



**FA** | FINANCIAL ARBITER  
OF THE CZECH REPUBLIC

Annual Report **2007**



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## Word of Introduction

The main mission of the Financial Arbiter of the Czech Republic is to ensure a quick, free-of-charge and efficient out-of-court settlement of clients' disputes with institutions. To put it simply, the Financial Arbiter is authorized to decide disputes between institutions (e.g. banks or institutions issuing electronic payment instruments) and their clients when making transfers of funds, corrective settlement, collection form of making payments or using electronic payment instruments.

The institute of the Financial Arbiter was established in early 2003. The emergence of an independent body to decide disputes in the area of the system of payment in the out-of-court manner, or rather the passing of an act on the establishment of such an institute, i.e. the act on Financial Arbiter, has a history of its own. The establishment of this body was preceded by not a completely easy road. The original draft of the act on out-of-court settlement of disputes in the system of payment, the so-called act on financial arbitration, was radically different from the act on Financial Arbiter which was passed later.

The fact is that the existing term Financial Arbiter was taken exactly from the original draft of the act. However, it should be noted that this term is, in comparison with other similar institutes within the EU, unique; abroad, the established term is the financial or banking ombudsman. Not even during its operation, the institute of the Financial Arbiter has always been "in clover". It will be only based on a permanent and extensive activities that will help it find its valid place within the system of the consumer protection in the Czech Republic. Its development goes hand in hand with the development and cultivation of the financial sector, namely both the institutional and the client one. I believe that the principles of the consumer protection will gradually become as strongly established in the Czech Republic as they are abroad.

The scope of the system of the consumer protection keeps becoming globally bigger and bigger. It was already J. F. Kennedy who mentioned this idea almost fifty years ago. The European Commission exerts stronger and stronger pressure on the transposition of all its recommendations and directives into the legislation of the Czech Republic. In this light, the discussion and realization of the extending of the scope of activities of the Financial Arbiter of the Czech Republic in order to get to the level usual in other countries of the European Economic Area seems inevitable. This consideration is based also on the requirements of consumers themselves. With its contemporary narrow authority, the Czech Financial Arbiter is an absolute exception within the countries of the European Economic Area.

I strongly believe that we will manage to resolve this complex task in this term of office and that the position and prestige of the institute of the Financial Arbiter will assist to it becoming the real protector of the financial rights of consumers in the Czech Republic.

Dr. Ing. František Klufa  
Financial Arbiter of the Czech Republic

## Introduction

This annual report on the Financial Arbiter (hereinafter referred to also as the “Arbiter”) has been processed and presented in compliance with the provisions of S. 21, para 1 of Act 229/2002 Coll. on Financial Arbiter, as amended (hereinafter referred to only as the “Financial Arbiter Act”). The Annual Report comments on the activities of the previous Arbiter, JUDr. Ing. Otakar Schlossberger, PhD., for the year 2007.

The main mission of the Financial Arbiter is to ensure a quick, free-of-charge and efficient out-of-court settlement of clients’ disputes with institutions.

The Financial Arbiter is authorized to decide disputes between institutions (e.g. banks or institutions issuing electronic payment instruments) and their clients when making transfers of funds, corrective settlement, collection form of making payments or using electronic payment instruments as per act No. 124/2002 Coll. on transfers of funds, electronic payment instruments and payment systems (hereinafter referred to also as the “act on the payment system”), as amended.

The Institute of the Financial Arbiter was established as at 1 January 2003, namely within the harmonization of the law of the Czech Republic with that of the European Union countries (as per the Financial Arbiter Act). The House of Deputies elects the Financial Arbiter for the term of office of 5 years by the means of a public voting out of persons who meet the conditions stipulated by this act. It is institutions, their professional associations and consumer protection professional associations that have the right to present proposals of persons to be elected.

The Financial Arbiter performs the duties in his position in an independent and unbiased manner. He must refrain from everything that might raise questions concerning his being unbiased. He is responsible for the fulfilment of his position to the House of Deputies.

The Financial Arbiter is authorized to address the above disputes if they happened after the moment when the Financial Arbiter Act became effective and if the amount which is subject of dispute does not exceed, as at the day when the petition is filed, the sum of EUR 50,000. The typical dispute for example is an unauthorized use of the payment card when paying in a shop or its use in an ATM, an unauthorized transfer within the Internet banking, an unauthorized transfer of funds from an account.

The Financial Arbiter’s authority, on the contrary, does not include, except for transfers or collections disputes for example from the area of mortgages, loans, saving schemes of building societies or disputes originating outside the EU member states and other states forming the European Economic Area. The main contribution of the existence of the Financial Arbiter for the clients is the speed of his decision-making, free-of-charge proceedings, high level of knowledge of the issues involved.

## 1. Activities of the Arbiter and the Arbiter’s Office

The Report on the activities of the Financial Arbiter is prepared for 2007 when this position was held by JUDr. Ing. Otakar Schlossberger, Ph.D., whose term in office ended on 1 January 2008.



The new Financial Arbiter, Dr. Ing. František Klufa, was elected by the House of Deputies of the Parliament of the Czech Republic on 25 October 2007 (Decree No. 452) and his term in office started on 2 January 2008.



On 6 December 2007, the House of Deputies of the Parliament of the Czech Republic again elected JUDr. Petr Scholz the Deputy Financial Arbiter whose second term in office started on 6 March 2008.

In the course of the year under review, the Financial Arbiter authorized other private individuals, who were not employees of the Czech National Bank (hereinafter referred to only as “CNB”), to carry out investigations concerning specific matters in accordance with the Financial Arbiter Act.

They were especially judicial experts in the field of graphology, a judicial expert in the field of economy, namely banking and insurance, specialized in direct debit – domestic and foreign payment cards and cheques, international payment systems, computer processing, settlement and security and protective elements in payment cards systems and an attorney. Other than that, they were experts in the area of issuing and using electronic payment instruments and also persons specialized in the area of the payment system.

In compliance with the provision of S. 19 of the Financial Arbiter Act, all institutions are obliged to meet their duty to notify in respect of the Arbiter. For this purpose, a form has been created (available at <http://www.finarbitr.cz/>)

cs/financi-arbitr-formulare-ke-stazeni.html) which makes it possible to these institutions to easily meet this duty to notify.

Based on the information arrived in this way, the Arbiter published, in compliance with the Financial Arbiter Act, a list of involved institutions which is also available at the above Arbiter's website (<http://www.finarbitr.cz/cs/instituce-seznam-instituci.html>).

The office hours for the public were set as follows: from Monday to Thursday 8:30 a.m. – 3:30 p.m., Friday: 8:30 a.m. – 2.30 p.m. and they were not changed after the evaluation of the previous years. In case that a claimant contacted the Arbiter's office at other times than the determined opening hours, all information was always provided to him/her as well as an appropriate service.

**Address of the Arbiter's registered office:**

Washingtonova ul. 25  
110 00 Praha 1

**Contact:**

Tel.: 221 674 600  
Fax: 221 674 666  
e-mail: [arbitr@finarbitr.cz](mailto:arbitr@finarbitr.cz)  
<http://www.finarbitr.cz>

## 2. Staffing and Administrative Provision of the Performance of the Arbiter's Work

In the period under review, the fulfilment of the Financial Arbiter Act was provided for directly by the Arbiter, his Deputy and other five employees of whom three were professional experts and two employees ensuring the administration support. All employees of the Financial Arbiter's office were employed by the CNB for a definite period which was limited by the Financial Arbiter's term.

All professional experts were permanently authorized to perform investigations in compliance with the provision of S. 12, para 7 of the Financial Arbiter Act which authority was granted to them by the Arbiter.

