products more uniform in order to ensure a higher level of consumer protection throughout the Union than was previously the case.

To this end, the Directive states that it is important to take into account the specific nature of insurance contracts in relation to investment products regulated by Directive 2014/65/EU of the European Parliament and of the Council. As a result, the distribution of insurance contracts, including insurance investment products, should take both Directive 2016/97/EU and the provisions of Directive 2014/65/EU as reference sources[14].

Directive 2016/97/EU applies to all those who distribute insurance and reinsurance products: agents, brokers and "bancassurance" operators, insurance undertakings, persons operating comparison websites when these enable the customer to directly or indirectly conclude an insurance contract, travel agencies and car rental companies.

More generally, the Directive 2016/97/EU applies to all insurance products, which can be subdivided into two macro-categories: the first consists of insurance investment products (Insurance-Based Investment Products, IBIPs), financial content policies belonging to classes I, III, V of the Private Insurance Code, including multi-class policies; and the second consists of non-life insurance products (e.g. motor third-party liability, health/accident policies, home insurance) as well as pure risk life policies (such as term life), including policies linked to mortgages and loans, and pension products (Non-IBIPs).

As was the case with previous directives in other areas of application, such as, by way of example, the MiFID Directives, the European legislator, with a view to achieving better and broader consumer protection, has, also within Directive 2016/97/EU, decided to introduce specific provisions aimed at regulating out-of-court dispute resolution.

13. Corrias, *Profili generali della nuova disciplina recata dalla Direttiva 2016/97/EU (A general analysis of the new Directive 2016/97/UE*, in *Riv. trim. dir. econ.*, 2018, p. 158; Corrias, *La direttiva UE 2016/97 sulla distribuzione assicurativa: profili di tutela dell'assicurando*, in *Assicurazioni*, 2017, p. 9.

14. Sabbatelli, *Adeguatezza e regole di comportamento dopo il recepimento della Direttiva IDD*, in *Riv. trim. dir. econ.*, 2018, p. 203; Landini, *Distribuzione assicurativa da IDD al decreto attuativo passando per EIOPA e IVASS*, in *Dir. merc. ass. e fin.*, 2018, p. 183.

## 2. Transposition into Italian law

In particular, article 15 of Directive 2016/97/EU envisages the creation in each of the Member States of an ADR body for the resolution of disputes between distributors of insurance products and customers. Said Directive was transposed into Italian law by Legislative Decree no. 68 of 2018[15], later amended by Legislative Decree no. 187 of 2020[16], which went on to amend, in particular, the texts of article 143 of the Consumer Code and article 187.1 of the Private Insurance Code.

In the light of the transposition of the Directives in question and the amendments introduced into the Italian legislation, it can certainly be said that the primary source of the AAS is precisely article 187.1 of the Insurance Code[17].

In fact, the article in question expressly provides that the persons referred to in Article 6, paragraph 1 (a) and (d)[18], as well as insurance intermediaries in an ancillary capacity, shall adhere to out-of-court dispute resolution systems for customer disputes concerning insurance services and services arising from all insurance contracts, without any exclusion[19].

In addition, the subsequent paragraph 2 establishes that, upon proposal of IVASS, the Minister of Economic Development[20], in agreement with the Minister of Justice, shall determine by decree, in compliance with the principles, procedures and requirements set forth in the Consumer Code, the criteria for the conduct of the dispute resolution procedures referred to in paragraph 1, the criteria for the composition of the adjudicating body, in order to ensure its impartiality and the representativeness of the parties concerned, as well as the nature of the disputes, relating to insurance benefits and services deriving from an insurance contract, dealt with by the schemes referred to in this article.

In relation to the other ADR instruments envisaged by the Italian legal system, with particular reference to "insurance" disputes, the third paragraph provides, then, that recourse to the AAS

15. Legislative Decree No. 68 of 21 May 2018, published in the Official Gazette No. 138 of 16 June 2018, laying down: «Attuazione della direttiva (UE) 2016/97 del Parlamento europeo e del Consiglio, del 20 gennaio 2016, relativa alla distribuzione assicurativa».
16. Legislative Decree No. 187 of 30 December 2020, published in the Official Gazette No. 19 of 25 January 2021, laying down: «Disposizioni integrative e correttive al decreto legislativo 21 maggio 2018, n. 68, di attuazione della direttiva (UE) 2016/97 del Parlamento europeo e del Consiglio, del 20 gennaio 2016, relativa alla distribuzione assicurativa».
17. Following Legislative Decree No. 187 of 30 December 2020, Article 187 *ter* was repealed, with the result that the reference contained in Article 120 CAP must be understood as referring to Article 187–1 CAP. In legal theory: Landini, *La distribuzione assicurativa dopo il d.lg. 30 dicembre 2020, n. 187, e il provvedimento IVASS n. 97 del 2020*, in *Dir. merc. ass. e fin.*, 2021, p. 313.
18. That is, companies, however named and constituted, which carry out insurance or reinsurance activities in any branch and in any form in the territory of the Republic, or capitalisation and management operations of collective funds set up to provide benefits in the event of death, in the event of life or in the event of cessation or reduction of working activity, and insurance and reinsurance intermediaries and any other operator in the insurance market.
19. Actually, as will be seen below, later regulations significantly limited the scope of application of the AAS.
20. Currently, Minister of Enterprise and Made in Italy.

is an alternative to mediation[21] and assisted negotiation procedures[22], and is without prejudice to recourse to any other means of protection envisaged by the law, and this precisely because the stratification of procedural rules has identified, even with non-suit limitations, multiple forums in which the plaintiff may, or must, present their claims.

