



An independent, impartial, specialised and confidential alternative for conflict management and dispute resolution in the Swiss financial sector.

ACTIVITY REPORT 2024

Financial Services Ombudsman (FINSOM) is a specialised mediation office for conflict management and dispute resolution in commercial and work relations in the Swiss financial sector. Recognised by the Federal Department of Finance (FDF) under the Financial Services Act (FinSA) in effect since 1st January 2020, FINSOM is also a member of INFO-Network¹ and an affiliate member of FIN-NET². Tax-exempt since 2018, FINSOM is the first public service mediation office in the Swiss financial sector. Its governance assures its independence from individuals, private interest groups and the public administration. This is FINSOM's public report on Commercial Mediation/FinSA for the civil year 2024 as required under art. 86 FinSA and art. 7 para. 2 Directive 2013/11/EU. For further information regarding FINSOM please visit : www.finsom.ch

Commercial Mediation/FinSA

In 2024, FINSOM handled a total of 122 requests, including 118 requests concerning Commercial Mediation/FinSA.

Requests	118
Economic offences	31%
Complaints ³	91%
Information	9%

Language	118
EN	63%
DE	20%
FR	15%
IT	2%

Residence	118
Abroad	82%
Switzerland	9%
Unknown	9%

Complaint	107
Rejected	97%
Admitted to mediation	3%

Rejected Complaint	104
FINSOM isn't competent ⁴ - referred	91%
"Access conditions" ⁵ not met	9%

FINSOM isn't competent - referred	95
Other competent authorities	31%
Other mediation office financial sector CH	42%
Other mediation office CH	5%
Other FIN-NET or INFO-Network member	4%
Concerned provider	7%
Other	10%

Most requests come from private clients abroad. FINSOM also handles requests from clients in Switzerland, professional clients and affiliated providers. Clients may be natural persons or legal entities.

¹ International Network of Financial Services Ombudsman Schemes (INFO-Network), <https://www.networkfso.org/>

² Financial Dispute Resolution Network (FIN-NET), https://finance.ec.europa.eu/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net_en

³ Or "mediation requests".

⁴ "Competent" to conduct mediation in accordance with Art. 98 FinSO or FINSOM's by-laws.

⁵ Art. 75 para 4 FinSA.

Requests may concern information on how to protect oneself against economic offences, how to complain to a provider or how to resolve a dispute. Requests mainly concern complaints (or “mediation requests”) regarding financial claims, the conduct or compliance of providers, for example.

“In some cases, the complaint concerned a provider distributing its services or instruments through affiliated providers.”

Of the 118 requests handled by FINSOM in 2024, there were 11 requests for information and 107 complaints, of which 36 related to economic offences. Of these requests, FINSOM handled 1 request for information and 14 complaints concerning affiliated providers.

Only 3 complaints concerning affiliated providers were admitted to mediation in 2024, of which 1 required the participation of the provider (art. 78 FinSA). The others were resolved without such participation or had no chance of success (art. 75 para. 7 FinSA).

Of the 104 rejected complaints, 95 were not within FINSOM's “competence” (art. 98 FinSO⁶) because the client's grievances did not concern an affiliated provider. In some cases, the complaint concerned a provider distributing its services or instruments through affiliated providers. In 9 cases, FINSOM was the competent mediation office (or “mediation body”) to conduct a procedure, but the “access conditions” (art. 75 para 4 FinSA) to mediation were not met.

FINSOM conducts a “preliminary review” of complaints to verify its competency and the conditions for access to mediation. This review may take a few minutes or a few hours, spread over one or more days. If a complaint is accepted for mediation, the maximum duration of the procedure is limited to 90 days, in principle. The 90-day limit may be extended with the agreement of the parties if the procedure has a chance of leading to a resolution. The preliminary review and the mediation procedure are conducted remotely, by telephone, videoconference or in writing. The physical proximity of the parties to the mediation office or the appointed mediator is not essential or required. If a complaint is rejected, FINSOM refers the complainant (if possible) to another mediation office, a competent authority or the provider concerned, for example. These may be located in Switzerland or abroad.

High rate of rejected complaints

The two main reasons for rejection in 2024 are:

“The majority concern non-affiliated providers.”

- 1) FINSOM was not the competent mediation office to conduct mediation (art. 98 FinSO).
- 2) The client had not yet complained to the affiliated provider (art. 75 para. 4 let. b FinSA).

While the number of complaints handled by FINSOM continues to increase compared to previous years, the majority concern non-affiliated providers, banking or payment activities, cryptocurrencies or fraud.

⁶ Financial Services Ordinance (FinSO).

Combating economic offences in the financial sector

Among the offences against property related to the Swiss financial sector brought to FINSOM's attention, investment fraud remains the most common. In addition to offering fictitious financial services or products, these initial frauds are often followed by offers of services aimed at recovering the stolen assets, which are equally fictitious.