The performance of the Arbiter's activities was ensured as per the below brief overview:

**Financial Arbiter**

Made decisions concerning disputes presented to him. He gave to the employees tasks on behalf of the employer, he organized, managed and checked their work. He established cooperation with similar bodies and institutions in EU member countries and states that are part of the EEA. He also cooperated with EU bodies and informed the public about the Arbiter's activities in the press, on the radio and television and also through the Internet. He also presented the Arbiter's function in a form of lectures and publication activities.

**Deputy Arbiter**

He filled in the Arbiter's position as necessary. He addressed disputable cases with which petitioners approached the Arbiter and prepared materials for the Arbiter's decisions. He processed groundwork materials for the fulfilment of the Arbiter's activities and provided the Arbiter with expert assistance in meeting obligations of international cooperation. He took part in meetings with involved parties (the Ministry of Finance, the House of Deputies of the Parliament of the CR, some associations dealing with the consumer protection, etc.) in the matter of the planned extending of the Arbiter's authority. He also presented the Financial Arbiter's institute in a form of lectures and publication activities.

**Financial Arbiter's Main Analyst**

He prepared groundwork materials and proposals for the Financial Arbiter's negotiations at international level and at the top bodies of the CR. He participated in negotiations in relevant committees and commissions of the Chamber of Deputies of the Parliament of the CR. He processed the continuous as well as final reports on the Arbiter's activities and for the FIN-NET association. He processed all the press releases of the Arbiter. He regularly checked and evaluated the duty of institutions to notify.

He performed investigations in the matters of proceedings before the Arbiter and prepared factual and expert groundwork materials for Arbiter's decisions in the given matters. He assessed filed petitions with regard to their admissibility and prepared groundwork materials for their being settled. He provided the petitioners, upon their request, the assistance with the writing, filing and/or supplementing the petition to open proceedings.

**Financial Arbiter's Legal Expert**

He coordinated the procedure of external specialists in case that they were authorized by the Arbiter to process expert viewpoints. He analyzed and generalized the results of proceedings in order to prepare summary reports and groundwork materials.

He performed investigations in the matters of proceedings before the Arbiter and prepared factual and expert groundwork materials for Arbiter's decisions in the given matters. He assessed filed petitions with regard to their admissibility and prepared groundwork materials for their being settled. He provided the petitioners, upon their request, with assistance with the writing, filing or supplementing the petition to open proceedings. He prepared groundwork materials for the information provided to the public concerning individual cases.

#### Financial Arbiter's Methodology Specialist

He performed investigations in the matters of proceedings before the Arbiter and prepared factual and expert groundwork materials for Arbiter's decisions in the given matters. He assessed filed petitions with regard to their admissibility and prepared groundwork materials for their being refused.

He analyzed and generalized the results of proceedings before the Arbiter in order to prepare summary reports and groundwork materials and took part in the creation of internal working procedures for the performance of the Arbiter's activities.

#### Financial Arbiter's Specialist

He received all the correspondence delivered to the Arbiter through the Internet and prepared groundwork materials for media analyses. Other than that, he provided the applicants with basic information concerning the filing of petitions to open proceedings before the Arbiter and regularly updated the Arbiter's website.

He provided, on the Arbiter's website, the basic information concerning similar bodies and institutions in EU member countries and states that are part of the EEA and also concerning EU bodies. He ensured support of communication with media entities within the CR.

#### Expert Secretary

He organized and ensured administration/technical works related to the performance of the Arbiter's activities. He provided the applicants with basic information concerning the filing of petitions to open proceedings before the Arbiter. He maintained a database of the central files of received petitions to open proceedings and of clients' suggestions and filled in the position of the Financial Arbiter's Specialist at the time when he was not present in the office.

Based on the previously concluded contract between the Arbiter and the CNB, the performance of the Arbiter's activities on the part of the CNB was ensured especially in the area of salary and other benefits, personnel, financial, IT technologies and the material securing and services.

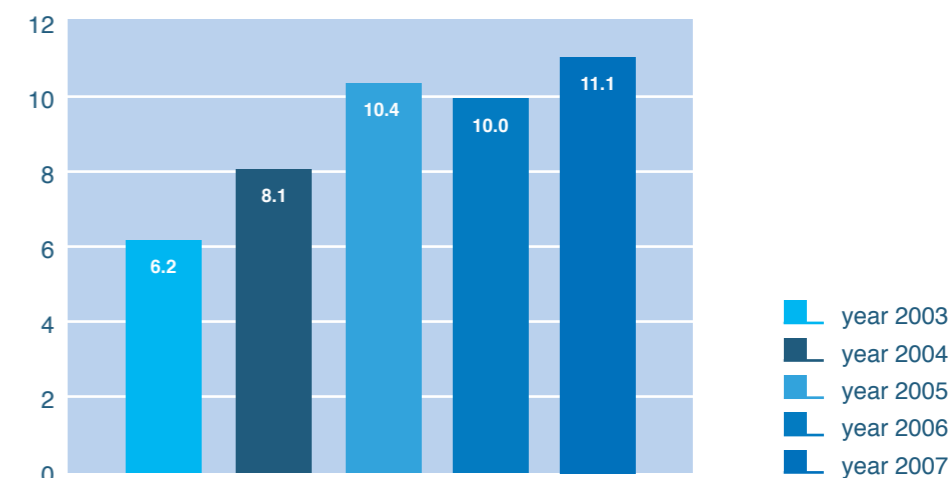
## 3. Budget

The costs of the performance of the Arbiter's activities are tied with the CNB's budget. These costs amounted to CZK 11,086 million in 2007.

A comparison of costs of the Financial Arbiter's activities in the period of 2003 - 2007 is set out in the following diagram.

Diagram No. 1

Costs of the Arbiter's activities in 2003 – 2007 (in CZK million)



CNB's income generated from the performance of the Arbiter's activities comprised only income from imposed penalties. As at 31 December 2007, based on the lawful penalties imposed by the Arbiter, the institutions paid penalties in the overall amount of CZK 225,565. Of that, the total number of 14 penalties were paid in the minimum amount<sup>1</sup> of CZK 10,000, one penalty in the amount of CZK 28,011 and one penalty in the amount of CZK 57,554.

<sup>1</sup> S. 17a of Act No. 229/2002 Coll. on the Financial Arbiter

## 4. The Arbiter's Notification Activities and the Duty of Institutions to Notify

The Financial Arbiter's duty to notify was carried out by the Arbiter as per S. 21 of the Financial Arbiter Act and, since 2005, newly, also as per the provisions of S. 5 of the Financial Arbiter Act.

On 6 February 2007, the Arbiter organized a press conference where he informed all of the present journalists, expert as well as the lay public about the activities of the Arbiter in the previous period.

In compliance with the provision of S. 5, para 3 of the Financial Arbiter Act, the Arbiter presented to the Chamber of Deputies the report on its activities for 2006 (Chamber of Deputies' print 193) which was discussed at a meeting of the Standing Commission for Banking of the Chamber of Deputies of the Parliament of the CR (Decree No. 3 of 25 April 2007).

To the Arbiter's duty to notify belongs the publishing of the annual report which he, for 2006, distributed in a printed form with an appendix in a PDF format on a CD.

This report was made public on the Arbiter's website (available at: [http://www.finarbitr.cz/download/3\\_cs\\_vz\\_financni\\_arbitr\\_cj\\_2006.pdf](http://www.finarbitr.cz/download/3_cs_vz_financni_arbitr_cj_2006.pdf)).

This website also provided basic information about the Arbiter's and his Deputy's roles and powers together with conditions for opening of proceedings designed especially for the petitioners.

There is also available a form for filing a petition in the PDF format and a form to file a petition to open proceedings before the Arbiter in an electronic form.