In response to the provision contained in article 187.1 of the Private Insurance Code, the Ministry of Enterprises and Made in Italy, in agreement with the Ministry of Justice, issued implementing Decree no. 215 of 2024,[23] which was followed by the IVASS regulation containing the detailed technical and implementing provisions for the establishment of the new body for out-of-court settlement of disputes, the Insurance Ombudsman[24], characterised by the adherence of intermediaries and the decisional nature of the procedure, along the lines of the provisions of article 128-*bis* of the Consolidated Banking Law in relation to the institution of the ABF and of article 32-*ter* of the Italian Consolidated Law on Finance (TUF) and of Legislative Decree no. 179 of 2007 for the ACF[25].

Like the ABF and the ACF, where intermediaries are obliged to adhere to the respective ADR procedures, the regulation of the AAS also stipulates that undertakings and intermediaries adhere to it, without the need for special communications, by virtue of their registration in the companies' register, the single register of intermediaries or the relevant lists (article 2, paragraph 2 of Ministerial Decree no. 215 of 2025).

The only exemption envisaged is that for the undertakings referred to in List II in the appendix to the Register of Companies and the intermediaries referred to in the list annexed to the single register of intermediaries, operating under the regime of free provision of services in the territory of the Italian Republic, which may refrain from adhering to the insurance ombudsman system

21. According to Legislative Decree No. 28 of 4 March 2010, published in the Official Gazette No. 53 of 5 March 2010, laying down: «Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali».

22. According to Decree-Law No. 132 of 12 September 2010, converted, with amendments, by Law No. 162 of 10 November 2014, in Official Gazette No. 261 of 10 November 2014, Ordinary Supplement No. 84, laying down: «Conversione in legge, con modificazioni, del decreto-legge 12 settembre 2014, n. 132, recante misure urgenti di degiurisdizionalizzazione ed altri interventi per la definizione dell'arretrato in materia di processo civile».

23. In Italian Law Interministerial Decree No. 215 of 6 November 2024, published in the Official Gazette No. 6 of 9 January 2025, laying down: «Regolamento concernente la determinazione dei criteri di svolgimento delle procedure di risoluzione stragiudiziale delle controversie con la clientela relative alle prestazioni e ai servizi assicurativi derivanti dai contratti di assicurazione, nonché dei criteri di composizione dell'organo decidente e della natura delle controversie trattate dai sistemi di cui all'articolo 187.1 del decreto legislativo 7 settembre 2005, n. 209 e successive modifiche».

24. Technical and implementing provisions contained in Article 13 of the Decree of the Minister of Enterprise and Made in Italy, in agreement with the Ministry of Justice, 6 November 2024, No. 215, containing the regulation concerning the determination of the criteria for conducting out-of-court dispute resolution procedures with customers relating to insurance benefits and services deriving from insurance contracts, as well as the criteria for the composition of the decision-making body and the nature of the disputes handled by the systems referred to in Article 187. 1 of Legislative Decree No. 209 of 7 September 2005, as amended.

25. In particular, paragraph 5-*ter* of Article 2 of Legislative Decree No. 179 of 2007, introduced by Article 1-*bis* of the aforementioned Legislative Decree No. 130 of 2015, tasked Consob with determining «con proprio regolamento, nel rispetto dei principi, delle procedure e dei requisiti di cui alla parte V, titolo II-*bis* del decreto legislativo 6 settembre 2005, n. 206, e successive modificazioni, i criteri di svolgimento delle procedure di risoluzione delle controversie di cui al comma 5-*bis* nonché i criteri di composizione dell'organo decidente, in modo che risulti assicurata l'imparzialità dello stesso e la rappresentatività dei soggetti interessati».

by notifying IVASS and, at the same time, by notifying another extra-judicial settlement system to which they adhere or to which they are subject in their country of origin within the Fin-net network, pursuant to article 2 of Ministerial Decree no. 215 of 2024[26].

As a result of the aforementioned provisions, undertakings and intermediaries are required to provide customers with adequate information on the existence and functions of the AAS, also through contractual documentation and their own website, with the clarification that the right to appeal to the Ombudsman cannot be waived by the customer and can always be exercised, even in the presence of clauses devolving disputes to other dispute resolution bodies contained in the contracts signed.

In addition, intermediaries must ensure that complaints received from investors are also assessed in the light of the AAS case law and that, in the event that the complaint is not upheld, even partially, the investor is provided with adequate information on how and when to file an appeal with the Ombudsman.

## 3. The role of the insurance Ombudsman as an indirect means of insurance market regulation

Within the systematics of insurance law, the AAS is called upon to play a specific and highly relevant role: in fact, direct accessibility exclusively by consumers-clients on a voluntary basis, procedural simplification and, above all, the burden of proof, constitute concrete features that are extremely consistent with a regulatory approach whose purpose is, on the one hand, to precede and not to replace the constitutionally guaranteed protection of rights provided by ordinary justice, which is the judge of the relationship and not of the system[27].

On the other hand, the aim is to bring the conduct of insurance undertakings and intermediaries into line with standards capable of reconciling the interests of all operators in such a way as to conciliate the market[28] and have a deflationary impact on litigation in a sector where disputes before the ordinary judicial authorities have far outnumbered those in matters subject to the jurisdiction of the counterparts ABF and ACF.

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26. The Decree states, in fact, that «l'adesione degli operatori a sistemi di risoluzione stragiudiziale delle controversie costituisce un utile strumento per migliorare i rapporti con la clientela e la fiducia del pubblico nei prestatori di servizi assicurativi, con effetti positivi anche sul contenimento dei rischi legali e reputazionali delle imprese e degli intermediari assicurativi».

