



BANCA D'ITALIA
EUROSISTEMA



Arbitro Bancario Finanziario
Risoluzione Stragiudiziale Controversie

The Banking and Financial Ombudsman: Annual Report



Abridged Version



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EUROSISTEMA

The Banking and Financial Ombudsman: Annual Report

Abridged Version

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The Report's Appendix, containing the statistical information and methodological notes, is only available online on the Bank of Italy and the Banking and Financial Ombudsman websites (in Italian).

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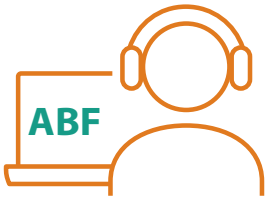
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SYMBOLS AND CONVENTIONS

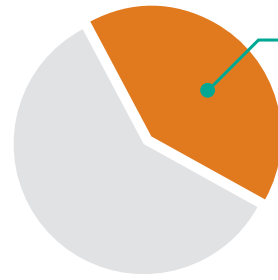
Unless otherwise specified, Bank of Italy calculations; for Bank of Italy data, the source is omitted.

Data for 2022

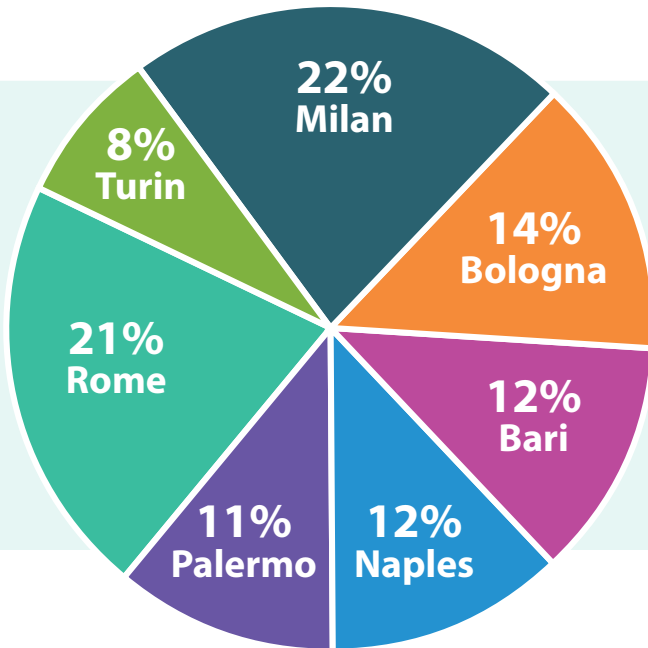


Complaints received

15,475
(-31%)

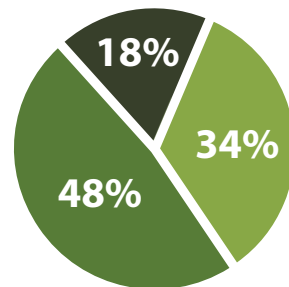


of which **41%** regarding payment instruments and services



Complaints received by Panel

17,372
Panel **decisions**



Settled before a decision was issued

Decided in favour of the complainant

Dismissed

339

Panel **meetings**



Almost **€20 million** awarded to customers;
over **€17 million** repaid by intermediaries

FOREWORD

This Report outlines the activity carried out in 2022 by the Banking and Financial Ombudsman (ABF), an out-of-court dispute resolution system for resolving disputes between customers and banks or financial intermediaries.

Complaints. In 2022 there was a decrease (-31 per cent) in the number of complaints submitted (over 15,400) and a significant redistribution of them by matter under dispute: the percentage of disputes involving payment systems and services increased considerably, owing in part to the spread of digital payment services. Just like in 2021, disputes regarding salary or pension-backed loans and postal savings certificates continued to decline due to the complexity of the regulatory framework: intermediaries tend not to comply with ABF decisions in these types of disputes and clients are discouraged from submitting complaints.

Decisions. Last year, the decisions issued by the Panels numbered over 17,300, down compared to 2021 consistent with the decrease in the overall number of complaints received. In 34 per cent of cases, the outcome was in favour of customers with complaints being fully or partially granted; 18 per cent of cases were settled with a declaration of termination of the dispute due to an agreement reached between the parties. In the remaining cases, the Panels rejected the customers' complaints as unfounded.

Customer awards and compliance rate for the intermediaries. The complexity of the regulatory framework stemming from the European Court of Justice's judgement in the *Lexitor* case¹ and the rules regarding postal savings certificates continued to fuel the rise in the rate of intermediaries' non-compliance with the Panels' decisions as they tend to bring such matters before ordinary courts. Apart from these types of disputes, the compliance rate with the decisions of the Panels was 92 per cent. In 2022, €19.6 million were awarded to customers (€31 million in 2021), of which €17.3 were paid.

The duration of the procedure. In 2022 the average duration of an ABF procedure, excluding suspension periods, was 120 days (down compared to 2021). This timeframe is well below the 180 day-period required by law, within which 93 per cent of the proceedings were concluded. The average duration including suspension periods amounted to 140 days.