The website also provided existing legal standards related to the Arbiter's activities. At the same time, updated references to websites of central banks of the EU member countries of the European Economic Area and similar consumer protection institutes in the EU member countries were made public there.

In February 2007, the Arbiter published, in the number of 15,000 copies, a promotion leaflet designed for the lay public in order to extend the awareness of the Arbiter's activities in the CR which was distributed especially through the Consumer Protection Association, Association of Czech Consumers and the civic association SPES.

Even in 2007, the Arbiter featured in the media and commented on the system of payment issues. He also answered questions through on-line discussions. He also featured at various expert conferences and seminars where he presented activities of the Arbiter in the CR.

Other duties to notify of the Arbiter include the publishing of a list of relevant institutions. Among these institutions are, in compliance with the provision of S. 14, para 1, letter a) of the act on the payment system, banks and subsidiaries of foreign banks<sup>2</sup>, co-operative savings banks<sup>3</sup>, issuers of electronic money<sup>4</sup>, institutions with foreign-exchange licence<sup>5</sup> and other issuers of electronic payment instruments.

<sup>2</sup> [http://www.cnb.cz/cs/dohled\\_fin\\_trh/bankovni\\_dohled/bankovni\\_sektor/seznam\\_instituci/seznam\\_bank/index.html](http://www.cnb.cz/cs/dohled_fin_trh/bankovni_dohled/bankovni_sektor/seznam_instituci/seznam_bank/index.html).

<sup>3</sup> [http://www.cnb.cz/cs/dohled\\_fin\\_trh/dohled\\_dz/dz\\_seznam/index.html](http://www.cnb.cz/cs/dohled_fin_trh/dohled_dz/dz_seznam/index.html).

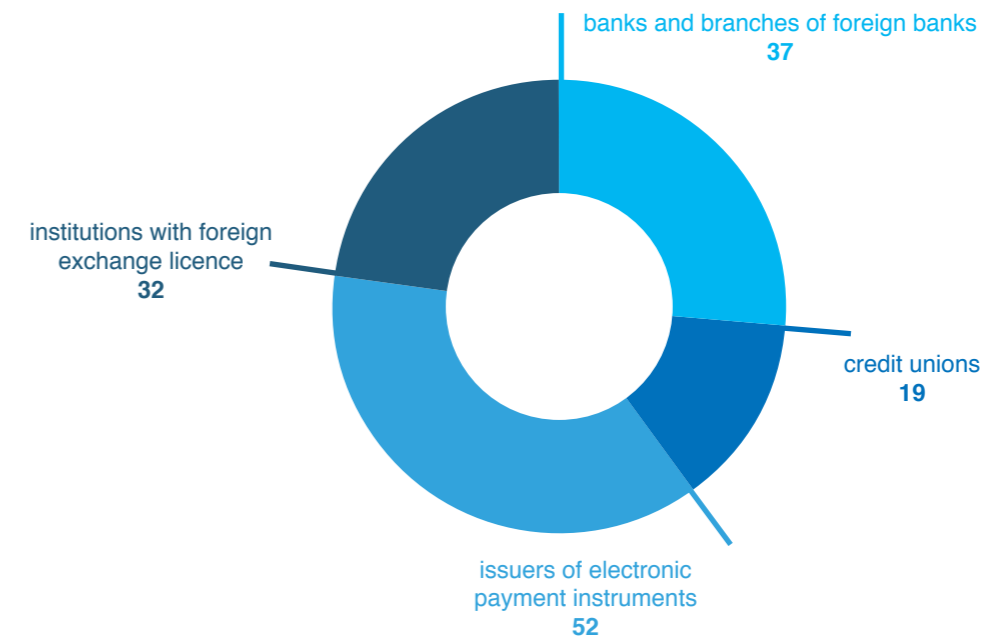
<sup>4</sup> [http://www.cnb.cz/cs/platbni\\_styk\\_elektronicke\\_penize/index.html](http://www.cnb.cz/cs/platbni_styk_elektronicke_penize/index.html).

<sup>5</sup> [http://www.cnb.cz/cs/dohled\\_fin\\_trh/devizovy\\_dohled/seznam\\_devizovych\\_mist/licence/index.html#jednicka](http://www.cnb.cz/cs/dohled_fin_trh/devizovy_dohled/seznam_devizovych_mist/licence/index.html#jednicka).

The number of these institutions as at 31 December 2007 on the files of the CNB (except for the issuers of electronic payment instruments) with the duty to notify in respect of the Arbiter<sup>6</sup> is set out in the following diagram.

**Diagram No. 2**

Structure and number of institutions that operate in the CR and have the duty to notify



<sup>6</sup> S. 19 of Act No. 229/2002 Coll. on the financial arbiter

## 5. Process of Proceedings before the Arbiter

### 5.1 Proceedings Rules

In 2007, no legal modifications concerning the Arbiter's activities took place. Proceedings before the Arbiter are governed by the Financial Arbiter Act and also by the Support Rules of Administrative Procedure (Act No. 500/2004 Coll.).

The below Principles of Proceedings before the Financial Arbiter are only of informative nature. The more detailed process of the proceedings before the Arbiter was already described in previous reports.

The Arbiter is, in compliance with the Financial Arbiter Act, an arbitration body designed to decide disputes between transferring institutions and their clients when making transfers as per the act on the payment system, corrective settlement<sup>7</sup> and collection up to the amount of EUR 50,000.

Other than that, the Arbiter is entitled to decide disputes between the issuers of electronic payment instruments and holders of such instruments when issuing them<sup>8</sup> and using them.

The Arbiter is entitled to address these disputes if the competence in respect of the settlement of the disputes is given to a Czech court.

The proceedings before the Arbiter are opened only based on a petition of a petitioner (a client of an institution or the issuer). In accordance with the Financial Arbiter Act, a form was created, available on the above website of the Arbiter, which makes it easier for the petitioners to file their petitions. Such a filing may be also made electronically<sup>9</sup>.

If the delivered petition to open proceedings has defects, these must be, based on the Arbiter's communication, removed by the petitioner within 15 days<sup>10</sup>.

If the dispute, in compliance with the provision of S. 9 of the Financial Arbiter Act does not belong to the Arbiter's competence, or rather the dispute is or was a subject of proceedings before the Arbiter or if in the same matter proceedings before a court have already been started or rather the court has already made a decision or the dispute is or already was the subject of arbitration proceedings, the petition is not acceptable.

The Arbiter, when settling the dispute, is not bound by the petition and pro-actively obtains evidence. He is entitled to require the participants in the proceedings to present any evidence, namely including the oral explanation.

The institution is, inter alia, in compliance with the provision of S. 12, para 6 of the Financial Arbiter Act, obliged, at the Arbiter's invitation to present, within 15 days, the required documents, take part in the meetings and provide explanation and relevant documentation related to the subject of the dispute.

The Arbiter, in compliance with the rules of administrative procedure<sup>11</sup>, also orders an expert opinion to be prepared by judicial experts.

The Arbiter may also, in the course of the proceedings, approach other institutions which are not participants in the proceedings, namely in order for them to provide explanation or to present required documents<sup>12</sup>.

If the Arbiter, in the course of the proceedings, later finds out that the petition is not acceptable or the petitioner failed to meet the lawful synergy or took his/her petition back, the proceedings are stopped in compliance with S. 14 of the Financial Arbiter Act.

The Arbiter decides about the matter itself based on an arbitration award in compliance with S. 15 of the Financial Arbiter Act which is, in writing, delivered to the own hands of the participants in the proceedings. The award (finding) includes the statement, reasoning and advice on objections

The participants in the proceedings may file, within 15 days of the delivery, justified objections. The Arbiter, by issuing a decision on the objections within 30 days (of the delivery of the objections) either confirms the award or changes it<sup>13</sup>.