27. With regard to the role of the ACF, in legal theory: Di Raimo, *L'arbitro per le controversie finanziarie: i primi orientamenti*, in *Le controversie bancarie e finanziarie – Trattato di diritto dell'arbitrato*, diretto da Mantucci, cit., p. 411, according to whom «la forza coercitiva della decisione del giudice ordinario ne impone il riferimento stretto al rapporto entro il quale è sorta la controversia dedotta in giudizio; riferimento al rapporto, che significa esclusivamente agli interessi delle parti del giudizio medesimo senza spazio per conferire rilievo all'impatto sul tessuto degli altri rapporti costituente lo specifico mercato».

28. Legal theory that has addressed this issue in relation to banking and financial litigation: Antonucci, *Gli strumenti di tutela metaindividuale e collettiva dell'utente finanziario*, in *I contratti dei risparmiatori*, a cura di Capriglione, Milano, 2014, p. 523; Grundmann, *The Banking Union Translated into (Private Law) Duties: Infrastructure and Rulebook*, in *Eur. bus. org. Law rev.*, 2015, 16, p. 357; Sirena, *ADR Systems in the Banking and Financial Markets*, in *Osser. dir. civ. comm.*, 2018, p. 634.

In reality, the AAS's compliance function[29] appears more limited, like that of the ACF, since both have only one panel. In contrast, the ABF[30] is divided into seven panels, all of which are required to ensure a uniformity of guidelines[31]. Such a requirement, although different from the nomophylactic function of the Supreme Court, performs a similar function, namely, to recompose, with a view to future relations, interests attributable to entire categories of counterparties[32].

It should be noted, however, that the Mimit Decree stipulates that the "*insurance ombudsman shall decide with the assistance of one or more panels*", the number of which is determined by IVASS itself, taking into account the number of appeals received and the type of disputes. Nevertheless, this provision may be considered problematic in that, should IVASS decide to create multiple panels to rule on the same matters, there would be no provision analogous to that contained in the rules relating to the ABF, which envisages the existence of two separate bodies, a conference of panels and a coordinating panel, with the primary aim of achieving alignment and conformity of rulings by all territorial panels.

On the contrary, the problem would not exist if IVASS decided to set up several colleges with competences on different subjects, thus avoiding possible conflicts between their decisions.

The European sources, i.e. Directive 2013/11/EU, are common to all three ombudsmen[33]; however, their scope of operation distinguishes them in relation to their respective markets to such an extent that it can be said that ADRs in banking, financial and insurance matters cannot be understood as having a homogeneous purpose[34].

The diversity of the reference context in which the AAS, ABF and ACF operate also has an impact on their operational aspects due to the significant differences between IVASS, the Bank of Italy and Consob: the AAS operates to ensure the adequate protection of policyholders by pursuing the sound and prudent management of insurance and reinsurance undertakings and their transparency and fairness towards their customers. In this context, the ABF has seen customer protection added

29. It deals with the relationship between ADR and supervisory authorities, focusing especially on the effectiveness of judicial measures in ensuring compliance through the so-called *moral suasion*, Tabarrini, *L'indipendenza delle ADR incardinate nelle Autorità di vigilanza*, in *Osser. dir. civ. e comm.*, 2018, p. 239. Indeed, the opinion which considers the judgments as [...] may be interpreted if seen from such perspective «*un vero e proprio atto di esercizio di un potere giurisdizionale di tipo arbitrale*»: Guizzi, *Un anno di ACF tra risultati raggiunti e qualche incognita*, cit., p. 5.

30. Sirena, *Il ruolo dell'Arbitro Bancario Finanziario*, in *Osser. dir. civ. comm.*, 2017, p. 3.

31. This refers to the role of the Coordination Committee and, following the latest regulatory amendment, also to the Conference of Committees.

32. By way of example, the ruling of the Coordination Panel on *omnibus guarantees* no. 14555 of 19 August 2020, which is in line with this position Cass. S.U., 30 December 2021, n. 41994.

33. Article 141-*octies* of Legislative Decree No. 206 of 6 September 2005 (Consumer Code), introduced by Legislative Decree No. 130 of 16 August 2015 No. 130 (implementing the aforementioned Directive 2013/11/EU), which – for the performance of the functions referred to in Articles 141-*nonies* and 141-*decies* of the same Consumer Code as amended by Legislative Decree No. 130 of 2015 – designated the Bank of Italy and Consob as the national authorities responsible for the respective dispute resolution systems with the task, among other things, of verifying compliance with the requirements of stability, efficiency, impartiality, as well as compliance with the principle of the service being, as far as possible, free of charge for the consumer.

34. With regard to the relationship between ABF and ACF, in legal theory: Maffeis, *Regole di vigilanza prudenziale comuni al mondo TUB e al mondo TUF: il conflitto di interessi degli amministratori nel decreto di attuazione della direttiva UE CRD IV e del regolamento UE 525 del 2013*, in *Riv. dir. banc.*, 2015, n. 14 e in *dirittobancario.it*.

to its traditional supervisory functions[35] through the creation of a special Customer Protection and Financial Education Department[36]. Lastly, the ACF carries out a supervisory activity that still appears to be focused exclusively on systemic risks, preventing complementarity due to a different supervisory function, which leads to a lack of communication that is at the root of the continuing autonomy and separation between different powers[37].