Case law uniformity. Uniformity in the case law is pursued by submitting the most important issues to both the Coordinating Panel and the Panel Conference, which is an important forum for discussion. Analysis of the documentation furnished by the parties by

¹ The Italian Constitutional Court weighed in on the regulatory framework applicable to consumer credit on 22 December 2022 with Judgement no. 263. For further information, see the section: *Salary or pension-backed loans* in Chapter 3.

single territorial Panels nonetheless remains crucial. The use of machine learning and text mining tools in the ABF process – currently under study in connection with the AbefTech project – will facilitate the timely identification of similarities and possible inconsistencies in ABF case law, thus improving the service offered to customers.

Collaboration with other ADRs. Pursuant to the **memorandum of understanding** signed in March 2020 between the Bank of Italy and the National Commission for Companies and the Stock Exchange (Consob), discussions continued between the ABF and the Securities and Financial Ombudsman (**Arbitro per le Controversie Finanziarie**) to prevent interpretative discrepancies or uncertainties within the scope of their respective jurisdictions. The collaboration with the Italian Insurance Supervisory Authority (IVASS) continued as well, ahead of the Insurance Ombudsman’s launch, including through staff exchanges between the Bank of Italy and IVASS itself.

Dialogue with the judiciary. The ABF’s decisions continue to be the subject of attention and analysis by the courts and academia. Dialogue with the judiciary has been strengthened thanks to the fruitful cooperation with the School for the Judiciary on issues of shared interest.

International Cooperation. 2022 was also a year of close cooperation at international level. In addition to the usual participation in the Fin-Net network established at the European Commission level – which represents an important forum for discussion between the ABF and other European ADR bodies operating in the banking, financial and insurance sectors – the ABF took part an international conference attended by several ADRs and Customer Protection Authorities operating in Europe and in the United States.

* * *

As in previous years, the Report is organized into four chapters.

The first chapter provides a description of the ABF’s main features and changes in 2022; the second chapter contains statistical information on complaints and on the decisions and activities of the Panels, as well as on the results of a survey on customers’ satisfaction and an investigation into the litigation submitted to the ordinary courts after the ABF has issued its decision; the third and fourth chapters outline the main dispute matters, respectively substantive and procedural, handled by the territorial Panels and by the Coordinating Panel in 2022 and in the early months of 2023; a comparison between the ABF’s decisions and the judicial case law on matters falling within ABF’s jurisdiction is also provided.

The Report is rounded out by an Appendix containing statistical data and methodological notes, available online on the **ABF website**, but only in Italian. The Annual Report on the ABF’s activity is published in fulfilment of its current legal obligations.²

² Credit Committee Resolution 275/2008, Bank of Italy provisions issued on 18 June 2009 as amended, Legislative Decree 130/2015.

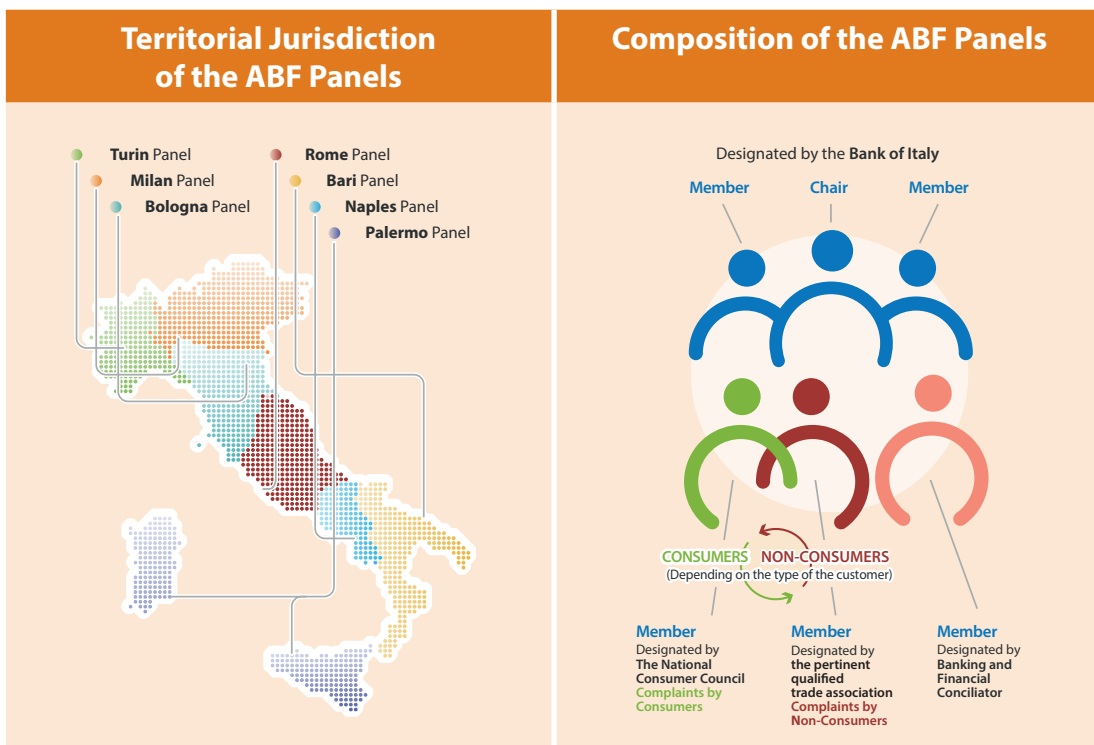
1. THE BANKING AND FINANCIAL OMBUDSMAN



What is the ABF?