At the same time, the Arbiter imposes on an institution a penalty amounting to 10%, however, at least CZK 10,000 if the Arbiter grants in his award (if only partly) the petitioner's petition. The Arbiter shall impose a penalty also in cases when the subject of the dispute is not a monetary amount. Based on the lawful finding, the sanctions are collected and enforced by the CNB<sup>14</sup>.

### 5.2 General Information about Settled Cases

In 2007, the Arbiter settled 95 cases, out of them 67 justified and 28 unjustified.

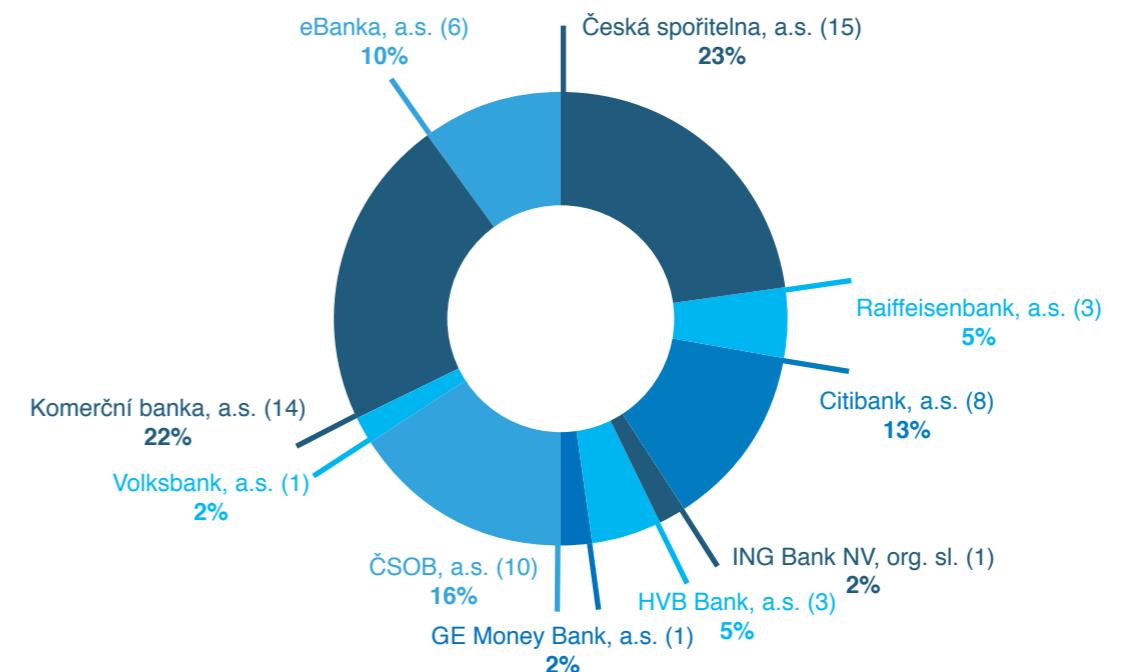
Other than that, during the period under review, 101 petitioners approached the Arbiter in writing and 174 petitioners by phone with their problems or with requests for assistance.

Approximately 20 petitioners a month visited the Arbiter's office directly, in person.

The information about institutions affected by petitions to open proceedings for the year 2007 is set out below.

**Diagram No. 3**

Justified cases – specification by institutions



Other than that, a petition was filed against Stavební spořitelna České spořitelny, a.s., 1 petition against GE Money Multiservis, a.s. and 3 petitions against CETELEM ČR, a.s.

<sup>7</sup> As per Act No. 21/1992 Coll., on banks and Act No. 87/1995 Coll., on savings and credit cooperatives, as amended.

<sup>8</sup> E.g. payment cards or electronic purses.

<sup>9</sup> [Http://www.finarbitr.cz](http://www.finarbitr.cz).

<sup>10</sup> The deadline may be extended on the basis of a request.

<sup>11</sup> S. 56 of act No. 500/2004 Coll., Rules of Administrative Procedure.

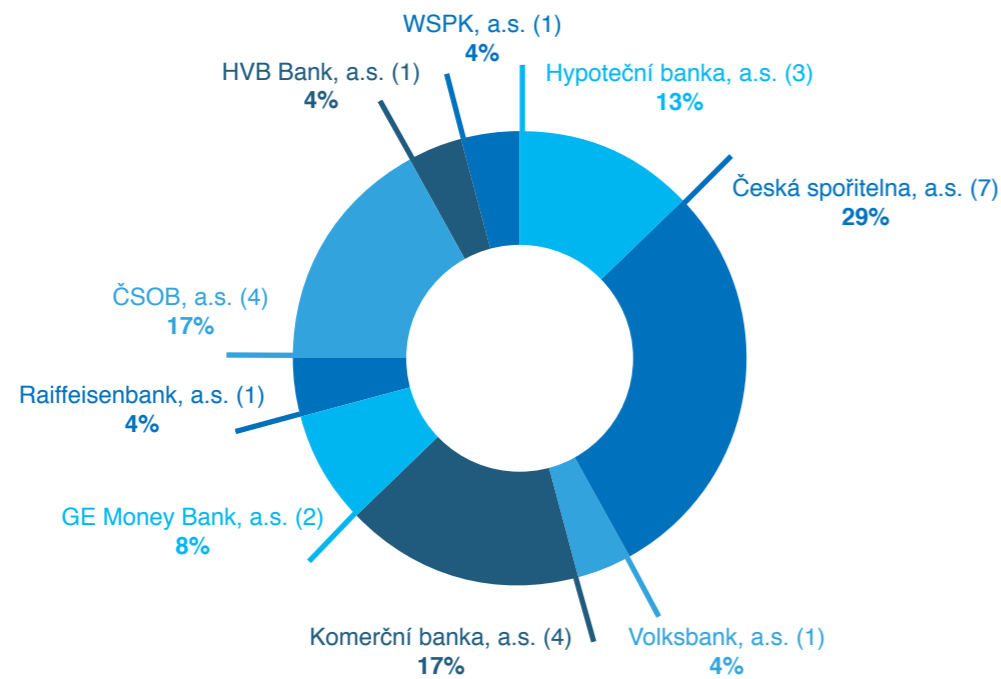
<sup>12</sup> ???

<sup>13</sup> S. 16 of Act No. 229/2002 Coll. on the financial arbiter

<sup>14</sup> ???

**Diagram No. 4**

Unjustified cases – specification by institutions

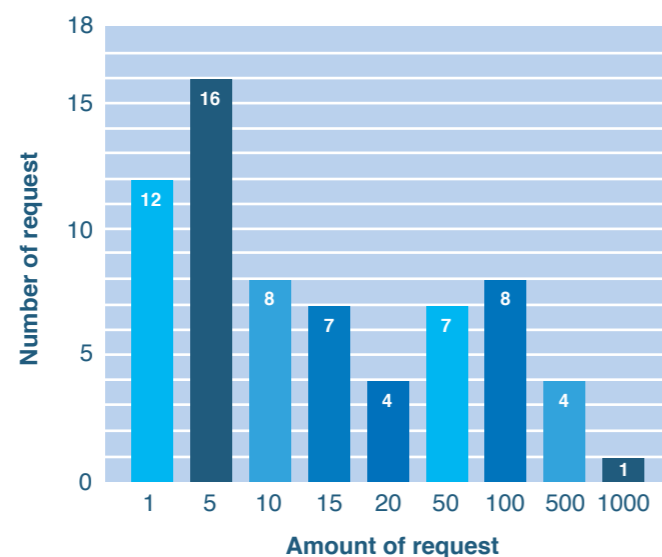


In addition to the above institutions, the total number of 4 unjustified cases were filed in 2007 against other institutions, namely specifically against AllPay.eu Ltd., ESSOX s.r.o., Česká pojišťovna a.s. and Home Credit a.s..