The boundary between the activities of the three ombudsmen, as we know, is outlined by the Memorandum of Understanding between the Bank of Italy and Consob on Alternative Dispute Resolution, the latest version of which was signed on 25–26 March 2025. The aims of the Memorandum are: to prevent the emergence of conflicts of interpretation or operational uncertainties in the delimitation of the ombudsmen's respective areas of competence in matters of common interest; to protect customers, guiding them in the correct identification of the competent system; to promote the sharing of good practices that have emerged in the course of the support work carried out by the respective technical secretariats entrusted with ensuring the proper functioning of the system, i.e. the decision-making work of the colleges, and to encourage a sharing of criteria for the exercise of verification activities in the role as competent national authority of the respective dispute resolution systems.

This activity is particularly significant in the light of the evolution of the markets in the face of obvious overlapping margins determined by the growing spread of hybrid instruments and transactions as well as of *fintech* and can, for certain, be considered to be based on the principle of overriding objective through the consistent use of a criterion that favours a functional, rather than a formalistic, approach.

In Italy, the creation of a third ombudsman for the insurance sector will entail the need for a further three-way Memorandum of Understanding that also includes the AAS, also in light of the fundamental consideration of potential overlapping areas of intervention. Suffice it to consider, by way of example, the stipulation of insurance contracts guaranteeing consumer credit agreements and mortgages, as well as the particular characteristics of certain insurance products that denote clear financial characterisations[38].

35. The banking and financial supervisory powers of the Bank of Italy are regulated by the Consolidated Banking Act (TUB), in accordance with European Union provisions, and are designed to protect the sound and prudent management on the part of financial intermediaries, the overall stability, efficiency and competitiveness of the financial system, and the transparency and fairness of the operations and services of banks, banking groups, financial intermediaries, IMELs and payment institutions.
36. Its activities fall into three areas: monitoring the conduct of intermediaries, providing individual customer protection (which is where the ABF comes in) and financial education.
37. Carleo, *L'arbitro-bancario finanziario: anomalia felice o modello da replicare?*, cit., p. 21.
38. Consob and IVASS recently signed three Memoranda of Understanding to strengthen cooperation and coordination in the supervision of issuers supervised by Consob that fall within the scope of IVASS supervision on the distribution of insurance investment products (known as IBIPs, Investment-Based Insurance Products) and in relation to Priips (Packaged Retail and Insurance-based Investment Products) limited to Ibips. Likewise, in February 2025, the Bank of Italy, IVASS and CONSOB signed a Memorandum of Understanding on the identification and supplementary supervision of financial conglomerates. The Memorandum replaces the Coordination Agreement dated 31 March 2006 to take account of changes that had occurred in the institutional framework of supervision with the establishment of the Single Supervisory Mechanism and the evolution of the relevant rules.

In any event, it is also worth considering that the introduction of ADR systems also in the area of insurance disputes, finds its raison d'être in the particular need to protect customers and in disputes, which are often characterised by modest claims and the impossibility of obtaining an effective and timely judicial remedy due to the costs and lengthy timeframes of civil justice, as well as a body of laws that still offers little certainty in the face of considerable risks of fraud[39].

Similarly, it should not be forgotten that the establishment of ADR systems in every legal system is an integral part of a process aimed at fostering good customer relations, with the result that certain procedures may be *more friendly* than others.

It appears, therefore, absolutely correct, in this systemic framework, that the powers of the supervisory authority must be flanked by adequate instruments of *enforcement*, including out-of-court dispute resolution systems, aimed at the protection of customers, to be established in a rapid, cost-effective and effective manner[40]. Such instruments must also guarantee a high degree of professionalism and competence as a safeguard for the weaker contracting party, also in view of the fact that dispute resolution methods are, albeit indirectly, an application of the principles of transparency and fairness in contractual relations.

Finally, another very delicate aspect regarding the establishment of ADR systems in the insurance sector, as has already been seen in Italy in the banking and financial sectors, arises from the different characteristics of the procedures to be chosen and "problem-solving tools", the legal nature of the outcome that the parties can obtain at the end of the proceedings, as well as the costs to be incurred to obtain them or, at least, to satisfy the mandatory requirement of mediation in these specific areas of application imposed by Legislative Decree no. 28 of 2010 and assisted negotiation limited to the insurance sector.

At this point, the question to be asked is whether the AAS's operating rules remain within the ambit of the European legislature's intentions and whether, therefore, the regulatory and conformation role played by the AAS will be in line with its European arbitration counterparts and, at national level, with ABF and ACF.

The answer to this question can only emerge from an initial examination of the rules governing the operating procedures of the ombudsman, pending the case law that will ensue following the effective operation of the AAS.

## 4. The scope of operation of the insurance Ombudsman

In order to correctly identify the scope of the new Ombudsman outlined by the Mimit Decree and IVASS, it should be noted that the AAS regulation stipulates that the jurisdiction *ratione materiae* is defined by precise requirements and limits in order to focus its action on disputes of lesser complexity and value, thus ensuring a swift resolution.

39. Just consider the restrictions placed on the right to testify in court (three times in five years, after which a report is made to the Public Prosecutor's Office) and the creation of the register of witnesses and injured parties referred to in Article 135 of the CAP, precisely with the aim of curbing the rampant phenomenon of fraud, with particular reference to the compulsory motor vehicle insurance not involving any personal injuries.

40. Article 187.1 CAP states that procedures must in any case ensure that protection is rapid, economical and effective.

Within this framework, disputes of a documentary nature[41] arising from an insurance contract and relating to the ascertainment of rights, including compensation, obligations and powers concerning insurance services and performances, or the non-observance of the rules of conduct envisaged in relation to the exercise of the activity of insurance distribution, fall within the jurisdiction of the AAS.