The Banking and Financial Ombudsman (ABF):

- is a decision-making alternative dispute resolution (ADR) system created to resolve disputes between customers and banks/financial intermediaries regarding banking or financial services and products;
- decides who is right and who is wrong based on the law, taking into account only the documents submitted by the parties;
- is autonomous and impartial with respect to the Bank of Italy;
- is organized into seven territorial Panels, each one consisting of experts.



Besides the territorial Panels, there is the Coordinating Panel (one for the entire country), which decides complaints involving the most important or controversial issues. An additional forum for discussion is the Panel Conference which explores issues, both substantive and procedural, of particular significance and of interest to the ABF. The **ABF website** contains brief descriptions of the issues addressed and the Panels' reasoning behind their decisions.

In addition to resolving individual disputes, the decisions of the ABF provide information to the public and the Bank of Italy that could prove useful in improving relations between banks/financial intermediaries and customers. The ABF's decisions serve as an additional source of information for the Bank of Italy in carrying out its supervisory and financial education functions.

The ABF's decisions, unlike those of a court, are not binding on the parties. If a bank or financial intermediary does not comply with a decision, a notice of its non-compliance is published both on its website and on that of the ABF. Customers who have approached the ABF or banks/financial intermediaries to resolve a dispute can always submit it to a civil court if they are not satisfied with the decision issued by the Ombudsman.



The benefits of the ABF

The ABF:

- is almost free of charge (to submit a complaint, the customer pays €20 which is refunded by the intermediary if the decision is made wholly or partially in the complainant's favour);
- is faster than civil litigation and the duration of the procedure may not exceed 180 days¹ (an average of 120 days in 2022);
- does not require any legal or other professional assistance;
- is easy to access through the online **portal**;
- like mediation, it satisfies the procedural requirement established by law to be able to submit the dispute to a civil court.



What can the ABF decide on?

The Ombudsman rules on disputes concerning banking and financial transactions and services (e.g. current accounts, mortgages, personal loans), payment services (e.g. credit cards) and on postal savings certificates, arising in the six years prior to the submission of the complaint. Disputes concerning investment services or activities fall under the jurisdiction of the **Securities and Financial Ombudsman** (ACF), established by Consob.

In filing a complaint, you can ask the ABF to:

- award an amount of money not exceeding €200,000;
- determine rights, obligations and prerogatives without regard to amount (for instance, the right to receive banking documents or the right to extinguish a mortgage after the repayment of the debt).

¹ Duration means the period of time between the date of receipt of the complaint and the date of communication of the decision to the parties, excluding suspension periods.

Further information on the ABF procedure is available on the [ABF website](#) and in a simple guide to the ABF ([ABF in parole semplici](#), available only in Italian). The submission of the complaint through the online portal is described in the [Guide to the use of the ABF portal](#) and in a [video tutorial](#).



What's new in 2022 and the early months of 2023: comparison with other ADR bodies and collaborations

The ABF collaborates with other national and international ADR bodies to share good practices, improve the functioning of the system and enhance customer protection, and with the judiciary to encourage dialogue on topical issues relating to banking and financial contracts, in accordance with their respective competences. It also frequently engages with consumer associations, businesses and academia to promote awareness of the system.

Collaboration between national ADR bodies. – In September 2022, the second **forum** of the Chairs and other members of the ABF and the ACF was held pursuant to the **memorandum of understanding signed in 2020**. It focused on disputes relating to financial instruments linked to financing transactions (e.g. loans for the subscription of financial instruments). During the meeting, the parties also addressed organizational issues in order to strengthen the cooperation and the exchange of information between the ABF and the ACF to provide a higher level of customer protection.²

In preparation for the launch of the Insurance Ombudsman, the ABF continued to collaborate with the Italian Insurance Supervisory Authority (IVASS) by organizing joint work experience opportunities.

International collaboration. – Extensive discussions took place between the ABF and other ADRs participating in Fin-Net, the **European network of national alternative dispute resolution schemes** in the banking, financial and insurance sector of the Member States of the European Union, of which the Ombudsman has been a member since 2011. In 2022, two meetings were held addressing issues related to digital payment fraud and the increased litigation in Europe due to the greater use of non-cash payment instruments as a result of the pandemic. Discussions also centered around proposals for the European instant payments regulation and some issues relating to basic payment accounts.

In the early months of 2023, the Bank of Italy sponsored a survey of Fin-Net members on the structure of and access to ADRs, especially in countries where there are different alternative dispute resolution systems for banking, financial and insurance disputes. The survey found that various methods are used to facilitate customer access to ADR bodies.³

² For more details, see the box: *The memorandum of understanding between the Bank of Italy and Consob on alternative resolution of the disputes* in Chapter 12 of the **Report on operations and activities of the Bank of Italy** for 2022.