The average financial sum of demands in opened (justified) disputes amounted, in the period under review, to CZK 36,378.43.

**Diagram No. 5**

The financial amount of demands in opened disputes in 2007 (in CZK '000)



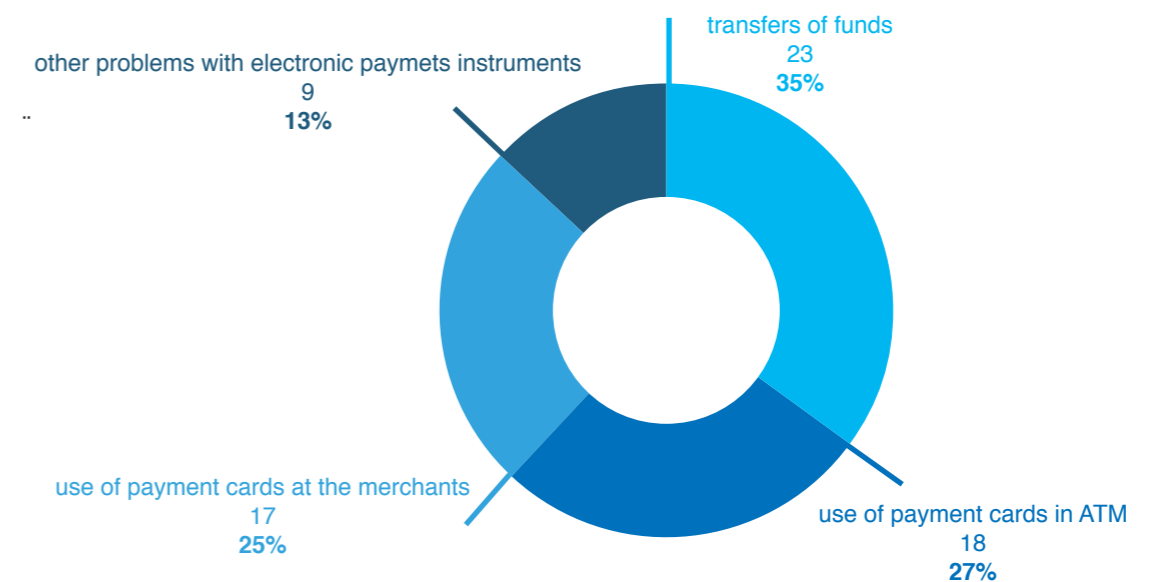
The following diagram shows in what number justified petitions to open proceedings were received in 2007 by individual types of disputes.

The petitioners had problems most often with the theft of payment cards and their later abuse in shops or issues in collecting funds from ATMs.

Among other cases, it is possible to include especially the issues of the Internet or telephone banking.

**Diagram No. 6**

Received justified cases in 2007 by the types of dispute



In the period under review, the Arbiter received 101 queries in writing, namely especially from the area of mortgage (4), loans (11), saving with building societies (6), insurance (5) and investment banking (4). Other queries concerned contractual conditions (9), charges (11) and other issues unspecified in a detailed manner (34). Queries falling under the Arbiter's competence (17) were mostly from the EPP area.

The Arbiter also registered telephone queries, mostly from the area of mortgage (11), loans (14) and saving with building societies (7). 12 queries concerned the insurance, 3 concerned pension insurance and another 3 concerned investment banking. Other queries concerned contractual conditions (17) and charges (9). 55 queries concerned issues not specified in a detailed manner and 43 queries concerned issues falling under the Arbiter's competence.

In addition to the above areas, queries were focused especially on the issues of seizures, behaviour of institutions' employees, possibility to delete data from the debtors register, transfer outside the EEA countries, the amount of fees and contractual conditions of maintenance of accounts. Other queries concerned general information about the deadlines for transfers, passbooks, banking secret, cash and foreign-exchange operations, transfers through post money orders and collection of cheques.

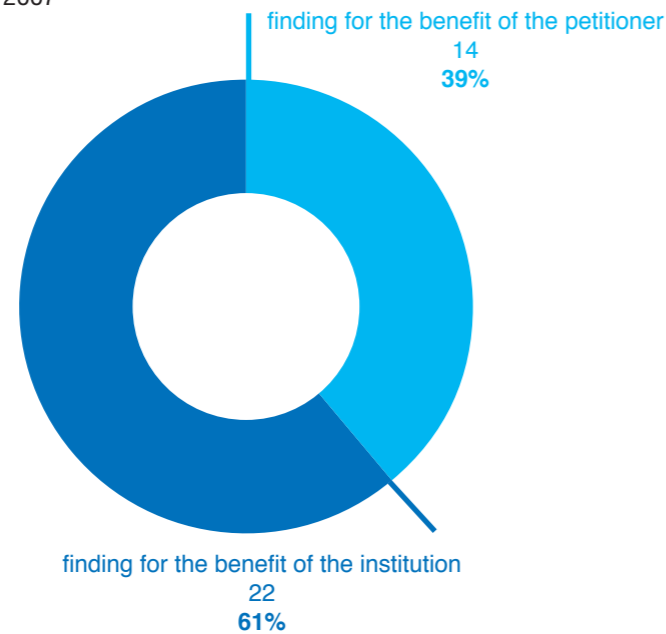
In the period under review, also information and contacts about other FIN-NET members were handed over and contacts to other bodies operating in the CR, namely the Czech Association of Insurers, Association of Financial Intermediaries and the CNB.

In 2007, the Arbiter also issued 36 findings (structure of issued findings see diagram No. 7), 17 decisions about objections concerning findings and 25 cases were stopped at the petitioner's proposal. In most cases, these requests were due to the institution's settlement with the petitioner before the finding was issued. This trend may be explained

by the institutions' effort to settle disputes with petitioners in a peaceful way. What contributed to these peaceful settlements is also the fact that the Arbiter, as mentioned above, in compliance with the law, imposes a penalty on the institutions amounting to 10% (however, at least CZK 10,000) if he grants, in his finding, the petitioner's petition.

**Diagram No. 7**

Breakdown of awards issued in 2007

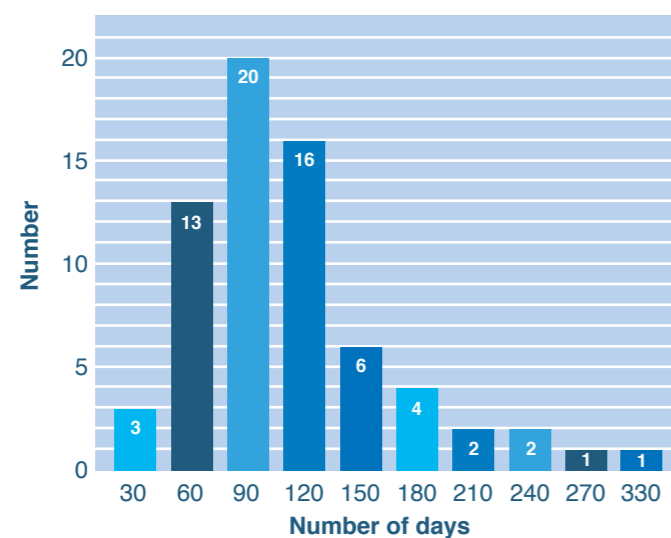


The average period of duration of the proceedings before the Arbiter was, during the period under review, 98 days. This period starts as at the date when the petition to open proceedings is received. This period continues through the issuance of findings and potential decision on the objections until the finding's becoming legally effective or until the decision to stop the proceedings (for example for reasons of taking the petition back). This period, however, does not allow for the possibility to stop or interrupt the proceedings which is made possible by the Financial Arbiter Act and the Rules of Administrative Procedure.