In contrast, disputes concerning claims managed by the guarantee fund for hunting and road accident victims[42] and disputes relating to matters falling within the jurisdiction of the Concessionaria Servizi Assicurativi Pubblici S.P.A. (CONSAP) are excluded from the jurisdiction of the AAS, as are disputes relating to major risks[43].

With regard to the jurisdiction *ratione temporis* of the AAS, article 9 of the Mimit Decree stipulates that disputes submitted to the panel must relate to actual facts or conduct that the claimant became aware of no later than three years prior to the date the complaint was lodged[44].

A crucial aspect relating to the operation of the AAS is the limit on the value of customer claims: in fact, with regard to jurisdiction by value, a distinction is made based on the contract class to which the litigation relates.

With respect to life insurance, the claim may be for the payment of a sum of money provided that this does not exceed Euro 300,000 if the dispute concerns class I contracts (life insurance) and the benefits under the contract are payable only in the event of death, or Euro 150,000 if the dispute concerns class I contracts and contracts of the other life classes.

On the other hand, with reference to disputes relating to non-life insurance contracts, the value of the claim may not exceed Euro 2,500 if the dispute concerns the right to compensation for damage for civil liability and is brought by the injured third party bringing a direct action against the insurance undertaking of the liable party, and Euro 25,000 in all other cases.

The provision of a dispute value threshold is in line with the established practice of other sectoral ombudsmen (ABF or ACF, which typically handle disputes up to Euro 200,000 or 500,000 for claims). In the system of ADR instruments employed by independent authorities, the introduction of a value threshold aims to streamline proceedings and to prevent recourse to the ombudsman from becoming an indiscriminate alternative to ordinary justice for major disputes that require a more detailed and complex investigation.

Also excluded from the jurisdiction of the AAS are disputes already submitted to the ordinary courts, or to other ADR entities, or disputes for which the time limits for court action have already expired, which is typical of actions for damages in the insurance field.

The process for access to the AAS is essentially structured in two well-defined stages, designed to incentivise a pre-litigation resolution and to ensure that recourse to the AAS is the last out-of-court resource.

41. Without prejudice to the right of the panel to hear the parties, in any case, the insurance arbitrator may not order technical expert reports or the taking of witness statements or verbal declarations.
42. As defined by Article 1, paragraph 1, letters p) and q) CAP.
43. As defined by Article 1, paragraph 1, letter r) CAP.
44. The temporal jurisdiction of the AAS is therefore different from that of other arbitrators.

Before being able to appeal to the AAS, the customer must first have made a formal complaint[45] to the insurance undertaking or intermediary involved in the dispute. This preliminary step is essential to give the operator the opportunity to resolve the matter internally.

In light of this characteristic, which is also inherent in ABF and ACF, recourse to the AAS is admissible only where the operator did not reply to the complaint within the time limits envisaged by the sectoral legislation[46], or if the reply received was deemed unsatisfactory by the customer. Likewise, in order to be eligible, the appeal must be made within twelve months of the complaint being lodged[47].

Once the prerequisites have been verified, the customer may file an appeal with the AAS, which is free of charge to clients, subject to the payment of a Euro 20 contribution towards procedural expenses[48].

It is important to emphasise that, in the event that the undertaking or intermediary loses the case and the customer's appeal is upheld, in whole or in part, this Euro 20 contribution is reimbursed by the operator itself[49]. The appeal must be submitted using the telematic methods that will be made available, attaching the relevant documentation.

The appeal may be lodged directly by the customer without legal assistance. Two precise features of the procedure are evident from a reading of this provision: the first is the possibility for the customer to be assisted by a solicitor or a consumer association, and this is primarily due to the transposition of Directive 2013/11/EU, which envisages special consumer-protection measures.

The second, meanwhile, is the clear discrepancy between the rule and the provisions of Legislative Decree no. 28 of 2010, which, in areas where an attempt at mediation is mandatory, such as those in which the AAS operates, imposes the necessary assistance of a lawyer, an absence that has already seen the development of judicial precedents that are in certain respects inconsistent, if not incomprehensible [50].

45. Article 1 of the Mimit Decree, under letter i), defines a complaint as: «una dichiarazione scritta di insoddisfazione della clientela, avente ad oggetto una prestazione o un servizio assicurativo o un comportamento relativi ad un contratto assicurativo, ricevuta da un'impresa o da un intermediario».
46. The company or intermediary shall respond within the time limit set out in the provisions on complaints, which were issued by ISVAP Regulation No. 24 of 19 May 2008, according to Article 7 of the Insurance Code.
47. In any event, the legal principle applicable to other arbitrators applies, according to which «ricorso vale reclamo» with the consequence that, if the appeal is declared inadmissible due to the lack of a complaint, the customer may immediately lodge a new appeal.
48. This amount is more symbolic and acts more as a filter than it does to actually cover costs, and it is also the same for the ABF, whereas at the ACF, the appeal is free of charge for the appellant, as the costs of initiating the proceedings are borne by the Guarantee Fund for the extrajudicial protection of savers and investors in accordance with Article 8 of Legislative Decree No. 179 of 2007.
49. Similar to what happens in front of the ABF.
50. Case law has ruled that a claim cannot be brought before the ordinary courts if the party in mediation was assisted by a solicitor and did not participate personally in the proceedings, on the basis that mediation «aims to re-establish communication between the parties to the dispute in order to enable them to explore the possibility of an agreed solution to the conflict; this necessarily implies that immediate interaction between the parties is possible in front of the mediator... without the filter of the lawyers – since the settlement agreement is of a highly personal nature and cannot be delegated». In this regard: Trib. Vasto, 9 marzo 2015; ancora: Trib. Roma, 26 ottobre 2015; Trib. Pavia, 9 marzo 2015 e Trib. Firenze, 19 marzo 2014. The mandatory involvement of a solicitor in mediation has raised various doubts about its constitutionality. In legal theory: Ieva, *Mediazione e assistenza (non imperativa) dell'avvocato*, in *Corr. giur.*, 2014, p. 949.