³ Thirty-two ADRs participated in the survey out of a total of 60 members of Fin-Net (at the date of the survey). The findings were presented at the Fin-Net plenary meeting held in May 2023.

BANK OF ITALY FIN-NET SURVEY

As the 2019 survey had already shown,¹ there is no single prevailing structural model: the decision-making systems operate alongside conciliation and hybrid models. About half of the ADR bodies that responded to the survey have expertise in only one of among the banking, financial and insurance sectors. To help customers choose the right ADR system, the ADRs usually make available guides with detailed information on what they can do and, in some cases, have dedicated helpdesks to assist customers.

In order to help users navigate when more than one ADR exists, a variety of collaboration arrangements have been adopted: in about half of the resolution systems, complaints are automatically redirected to the competent ADR when they are filed with the wrong body.² No Member State that took part in the survey has a single portal for submitting complaints and for automatically forwarding them to the competent extrajudicial bodies.

¹ For more information on the survey, see the [Report on the activity of the ABF](#) on 2019.

² This mechanism exists, for example, for the Belgian Ombudsfm and the German Schlichtungsstelle bei der BaFin.

In December 2022, a **conference** was organized for european and international bank and financial ADR bodies, European Commission representatives and experts in the subject matter. It provided an opportunity to compare and share experiences on topics of common interest.

INTERNATIONAL CONFERENCE: TEN YEARS AFTER THE ADR DIRECTIVE - A COMPARATIVE OVERVIEW OF BANKING AND FINANCIAL ADRS

At the opening of the second international conference on banking and financial ADRs, an update was provided on the revision of Directive 2013/11/EU. The goals of the revision, which is still under way, are to improve the management of cross-border disputes, promote digitalized access to ADR systems and provide support to the most vulnerable customers.

During the debate, it was noted that the Italian legislator has acknowledged the importance of the ADR systems and has made strengthening them not only one of the goals of the National Recovery and Resilience Plan (NRRP) but also of the ‘Cartabia Reform’ of the Italian legal system¹. The sharing of experiences with customer protection tools by the US Consumer Financial Protection Bureau, the French Médiateur de l’Assurance, the Finnish Financial Ombudsman Bureau and the Italian Securities and Financial Ombudsman (ACF) highlighted the value of a flexible approach to managing internal procedures and customer relations, which can also facilitate customer access to ADR systems.

¹ Legislative Decree 149/2022, implementing Law 206/2021, which enabled the Government to pass legislation concerning the efficiency of civil trials, the review of alternative dispute resolution mechanisms and urgent measures to rationalize the proceedings related to rights of individuals and families as well as forced execution.

With regard to using artificial intelligence (AI) to support ADR activity, it was noted that the ethical risks associated with the use of AI must be managed and ‘human control’ over out-of-court proceedings need to be preserved in order to avoid potential discrimination between users. The debate on the effectiveness of customer protection provided by ADR systems – which involved the ADR bodies associated with Banco de España, Banco de Portugal, IVASS and the UK Financial Conduct Authority – stressed the need both to ensure adequate information exchange between the ADRs and the competent authorities and to develop synergies in pursuit of customer protection.

Collaboration with the School for the Judiciary. – Once again in 2022, the dialogue with the School for the Judiciary - with which the ABF has actively collaborated since 2017- was intense and profitable: discussions covered current topics related to litigation between banks/financial intermediaries and customers. In addition to the regular annual conference on banking and financial contracts, roundtables were organized on topics of common interest. The debate, which was also attended by academics, prompted reflection on topical jurisprudence (e.g., salary or pension-backed loans, postal saving certificates, default interest and usury).

Other external collaborations. – The activities of the ABF were the subject of meetings with consumer associations, businesses and conferences organized in cooperation with a number of universities to promote awareness of the Ombudsman and its mission.

The ABF and its work were presented as part of the educational programme **Scelte finanziarie e rapporti con le banche** targeted at small businesses. The Bank of Italy’s portal **L’Economia per tutti** also served as a channel for spreading information about the ABF system.

In early 2023, an **information campaign** was launched in collaboration with RAI in the form of television interviews with Bank of Italy representatives on financial protection and education topics. The purpose of the project was to acquaint the public with some of the main issues that influence the relationship between customers and banks/financial intermediaries, as well as inform them about the work of the ABF.



Artificial intelligence in the ABF system

The AbefTech procedure for using machine learning and text mining techniques will help the ABF research decisions made in similar cases by identifying precedents and possible inconsistencies in interpretation by the Panels,⁴ thereby improving the service offered. Decisions on complaints will continue to be made by the ABF Panels.

⁴ For further information on the project, see Chapter 1 of **The Banking and Financial Ombudsman: Annual Report** for 2021.



2. DATA ON COMPLAINTS AND DECISIONS OF THE PANELS

Overview

In 2022, the ABF received 15,475 complaints, down by 31 per cent from 2021. The decrease continued to affect largely disputes regarding salary or pension-backed loans (CQS)¹ and postal savings certificates (BFP). After increasing in 2021, complaints relating to payment services and instruments also declined, albeit less so than the other main categories did.²

The Panels held 339 meetings over the year, during which they decided 17,372 complaints. In 34 per cent of the cases the complaint was upheld and in 18 per cent of cases, the parties reached an agreement to settle without a decision being necessary; 48 per cent of complaints were dismissed. Complainants were awarded €19.6 million, of which €17.3 million have already been paid to customers.