The following diagram provides the number of individual cases as per the average length of the proceedings period.

**Diagram No. 8**

Average length of proceedings in 2007 (in days)



In the period of 2003 – 2007, competent courts delivered to the Arbiter 4 actions whereby the suitors demanded that the Arbiter's decision to impose a penalty for the failure to adhere to the duty to notify is cancelled and 9 actions whereby the suitors demanded that a decision on the imposing of a penalty for the breach of obligations based on the lawful finding of the Arbiter is cancelled.

The Arbiter also had on his files one action by which the petitioner demanded in court that a dispute is settled by the Arbiter. The subject matter between the petitioner and the institution was issues of the contractual relationship in the matter of the maintenance of an account which, however, is not within the competence of the Arbiter. The petitioner was informed about this fact, however, the petitioner did not agree with the Arbiter's decision not to decide a dispute between the petitioner and the institution and required that a court decides the Arbiter to settle his dispute with the institution.

**5.3 Information about Heard Cases**

The Arbiter mentions, in compliance with the provision of S. 21 of the Financial Arbiter, selected cases which he addressed in the previous period.

**Use of Electronic Payment Instruments**

**Case A1**

The petitioner sought that institution compensate his damages sustained by him when funds were drawn from his account amounting to EUR 7,918.52 through an abused payment card.

Since October 2004, the petitioner had problems with the functioning of his payment card. Based on his complaint, the institution blocked this card for reasons of a suspicion that it might be abused, later it unblocked it. In May 2005, the institution issued to the petitioner a new card with the identical number as the card about whose functionality the petitioner complained. However, not even the newly issued card functioned reliably and the petitioner could not use it in June and July 2005 for reasons of its failure to function. The petitioner informed the institution about this issue and personally also visited it seeking a remedy. In August 2005, the petitioner made several payments using this card, however, the card then ceased to function. In late October 2005, the petitioner found out that payments were made in France using the copied (first or second) card where he was not present at the time when the transactions were realized.

In order to find out the facts related to this matter, the Arbiter requested an expert opinion of a judicial expert who dealt, inter alia, with the liability of the petitioner for the sustained damage as per the business conditions. The expert opinion confirmed that the checking of the transactions made using the card was not made for the period of 1 year although he had problems using it which was what he complained about. In the opinion of the institution, this is why the petitioner is to a large extent to blame for the large number of fraudulent transactions which he must have discovered had he properly monitored statements of his card account.

Although the Arbiter tried to settle the dispute peacefully which would consist in the petitioner's being compensated in the amount of the damage sustained to him by the fact that the second card was issued with the same number as the first one, this suggestion was not acceptable for neither of the parties to the dispute. By this, the Arbiter exhausted all the opportunities the Financial Arbiter Act provides him with in settling such a dispute. For the above reasons, the Arbiter decided so that he dismissed the petitioner's petition.

**Case A2**

Within the settlement of an application to increase the credit limit in a supplementary credit card maintained in the name of a family member, the petitioner claimed to have suffered a damage of her good name. Therefore she claimed from the institution a payment of the amount of CZK 1,120 for lost time and telephone calls including a compensation for the damaged good name.

The petitioner said to the Arbiter that she approached the institution by phone asking it to increase the credit limit in a “supplementary credit card” with such a requirement usually being settled within five working days. As a follow-up, the petitioner urged this requirement and then complained in conjunction with it. The limit was increased only much later which she learned only after a communication made in writing and sent by post by the institution.

In her petition, the petitioner also stated that in the course of the settlement of her petition, she suffered a damage of her good name since she had to make payments for accommodation services to her foreign suppliers using other financial resources.

In her petition, the petitioner also expressed a disagreement with the wording of the Business Conditions for the holders of credit cards (hereinafter referred to only as the “hereinafter referred to as the “Conditions”) issued by the institution and mentioned that she, as the client, does not have an opportunity to adjust the wording thereof so that the Conditions are bilaterally acceptable.

An increase in the credit limit in the supplementary credit card took place after eight working days. Since the institution in its Conditions has no period stipulated which is required for the processing of the client’s demands, there was no fault on the part of the institution in this matter.

The Arbiter could not grant the petitioner’s requirement to be compensated the amount of CZK 1,120 for the lost time and telephone calls because, despite being invited repeatedly to do so, the petitioner never presented any documents which would prove the given expenses.

On the part of the institution, there was no breach of a legal obligation ensuing from the contractual relationship concluded with the petitioner and, at the same time, the institution did not breach provisions of the act on the payment system. For the above reasons, the Arbiter decided so that he dismissed the petitioner’s petition.

#### Case A3

A petitioner sought that institution returns funds in the amount of CZK 248.54 withdrawn from the petitioner’s account. He justified his petition by saying that he has established a student account and, after having received the payment card and PIN, the petitioner wanted to establish the “AA” service provided by the institution. He received a numerical code and used it as instructed. The result of this attempt was an announcement that the petitioner was not the institution’s client. The petitioner repeated this several times with the same result. Therefore, the petitioner filed a complaint and required that the invested funds into a non-functional service were returned.

The Arbiter found out that the institution was contacted by a caller whose voice did not correspond to the voice of the petitioner. The telephone banker, after having passed the security procedure, ended the call for reasons of a potential for an abuse. The institution’s call centre reviewed the previous petitioner’s calls and by comparing the voices, it was found out that the owner of the telephone banking service has a clearly younger voice than the man who called.

The call centre employee then contacted the petitioner at the given telephone number. The call was again made by a man with an older voice who claimed to be the petitioner. The call was ended for security reasons and this information was handed over to the relationship manager in question. Later, the father of the petitioner came to the institution’s branch and admitted that it was him who contacted the telephone banking service on behalf of his son.

The Arbiter stated that the petitioner breached the contractual arrangement with the institution when instead of the identification number, which was his birth-certificate number, he entered PIN in signing up to the “AA” application and this was the origin of the increased costs sustained by him (telephone charges related to the service). The institution, by its act, did not cause any damage to the petitioner.

For the above reasons, the Arbiter decided in his finding so that he dismissed the petitioner’s petition. However, since the Arbiter found out during the objection proceedings, that the institution made a settlement with the petitioner, he cancelled the contested finding and stopped the proceedings.

#### Case A4

Based on a petition, proceedings were opened against an institution concerning the use of the internet banking. The petitioner was, in his own words, misled by the institution since the institution on its website offered clients a service of sending an account statement free of charge, however, when the petitioner used this offer, the institution charged this service to him as a repeated sending of an account statement in the amount of CZK 80.

The petitioner complained about the above procedure at the institution, the institution accepted its error, adjusted the information on its website, however, it failed to return the claimed amount to the petitioner. That is why the petitioner approached the Arbiter in the above matter.

In the course of the evidencing procedure, based on the statement made by the institution, it became clear that the institution credited the claimed amount of CZK 80 to the petitioner’s account.

The petitioner confirmed that and therefore the petition clearly became groundless. Therefore, the Arbiter issued a decision to stop the proceedings.