It follows that for the same dispute, if the customer decides to turn to a mediation body recognised by the Ministry of Justice, they will necessarily have to be assisted by a lawyer, whereas, if they decide to turn to the AAS, they may do so in person or through a consumer association. Thus, the reasons put forward by case law requiring the involvement of a lawyer appear to be partly contradicted *per tabulas* by the provisions of the AAS, always taking into account, however, the diverse nature of the two instruments[51].

Once the appeal has been received, the technical secretariat[52] carries out a preliminary investigation, verifying the admissibility of the appeal and acquiring the necessary documentation from both parties. The rules fully guarantee respect for the adversarial principle, with the possibility for the undertaking or intermediary to present its counter-arguments.

Once the parties have completed the documentation phase, the case is submitted to the adjudicating panel, which examines the dispute and takes a reasoned decision.

The technical secretariat submits the file to the panel and notifies the parties at the same time. Upon receipt of the file, the panel have to reach a reasoned decision by a majority of its members within 90 days. The time limit may be extended once by the panel for up to a further 90 days in the case of particularly complex disputes and the technical secretariat notifies the parties accordingly.

Unlike the other sectoral ombudsmen, the panel may formulate conciliatory proposals that the technical secretariat communicates to the parties. Ten days after the communication, if the parties do not agree, the panel resumes deliberation of the appeal.

## 5. The composition of the insurance Ombudsman panel

The rules pertaining to the composition of the Ombudsman's panel of arbitrators and its appointment are set out in article 4 of the Mimit Decree: specifically, the mechanism can be said to closely resemble that of the ABF and ACF even though the decision-making activity of the AAS appears, at least in the initial phase, to be centred on a single panel.

The panel is composed of five members[53], the same number envisaged for the ABF and ACF panels: the Chairperson and two members are chosen by IVASS; one member is chosen by the most rep-

51. The company or insurance broker may also appear in front of the AAS in person or through their trade association or with the assistance of a solicitor.

52. The technical secretariat plays a fundamental role in the functioning of the AAS, acting as the organisational and managerial hub of the entire process. Its activities are detailed in the IVASS implementing provisions and include the administrative management of appeals: preliminary investigations, communications with the parties, support to the panel and tracking the progress of cases and resolution times. The technical secretariat is therefore the main point of contact for the parties involved and the operational arm that ensures the proper conduct of the proceedings, from the initial stage of receiving the appeal to the communication of the panel's decision. Its efficiency is crucial to ensuring the speed that the AAS aims to offer.

53. The provision was established in order to ensure, in accordance with the principle of representativeness of the categories concerned, the thoughtfulness of the decisions taken and an effective distribution of appeals and the resulting workloads among the members of the panel. In the same manner as for the five permanent arbitrators, one or more substitute members are designated and appointed to replace the permanent members in the event of absence, impediment, suspension, forfeiture, revocation, resignation or abstention as specified in Article 51 of the Italian Code of Civil Procedure.

resentative national trade association of enterprises; one member is appointed jointly by the most representative national trade associations of intermediaries, which may satisfy the requirement of representativeness through agreements between trade associations[54].

The fifth member of the panel is appointed by the Italian National Council of Consumers and Users, referred to in article 136 of the Consumer Code, and for the other categories of customers, other than consumers, by a member designated jointly by the most representative trade associations at national level, which have carried out continuous activity in the preceding three years[55].

All members of the panel are chosen from persons of undisputed independence and integrity and of specific and proven competence in legal, insurance, financial or technical disciplines relevant to insurance [56].

The Chairperson remains in office for five years and the other members remain in office for three years, and may be re-appointed once[57]; at the end of the second term, alternate members and full members may be appointed to the role of full member and Chairperson, respectively, for a single further term; two years after the end of the term, including any renewals, the person may be re-appointed[58].

The organisation of the AAS appears to be fully in line with the existing experiences of other independent authorities in Italy and allows us to affirm the complete autonomy of the Ombudsman with respect to the other institutional activities of IVASS itself[59]. However, the AAS, as constituted, appears to be a body established by a public entity, which lacks legal personality and, by law, must avail itself of resources and structures identified by IVASS that are delegated to a technical secretariat based in IVASS offices in Rome.

The five members of the Ombudsman's panel of arbitrators[60] cannot hold political office and must possess adequate qualities of competence, experience, and unquestionable independence and integrity, considering these requirements of fundamental importance in order to provide the Ombudsman with the authority, autonomy and capacity necessary to perform the relevant functions.