Demand

Complaints received

The most common disputes submitted to the ABF involved payment services and instruments as a whole, with more than 6,300 complaints, although they fell in absolute terms by 11 per cent (Table 2.1; for monthly trends, see Figure 2.1).

Salary-backed loans continued to be the main matter under dispute of the complaints received, with a share of around 23 per cent of the total, despite having more than halved compared with the previous year; disputes involving postal savings certificates also declined considerably (-36 per cent compared with 2021). These trends reflect the evolution in consumer complaints (Figure 2.2.a); the share of those submitted by non-consumers remained unchanged at 5 per cent.

¹ On this subject, see the section on ‘Salary or pension-backed loans’ in chapter 3. Although salary or pension-backed loans fall under the category of consumer credit, in this report they are treated separately due both to the fact that they make up a significant part of the inflow and to the distinct characteristics of the disputes. Therefore, the data referring to consumer credit reported in this chapter are shown net of these disputes.

² For further information, see the sections on ‘Current accounts’ and ‘Computer fraud’ in Chapter 3. The ‘services and payment instruments’ category refers to ATMs and debit cards, credit transfers, credit cards and current accounts.

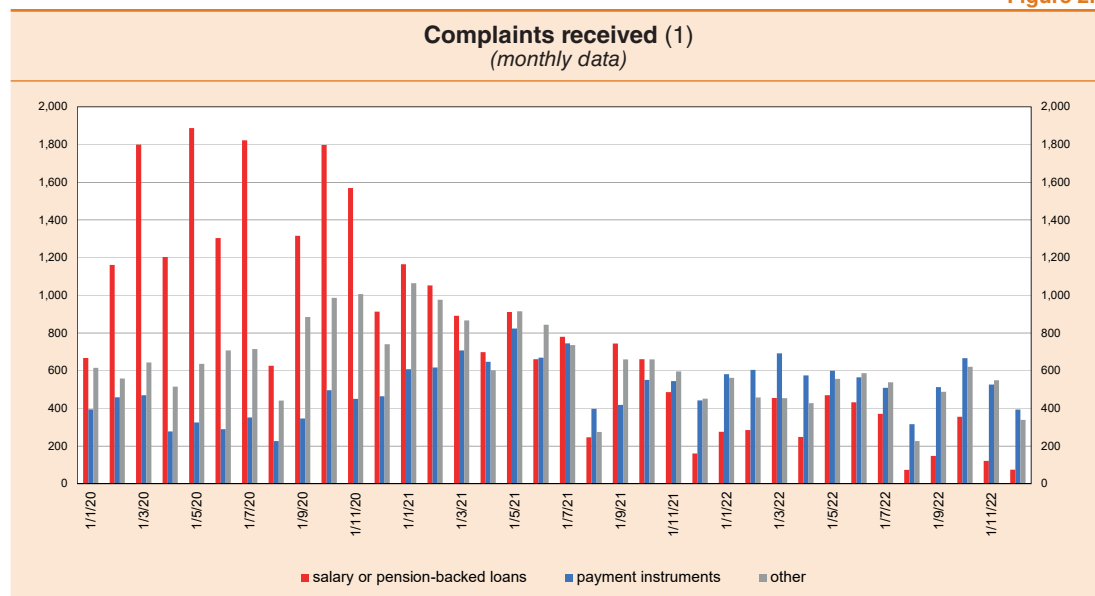
Table 2.1

Complaints received by matter under dispute: comparison with 2021					
MATTER UNDER DISPUTE	2021		2022		% variation 2022-21
	No.	% of total	No.	% of total	% change
Salary or pension-backed loans	7,685	34	3,608	23	-53
ATMs and debit cards	2,028	9	2,127	14	5
Savings accounts/postal savings certificates	3,036	14	1,934	12	-36
Credit cards	1,938	9	1,931	12	-
Current accounts	1,726	8	1,722	11	-
Consumer credit	1,311	6	997	7	-24
Credit reporting agencies	716	3	609	4	-15
Credit transfers	1,461	7	582	4	-60
Central Credit Register	549	2	442	3	-19
Mortgages	554	2	406	3	-27
Other	1,376	6	1,117	7	-19
Total complaints	22,380	100	15,475	100	-31
Total complaints excluding salary or pension-backed loans	14,695	66	11,867	77	-19
Total complaints regarding payment instruments and services	7,153	33	6,362	41	-11

The complaints submitted by non-consumers are more varied in terms of subject matter. Current accounts continue to be the most common matter under dispute (25 per cent; Figure 2.2.b); followed by, in order of importance, credit transfers and credit cards.