#### Case A5

A petitioner sought that institution returns her drawn funds in the total amount of CZK 12,761. The petitioner justified her petition by the fact that in the account statement sent by the institution for September 2006, she found out that in the course of the period under review, i.e. for September 2006, fictitious items Nos. 1, 2, 3, 4 were charged to her current account and, later, to her memorandum account. The institution communicated to the Arbiter, inter alia, that transaction No. 3 amounting to CZK 7,025 is an addition of the amount of CZK 25 for the fee for a payment card transaction (withdrawal from an ATM of another institution) and the amount of CZK 7,000 (withdrawal from an ATM) and transaction No. 4 amounting to CZK 3,873.68 is the addition of the total number of 4 operations (CZK 2,000 – withdrawal from an ATM; CZK 1,760.50 – a payment made by a payment card; CZK 114 – a fee for the maintenance of the account and CZK 0.82 a positive settlement of interest).

Such a procedure of the institution was, in the Arbiter’s opinion, contrary not just to the own Conditions of the institution but also to the provision of S. 7, para 3 of the act on the payment system and provisions of S. 6 of Decree No. 62/2004 Coll. which stipulates the manner of performance of the system of payment among banks, settlement on accounts in banks and the technical procedures of banks in corrective settlement.

In his finding, the Arbiter stated that the whole problem consisted in the fact that the institution interchanged the authorization with the settlement itself (the accounting performance of a transaction). The institution considers the authorization of a card transaction already the settlement date and as at that date it subjects the withdrawn funds from the memorandum account to interest. By doing so, the institution breached S. 6, para 1 of the act on the payment system since it determined, of its own will, as the effective date of the transfer order the date when it failed to receive groundwork materials necessary to perform the transfer.

The Arbiter further stated that the institution by its behaviour (in this case, the settlement of transactions) breached, inter alia, the provision of S. 7, para 3 of the act on the payment system and the provision of S. 6 of Decree No. 62/2004 Coll., and also the provision of S. 712 of act No. 513/1991 Coll., the commercial code.

Therefore, the Arbiter decided that the institution was obliged to compensate the petitioner for interest on the memorandum account withdrawn in an unauthorized way in conjunction with the realization of card operations including the default interest and, at the same time, to pay a penalty amounting to CZK 10,000 for having breached the law.

The institution in the objections filed later did not prove any new facts which would lead the Arbiter to change the finding and thus he confirmed the finding by his decision about the objections.

## Transfers of Funds

### Case B1

By his petition, the petitioner sought that institution returns funds in the amount of CZK 10,362.33 to the credit of the petitioner's account. The petitioner justified his petition by the fact that he made an order from his account to a cross-border transfer to the credit of the recipient amounting to DKK 70,858. The crown equivalent of the order amounted to CZK 272,845.81.

The institution communicated to the petitioner that the transfer failed to be performed because of an erroneously entered account number of the recipient and that the amount of the transfer was returned back to the credit of the petitioner's account in the amount of CZK 262,483.48. The difference between the amount debited from the orderer's account and the amount credited (refunded) was CZK 10,362.33. The petitioner asked the institution to return this difference. The institution dismissed the petitioner's claim consisting in the demand to return the given difference.

In the course of the evidencing procedure, the Arbiter found out that the petitioner concluded with the institution Contract on Account Maintenance in the Czechoslovak currency (Contract) the inseparable part of which are Conditions for the Maintenance of the Account in the Czechoslovak Currency. Both contractual parties also undertook in the Contract to govern their act in compliance with the General Terms and Conditions issued by the institution. The General Conditions stipulated the manner of translation of foreign currencies so that the institution sold in the cashless form funds to the client in a foreign currency for Czech crowns using the "cheques sell" rate and purchased them from the Client for Czech crowns using the "cheques buy" rate.

Based on the performed evidencing procedure, the Arbiter arrived at a conclusion that the institution did not breach the provisions of the act on the payment system. For the above reasons, the Arbiter decided so that he dismissed the petitioner's petition.

### Case B2

Proceedings concerning the matter of a delayed transfer of funds was started based on a petition of a petitioner which, however, did not have requirements stipulated by Art10, para 1 of the Financial Arbiter Act. The petition did not include a document proving that the institution was invited to provide a remedy by the petitioner.

The Arbiter invited the petitioner to remove the defects of the petition which she, however, failed to remove within the stipulated deadline. These defects caused that it was not possible to continue in the proceedings. Therefore, the Arbiter issued a decision to stop the proceedings.

### Case B3

A petitioner sought that the institution returns funds in the aggregate amount of CZK 78,180 saying that she came to a branch of the institution and asked that the amount of CZK 75,000 is sent via the P service to Berlin.

Before having made the transfer, the petitioner was assured that the recipient would receive the funds after having presented the identity document. She checked through the website that the funds were ready for being picked up. However, when checking it again, she found out that the amount was paid out. The petitioner commented on this that since neither she nor her friend made a trip to Germany, it was not possible for them to pick up the funds.

The institution in its comments sent to the Arbiter stated that the institution did not accept the petitioner's claim since it deemed not to have breached any of its obligations, and in case that the petitioner sustained a damage, the institution was not responsible for it. In compliance with the provision of S. 12, para 5 of the Financial Arbiter Act, the Arbiter invited the petitioner and her friend to provide an oral explanation.

She stated to have communicated the number of the transaction only to her friend. She also stated that immedi-

ately after having found out that the funds had been picked up by an unauthorized person, she called the institution's branch by phone. They were told that the money was really collected.

The Arbiter from the evidential material of the institution (a print-out of the computer screen of the agent mediating the transfer) found out that the recipient of the money presented the identity document showing, inter alia, the name and surname, place of birth (Germany), nationality (Spanish), type of identification document – the EU identification card, No. XXX issued in 2004.

The petitioner's friend presented to the Arbiter an identity card No. YYY and the passport No. ZZZ.

From the other evidential material presented by the institution it ensued, inter alia, that the recipient set out the identical name and surname of the petitioner's friend. Other data were completely different. From the above, it clearly resulted that there was a difference among all identification data having a relation to the recipient except his name and surname. This concerned especially the place of residence, date of birth, type and number of the identification document including the date when it was issued.

In the course of the evidencing procedure, the Arbiter found out, inter alia, that from the conditions set out on the rear side of the presented document, it ensued that the service of the P transfer is designed for the transfer of money between close persons or persons who knew each other very well. Further, it is set out here that the sender undertakes to communicate the identification data about the transfer only to the person of the recipient and not to another person.

The petitioner, in the Arbiter's opinion, clearly met these conditions.

The institution failed to protect the funds entrusted to it and, while using an absolutely inappropriate security mechanism, made, through the mediating institution, the payout of the funds to another person than the one stated by the petitioner.

Therefore, the Arbiter, within the meaning of S. 15 of the Financial Arbiter Act, decided by the means of his finding that the institution was obliged to compensate to the petitioner the funds amounting to the total of CZK 78,180 and, at the same time, to pay a penalty amounting to CZK 10,000 for having breached the law.

### Case B4

In his petition, a petitioner sought that institution compensated him for a delayed transfer of funds in the amount of CZK 257,538.38 to an account maintained at another institution. The petitioner justified his petition by the fact that the required transfer of the funds amounting to 257,538.38 was credited to the petitioner's account late.

From the statement made by the institution it ensued that the transfer of the funds to the other institution was really performed late. The institution realized its fault which it explained by the implementation of a new banking system. It calculated the amount of compensation ensuing from the lost interest for the given period to amount to CZK 90.16 and transferred it to the account of the petitioner.

Since the petition for the opening of the proceedings for the above reasons became clearly unjustified since the petitioner neither in his petition nor in the course of the proceedings provided a figure or documented that the late transfer was the reason for another financial damage, the Arbiter decided to stop the proceedings.

## 6. The Arbiter's International Cooperation

Within the meaning of S. 20 of the Financial Arbiter Act, the Arbiter, his Deputy and professional experts of the Arbiter's office made, in the period under review, business trips to selected similar bodies in order to exchange experience from the area of consumer protection and cooperation within FIN-NET.