"Clients do not always know how to proceed to protect themselves."

If the offer isn't simply fictitious, it may also be misleading under the Unfair Competition Act (UCA)⁷. Sometimes providers also operate "without authorisation, recognition, a licence, registration or affiliation" (art. 44 FINMASA⁸).

The Swiss Financial Market Supervisory Authority (FINMA)⁹ and other Swiss and international authorities and organisations publish useful information on how to protect oneself against economic offences in the financial sector. Among other things, in September 2024, the National Cyber Security Center (NCSC) published specific examples of asset recovery fraud¹⁰. In addition to FINMA's blacklist¹¹, clients can also consult the blacklist of the International Organisation of Securities Commissions (IOSCO)¹² and the blacklist of the Zurich cantonal police¹³, for example.

"The due diligence required of clients is not made any easier."

Despite the availability of the above information, clients do not always know how to proceed to protect themselves. The due diligence required of clients is not made any easier by the increasing complexity of financial sector regulation and the numerous public lists or registers that need to be consulted.

Observations regarding commercial practices

FINSOM observes that private clients are not always adequately informed that instruments intended for "professional" (art. 4 FinSA) or "qualified" (art. 10 CISA¹⁴) investors may be placed in their portfolios or recommended to them. Private clients are also not always adequately informed of the risks involved or of the possibility of refusing such instruments.

Furthermore, it is not always possible for clients to restrict investments or recommendations to instruments designed for private investors. They may also be advised not to set such restrictions. When private clients seek to liquidate investments, they may be dissatisfied and complain.

"It is not always possible to restrict investments to instruments designed for private investors."

FINSOM reminds that Swiss financial market regulations allow the distribution of instruments designed for professional investors to private investors under certain conditions.

For example, the CISA provides for the possibility of distributing collective investments intended for "qualified" investors to private clients who have "a long-term management or advisory relationship". However, the conditions set out in art. 10 para. 3ter let. b CISA (specified under art. 6a CISO¹⁵) apply.

⁷ Example: F. Burgener, *Concurrence déloyale : Les commissions d'un intermédiaire peuvent-elles être confisquées ?*, 09 April 2024, <https://cdbf.ch/1336/>

⁸ Financial Market Supervision Act (FINMASA).

⁹ <https://www.finma.ch/en/finma-public/wie-sie-sich-schuetzen-koennen/>

¹⁰ https://www.ncsc.admin.ch/ncsc/en/home/aktuell/im-fokus/2024/wochenrueckblick_38.html

¹¹ <https://www.finma.ch/en/finma-public/warnungen/>

¹² <https://www.iosco.org/i-scan/>

¹³ <https://cybercrimepolice.ch/fr/warnliste>

¹⁴ Collective Investment Schemes Act (CISA).

¹⁵ Collective Investment Schemes Ordinance (CISO).

Efficiency and effectiveness of mediation in the financial sector

In addition to requests concerning financial services or instruments as defined under FinSA, FINSOM receives requests from dissatisfied clients regarding other activities, such as banking or payment services and cryptocurrencies.

If FINSOM is not the competent mediation body to conduct mediation, FINSOM will refer clients to another body for alternative dispute resolution in Switzerland¹⁶ or abroad¹⁷, if possible.

"It isn't always possible to refer dissatisfied private investors to a specialised and competent mediation body in Switzerland."

Although there are already 11 recognised mediation offices in the Swiss financial sector¹⁸, they do not cover all types of services or products offered in Switzerland. Furthermore, despite the existence of 8 mediation bodies for financial services recognised by the FDF¹⁹, it isn't always possible to refer dissatisfied private investors to a specialised and competent mediation office in Switzerland.

Currently, the competency (or "jurisdiction") of recognised commercial mediation offices in the Swiss financial sector depends on the affiliation of the provider. However, not all providers or parties that may be concerned by a complaint are affiliated. The affiliation obligation under Art. 77 FinSA only applies to financial service providers that serve private clients (including "opt-out"). Voluntary affiliation is rare.

Commercial mediation offices adapted to the needs of the Swiss financial sector, whose jurisdiction would be determined by a legal mandate and by the type of service or product (instead of the affiliation), would enable commercial mediation to make a greater contribution to risk management and relieving the burden of the judicial authorities. It would also optimise the cost efficiency and effectiveness of regulation.

Thank you for your attention

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¹⁶ <https://www.konsum.admin.ch/bfk/fr/home/konsumenteninformationen/ombudsstellen.html>

¹⁷ FIN-NET (https://finance.ec.europa.eu/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net_fr) or Info-Network (<https://www.networkfso.org/>)

¹⁸ <https://www.finma.ch/en/finma-public/>

¹⁹ <https://www.efd.admin.ch/en/ombudsman>