54. The composition of the panel is determined according to the nature of the entity against which the appeal has been lodged. However, when the appeal is filed against both the company and the intermediary, the members jointly identify who among them will participate in the panel; if no agreement is reached, the member is identified by the chair, who decides based on the nature of the dispute and the prevailing interests involved.
55. In this case, when convening the panel, the president identifies the member competent in relation to the category to which the applicant belongs.
56. Having held corporate offices or having been employed by intermediaries and their associations or consumer associations in the last two years, or having worked on the basis of relationships that determine their inclusion in the company organisation, are considered causes for exclusion of designation.
57. The powers of the president have been supplemented with the express provision of the power to declare the inadmissibility of the request for correction pursuant to Article 17; this addition, therefore, serves exclusively to coordinate with the provisions of paragraph 3 of Article 17.
58. These provisions are similar to those for ABF and ACF arbitrators.
59. In addition to the bodies set up by the individual chambers of commerce, the ABF, the ACF and the corporate bodies recognised by the Ministry of Justice, there are a number of national bodies such as the Arbitration Chamber for Public Contracts, the National Arbitration Chamber for Agriculture, the Conciliation and Arbitration Chamber for Sport and the Conciliation and Arbitration Chamber of the Institute of Advertising Self-Discipline.
60. A president and four members.

As noted above, the Mimit Decree clearly outlined the characteristics and composition of the panels so as to ensure efficiency and timeliness in the settlement of appeals and in compliance with the provisions of article 141 *bis* of the Consumer Code.

The Ministry, in defining the criteria for the appointment of the members of the AAS, clearly referred to the existing legal framework, and, in particular, to the ABF, the ACF and the Public Contracts Code in the part that regulates the Chamber of Arbitration for Public Contracts[61].

The Decree, in defining the subjective requirements of the members of the AAS, stipulates that they must belong to four absolutely heterogeneous categories, such as university professors, retired magistrates, professionals registered in professional registers with seniority of at least 12 years, and former employees of the Supervisory Authorities who have ceased to perform their supervisory functions[62].

Finally, the Decree provides an indication of situations of incompatibility in order to ensure the proper execution of duties (article 4, paragraph 9).

## 6. The proceedings, the decision and its fulfilment

One of the strengths that characterises the activity of the new Ombudsman, like the ABF and ACF, is the speed with which disputes are settled. For this purpose, as already highlighted above, the AAS is called upon to issue its reasoned decision within 90 days; decisions are published on the AAS website by the technical secretariat.

The undertaking or intermediary must implement the decision within 30 days of its notification and, within five days thereafter, provide the technical secretariat with documentation proving compliance. Failure to do so is equivalent to non-compliance.

The decision may not be reviewed on its merits, but may nevertheless be subject, upon request of a party, to correction of mere clerical and calculation errors within a period of 30 days from receipt of the decision complete with the grounds for the request for correction.

In this way, a principle immanent in the discipline of ADRs has been made explicit in order to discourage inadmissible requests for review.

The other party is promptly notified of the filing of the request for correction by the technical secretariat, which then refers the request to the Chairperson for action.

In the regulatory and conformation perspective that also permeates the activity of the AAS, the rules aimed at ensuring intermediaries timely comply with the decision are decisive, also

61. Odorisio, *Il nuovo regolamento sulla organizzazione e sul funzionamento della Camera arbitrale dei contratti pubblici*, in *Riv. arb.*, 2015, p. 597; De Robertis, *L'arbitrato nell'appalto dei lavori pubblici e la camera arbitrale*, in *Cons. Stato*, 2003, II, p. 1652; Verde, *Le funzioni "paragiurisdizionali" della Camera arbitrale per i lavori pubblici*, in *Riv. arb.*, 2001, p. 155; Vaccà, *Procedure e deontologia della camera arbitrale dei lavori pubblici*, in *Contratti*, 2001, p. 427; Borghesi, *Il regolamento di procedura della Camera arbitrale per i lavori pubblici*, in *Corr. giur.*, 2001, p. 944; Luiso, *La Camera arbitrale per i lavori pubblici*, in *Riv. arb.*, 2000, p. 411.

62. Regarding the professional requirements for professionals called upon to serve as arbitrators at ABF and ACF, who are exclusively lawyers, accountants, and notaries, this limitation does not appear to be reproduced in the decree; likewise, retired professors are excluded due to the absence of an express indication in the regulation.

in order to instil in undertakings and intermediaries the necessary confidence in the operation of the dispute resolution body, under penalty of sanctions of a purely reputational nature.

As in the case of ABF and ACF, the sanctions envisaged appear particularly incisive and apt to discourage intermediaries from failing to comply with the decisions made by arbitrators, making the customer even more confident in choosing to submit their appeal before the Ombudsman.

In the event of non-compliance with the provisions of the decision, the technical secretariat of the AAS shall make this known, in compliance with the rules on the processing of personal data, by publication in a special section of the AAS website for a period of five years.

Within 15 days of its publication on the AAS website, the undertaking or the intermediary publicises it, in turn, for six months in a special section of the home page of its website[63], informing the technical secretariat[64] without delay.

The effectiveness of reputational sanctions lies in the fact that reputation is an invaluable intangible asset for any market player, especially in an industry based on trust, such as insurance.

Publicising the breach exposes the operator to a significant risk of loss of credibility in the eyes of current and potential customers, but also of business partners and supervisory authorities.

This mechanism creates a strong deterrent against non-compliance with the decisions of the AAS. In fact, an undertaking or intermediary that does not respect the arbitration decision risks not only economic damage resulting from the specific dispute, but above all long-term image damage, which may result in a reduction in business volume and a deterioration of customer relations. The prospect of being labelled as "non-compliant" on the website of a recognised authority such as IVASS, and even more so on one's own website, is a powerful incentive to honour the Ombudsman's decisions.

Although the default of the company and the intermediaries must be regarded as a residual and certainly undesirable scenario compared to the ordinary course of the procedure following the decision issued – which is, by its very nature, intended to conclude, from a compliance-oriented perspective, in the event that the company and the intermediary are unsuccessful, with the enforcement of the order set out in the operative part – the five-year period of publication of the intermediary's non-compliance appears to be a reinforcing element of the decision in light of the objectives pursued by the out-of-court arbitration system.