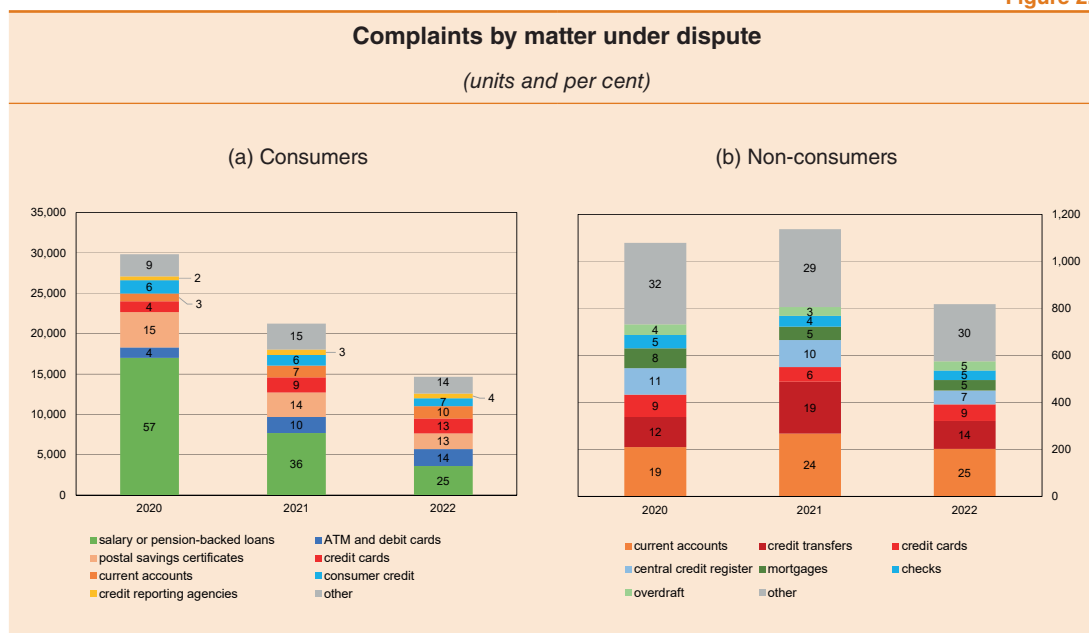
The Centre and South of Italy continue to have a higher number of disputes per capita than the North does.

Figure 2.1



(1) 4-month moving averages ending in the reference month; seasonally adjusted data.

Figure 2.2



COMPLAINTS CONCERNING THE FRAUDULENT USE OF PAYMENT SERVICES AND INSTRUMENTS

The digitalization of payment services and instruments is changing the size, form, frequency and impact of fraudulent use: according to a study conducted at global level,¹ between 2019 and 2021, fraudulent online use recorded a much higher growth rate than that of regular online transactions (233 and 65 per cent respectively).²

The latest statistics published by the Bank of Italy³ confirm the growing spread of digital payment services and instruments among the public in Italy, in terms of both the numbers and values of transactions. As in other countries, the use of cash declined further during the pandemic crisis.⁴

This trend reflected in the composition of the disputes submitted to the ABF: in the years 2017-2022, the number of complaints involving fraudulent use of payment instruments rose by more than 130 percentage points.

¹ Feedzai, *The RiskOps Age: Q2 2022 Financial Crime Report*, 2022. This study, conducted on more than 18 million online banking transactions carried out globally, finds that fraudulent attacks via mobile banking applications have been less frequent than those carried out using other IT devices; online identity theft, specifically account takeover, was the leading type of fraudulent cyber attack.

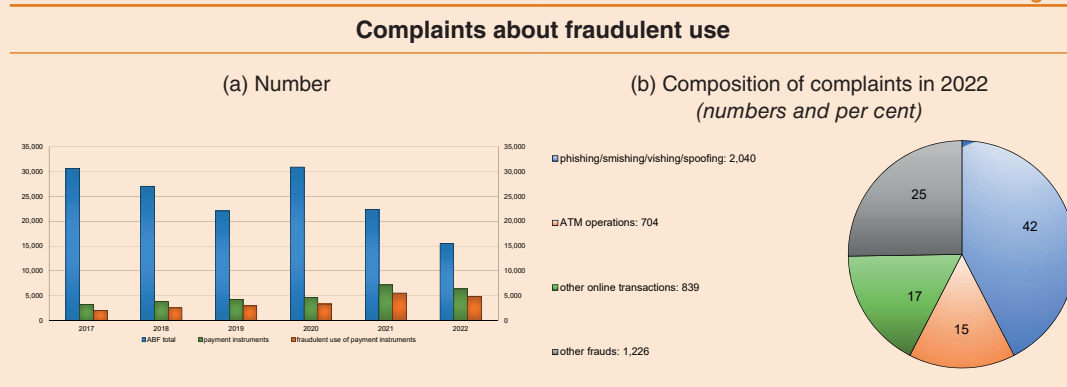
² In its analysis of the fraudulent uses of payment cards alone in Europe in 2020-21, the European Central Bank noted that the value of card fraud as a share of the total value of payment card transactions fell to the lowest level observed since 2008 (0.028 per cent). The overall value of card fraud fell significantly (-8 and -11 per cent on an annual basis in 2020 and 2021 respectively). Fraudulent uses are mainly connected with cross-border transactions (see ECB, *Report on card fraud in 2020 and 2021*, 2023).

³ For further information, see *Payment systems*, Banca d'Italia, Statistics Series, 23 May 2023.