### Experience from Denmark

The Deputy Arbiter took part in a meeting at Pengeinstitutankævnnet - Complaint Board of Banking (CBB), at Realkreditankævnnet - The Mortgage Credit Complaint Board (MCCB) and a meeting at Ankenævnet for Forsikring - Danish Insurance Complaints Board (DICB).

The groundwork materials are processed by the secretariats only after the fee of DKK 150 is paid which amount is, in case of a positive settlement, returned back to the petitioner.

CBB addresses specific complaints of private individual consumers (legal persons only to a limited extent) in respect of financial institutions. The activities of the secretariat is funded by a banking association.

Concerning the matters of the consumer's complaints, the decision is made by a committee of five members, unless the dispute is settled by the secretariat within the "preparatory proceedings" If the committee issues a decision which is for the benefit of a consumer, the institution is obliged (based on an agreement of banks with the Danish banking association) to pay a penalty of DKK 10,000 which represents an income of the secretariat.

MCCB – settles disputes related to mortgage loans. The secretariat prepares groundwork materials for decisions made by the MCCB. In case that the mortgage bank fails to contest the decision made by the committee within the period of 4 weeks, the decision is final. If the mortgage bank contests the decision, the secretariat announces to the claimant all opportunities how to continue with the dispute in court and the manner of its funding.

DICB – Accepts complaints practically against all insurance products, however, it does not work with third party liability. Unlike banks, these insurance companies do not pay, if a decision is against them, any penalty. On the contrary, a fee is paid for each settled dispute which is related to the amount of the contested sum.

### Experience from Ireland

The Arbiter met the Irish ombudsman who settles disputes among clients, small companies and providers of financial services (banks, building societies, insurance companies, savings cooperatives, intermediaries of mortgage, insurance, stock-exchange brokers, providers of loans, exchange offices and health insurance companies). The petitioners may be only natural persons using financial services, limited liability companies (up to the turnover of less than EUR 3 million and charity associations, clubs, funds, foundations and others).

The ombudsman settles, free-of-charge, complaints concerning the amount of fees for financial services, proposals to perform a financial service and the failure to perform a financial service which was requested by the petitioner.

A proposal to open proceedings is sent to the petitioner (a Complaint Form) which the petitioner fills in, documents with all necessary evidence and returns to the office within 14 days. In justified complaints, it is recommended to the petitioner to approach the provider of the services with a request for them to provide their final viewpoint. The provider is obliged to reply to the petitioner within 25 working days. During this period, up to 60% of complaints are settled. After that, a decision is made and both parties have 15 days for a mutual agreement. After the elapse of this period, the ombudsman makes a definitive decision. Parties may appeal to the court against this binding decision.

The activities of the Irish ombudsman are paid out of fees of individual providers and depend on the number of clients. For his work, he uses the information system which is very detailed and works with a number of templates for individual steps within the proceedings. This system also provides, inter alia, an overview of the situation concerning the settlement of individual complaints. The Irish ombudsman's effort is to introduce, within two years, a fully electronic processing of the complaints.

### Experience from Malta

The Arbiter met with a representative of the Malta Financial Services Authority (MFSA) which is the only regulator in the country. MFSA regulates and, at the same time, checks all financial, credit and investment companies, insurance companies to which it has granted a licence. It also proposes and then issues legislative recommendations and monitors local and international developments in the financial sphere.

The top body is the governors council with the authority for legal and international matters and a co-ordination committee which is focused on a certain specific area (banking, insurance, etc.).

MFSA also serves as a consulting body for citizens to whom it answers and provides advice in the whole financial sphere.

The authority uses software which works on a similar principle as the British authority. As soon as the client calls, already during the call, a form is filled in with the client. In case that any issues arise, the form is sent to the client to be completed.

According to the type of the dispute the case is then handed over to be settled. The system includes all types of correspondence required in the course of the settlement of the dispute including the possibility to process all statistical data.

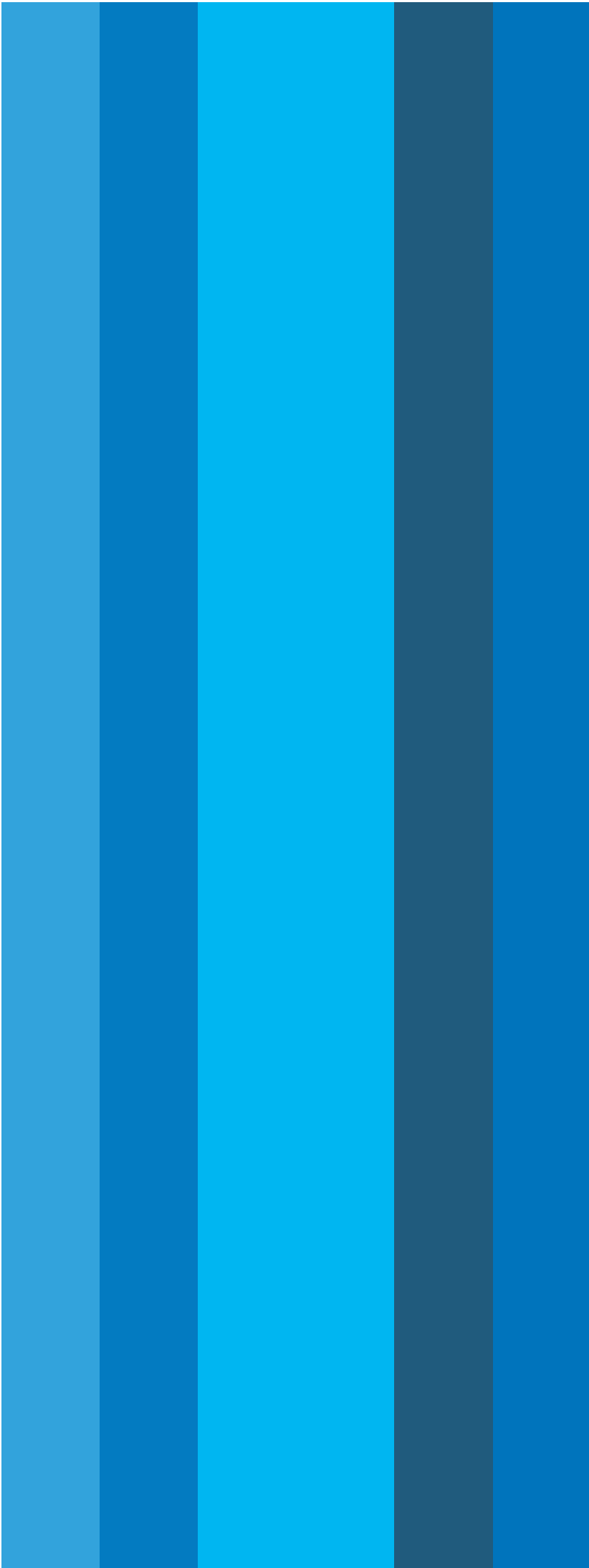
## Conclusion

The presented annual report deals with the activities of the Financial Arbiter of the Czech Republic for 2007. The uniqueness of this report is that the person presenting this report differs from the person who performed the activities of the Financial Arbiter in the given period. The ambition of the report thus is to present a comprehensive information and findings ensuing from the activities of the Financial Arbiter in 2007.

Part of this report is a descriptive part which comments procedural and staff facts and also the selection of some of the settled disputes, it also provides comprehensive statistical output for the given period.

I would like to conclude by thanking all partners and institutions with which I cooperate by virtue of the position of the Financial Arbiter, especially the Czech National Bank which provides the necessary administrative securement for the performance of these activities.

Dr. Ing. František Klufa



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