However, the prolonged exposure of intermediaries' non-compliance could represent a point of weakness for the AAS system, which, in the eyes of clients wishing to use this ADR instrument, thus risks appearing less effective in its compliance capacity. In any case, the provision of a long publication period discourages future "unethical" behaviour by intermediaries, who evidently have a vested interest in protecting their good name.

63. If the intermediary does not have its own website, it must comply with the disclosure requirements set forth in Article 12, paragraph 2 of the ministerial regulation by posting a specific notice on its premises.

64. Once the five-year period has passed, the technical secretariat shall remove the publication from its website. Before the expiry of this period, the panel may order the deletion at the request of a party, in the event that a final judgment has been handed down by the ordinary judicial authority in favour of the company or intermediary, or if the company or intermediary has notified the full compliance with the decision, even if late, or the reaching of a documented agreement between the parties.

## 7. Conclusions

The Insurance Ombudsman represents a fundamental development in the landscape of out-of-court dispute resolution in Italy before independent authorities. In line with European best practices and with the consolidated experience of other sectors, such as banking and finance, this new body will act as a bastion for the protection of customers' rights in the complex world of insurance.

Its inception, the result of a careful legislative process involving several EU Directives, the Private Insurance Code, the Consumer Code, a ministerial regulation and the implementing provisions of IVASS, testifies to the seriousness and consideration with which it was conceived. Its structure, based on the requirements of accessibility, speed, specialisation and independence, aims to overcome the inefficiencies and costs of ordinary justice, offering an effective and affordable alternative route.

The creation of the AAS represents a major milestone in the evolution of the consumer protection system in the insurance sector, with important future prospects and implications for the market.

In fact, a better functioning of out-of-court dispute resolution systems can significantly contribute to increasing customer confidence in undertakings and intermediaries, also improving their relations[65].

A key aspect for the evolution of the AAS will be the formation of "consolidated guidelines": the repetitiveness of certain types of disputes and the consistency of the decisions taken by the panel will lead to the creation of a "corpus" of interpretations and applications of insurance rules and principles.

These guidelines will serve as a guide both for operators insofar as they will provide a clear reference for handling complaints and assessing the likelihood of a successful appeal, encouraging compliance with established practices, and for consumers insofar as they will provide greater clarity about their rights and realistic expectations in the event of a dispute, guiding them in their decision as to whether or not to file an appeal, as well as for the system as a whole insofar as they will help reduce legal uncertainty and promote greater uniformity in the application of rules of conduct in the insurance market.

The reasons underlying the legislative intervention appear to be correctly pursued through the rules issued, which are aimed at promoting the smooth functioning of the procedure, also with a view to general efficiency. These rules, on the one hand, target the system of arbitration before independent authorities to consolidate the ADR role, increasingly oriented towards the principles of speed, cost-effectiveness, impartiality and effectiveness of protection, while, on the other hand, warding off the risk of non-homogeneous decisions, which, for that matter, could lead to an increase in the litigation rate. This allows undertakings and intermediaries to adapt their actions to the guidelines that emerge from arbitration, in the conformative role of the ombudsman that has been outlined in this work.

65. Bertarini, *Il rilievo assunto dagli strumenti giuridici di risoluzione alternativa delle controversie: impatto sulla fiducia dei consumatori nel mercato*, in *La tutela giurisdizionale effettiva dei diritti*, a cura di Bertolissi, Lamandini e Nania, cit., p. 592.

## Nowy włoski Rzecznik Ubezpieczeniowy

*W niniejszym artykule przedstawiono nową instytucję Rzecznika Ubezpieczeniowego (AAS), będącym najnowszym włoskim instrumentem alternatywnego rozstrzygania sporów (ADR) w sektorze ubezpieczeniowym, wprowadzonym w ramach wdrażania europejskich dyrektyw dotyczących ochrony konsumentów i dystrybucji ubezpieczeń.Po przedstawieniu odpowiednich europejskich ram prawnych – w szczególności dyrektyw 2013/11/UE, 2014/65/UE i 2016/97/UE – autor analizuje transpozycję tych dyrektyw do prawa włoskiego, a zwłaszcza do Kodeksu ubezpieczeń prywatnych oraz przepisów wykonawczych IVASS (Istituto per la Vigilanza sulle Assicurazioni). Autor podkreśla, że z systemowego punktu widzenia AAS pełni funkcję pośredniej regulacji rynku, promując jednolite praktyki i przyczyniając się do ograniczenia liczby sporów sądowych. Stworzenie zbioru orzecznictwa i ujednoliconych wytycznych wzmocni pewność prawną, poprawi przejrzystość stosunków umownych oraz ułatwi podmiotom gospodarczym przestrzeganie przepisów. Podsumowując, autor posuwa się nawet do stwierdzenia, że AAS stanowi znaczący krok naprzód w ewolucji ochrony konsumentów w sektorze ubezpieczeniowym, umacniając rolę ADR jako skutecznych i szybkich alternatywnych narzędzi rozstrzygania sporów, zdolnych do wywierania wpływu na dynamikę rynku poprzez coraz bardziej istotne działania interpretacyjne.*

**Słowa kluczowe:** Rzecznik, ubezpieczenie, umowa ubezpieczenia, ADR, spory

***NICOLA SOLDATI*** – Professor at the Alma Mater Studiorum University of Bologna, Department of Sociology and Business Law
e-mail nicola.soldati@unibo.it
ORCID: 0000-0002-2542-266X