⁴ G. Coletti, A. Di Iorio, E. Pimpini and G. Rocco, '*Report on the payment attitudes of consumers in Italy: results from ECB surveys*', Banca d'Italia, *Markets, Infrastructures and Payment Systems*, 21, 2022.

In 2022, the Ombudsman received 4,809 complaints concerning fraudulent use of payment services and instruments, down by 13 per cent compared with 2021 (see panel (a) of the figure). Some 42 per cent of the fraud reported in 2022 involved phishing, spoofing, smishing and vishing, where fraudsters also use digital communication channels, sometimes combining them, to lead victims to give out their account login and device credentials (see panel (b) of the figure); of these, around 70 per cent of them involved debit and credit cards. Among the remaining categories, the main reasons for complaints were, in order of importance, fraud relating to online payments (17 per cent) and to ATM transactions (15 per cent). The Ombudsman made 4,898 decisions on fraudulent use, a decrease in line with the fall in complaints received (-11 per cent). In 41 per cent of the cases, the complaints were upheld, while in 30 per cent of cases, the Panels found that an agreement was reached with no need for a decision, and 29 per cent of complaints were dismissed.

Figure



The rate of compliance with the Ombudsman’s rulings was high in 2022: against a total amount awarded of €9.3 million, intermediaries refunded €9.1 million to complainants. The average amount awarded was just over €5,000 (higher for credit transfers and current account disputes, around €15,000 and €7,000 respectively).

Characteristics of complainants

Complaints were mainly submitted by men, whose share remained in line with that of 2021 (61 per cent).³ The percentage of male complainants is slightly higher than the average in the southern regions of Italy.

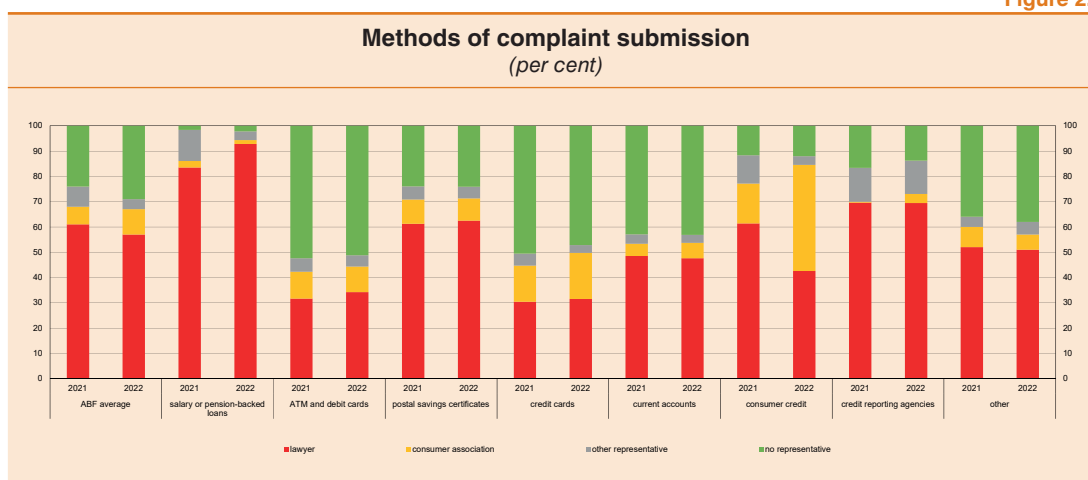
The average age of complainants was 53 years old (54 in 2021). The age distribution among the matters under dispute mirrored that of persons holding banking and financial

³ The data in this section refer to consumers.

products.⁴ The average age was higher for complaints about savings accounts, postal savings certificates and salary-backed loans, and lower for those about reports to credit reporting agencies, payment services and instruments, and mortgages.

The share of complaints submitted with professional assistance remained the largest (71 per cent), although it was down slightly compared with the previous year (Figure 2.3). The figure was affected by the decline in complaints about salary-backed loans, which almost entirely involved the use of a professional, and by the increase in complaints about payment services and instruments, which instead had a higher percentage of complaints lodged without professional help in comparison with the system average.

Figure 2.3



Types of financial intermediaries

In 2022 too, banks accounted for over half of the volume of complaints submitted to the Ombudsman (55 per cent), although they declined by 37 per cent in absolute terms compared with 2021. In contrast, cooperative credit banks recorded an increase in complaints in absolute terms of 18 per cent, mainly as a result of the trend in disputes over payment services and instruments. This trend also contributed to the significant increases in the number of complaints submitted to the ABF that had been made to electronic money institutions and payment institutions, of 43 and 27 per cent respectively.

LETTERS OF COMPLAINT TO INTERMEDIARIES IN 2022

Based on supervisory reports, the letters of complaints received by intermediaries decreased by 17 per cent compared with 2021, although the number remained above 400,000. The decline affected, albeit to different extents, all the matters subject to reporting, although payment services and instruments remained prevalent (see the figure).

⁴ For more details, see ‘[Survey on Household Income and Wealth](#)’, Banca d’Italia, Statistics Series, 22 July 2022.

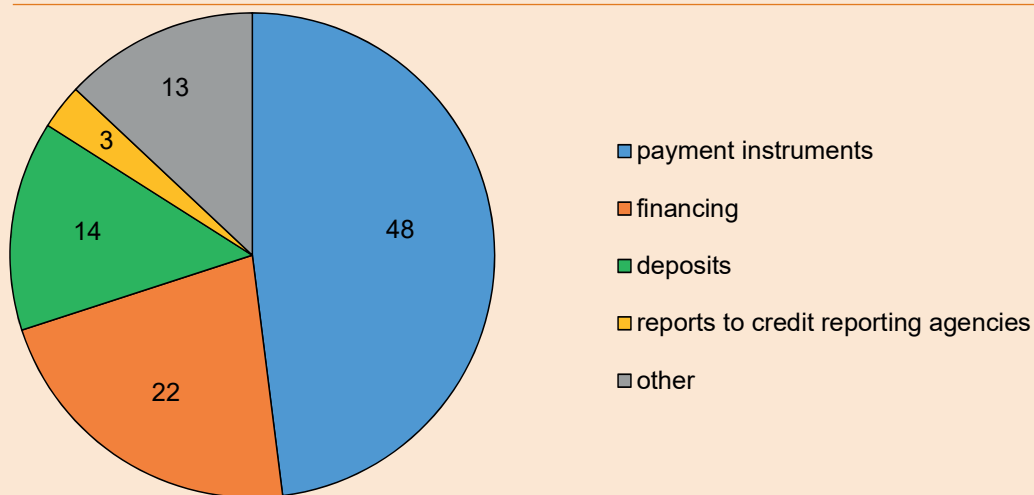
Some 42 per cent of the complaints ended with a favourable outcome for the complainant, 8 per cent with a partially favourable outcome, while the remaining 50 per cent had a negative outcome (48, 9 and 43 per cent respectively in 2021).

The share of complaints rejected was below the average for payment services and instruments (39 per cent) and above the average for the other matters (61, 65 and 58 per cent, respectively, regarding deposits, financing and reports to credit reporting agencies).

Even when accounting for the fact that the letters of complaint may concern matters outside the ABF's jurisdiction, those submitted to the ABF represented only around 4 per cent of the letters of complaint received by the intermediaries and 8 per cent of those rejected by them (5 and 11 per cent in 2021, respectively).

Figure

Letters of complaint received by the banking system
(per cent)



Source: Based on supervisory reports. The data could be affected by some missing reports.

The matters under dispute in the complaints reflect the type of intermediaries and their specialization; for financial corporations, complaints about salary-backed loans prevailed (66 per cent of the total), which was also the case for cooperative (*popolari*) banks (62 per cent); about 90 per cent of complaints to electronic money institutions involved payment cards.

ABF complaints are a useful source of information for supervisory activity, as are complaints sent to the Bank of Italy (through which customers complain of improper behaviour by banks or financial intermediaries; see '**Report on the management of complaints from banks and financial companies**'). The analyses carried out on data for the two years 2021-22 showed a positive correlation, at individual intermediary level, between the number of complaints to the ABF, complaints to intermediaries and complaints submitted to the Bank of Italy.

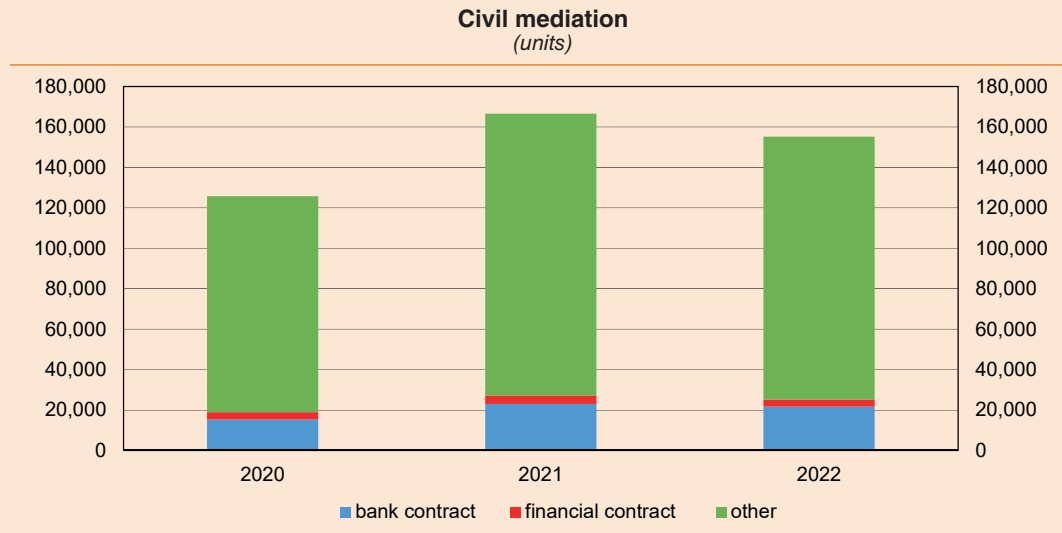
For the year 2022, too, it is possible to compare cases in which customers sought recourse to the ABF and those in which civil mediation was used. Indeed, Legislative Decree

28/2010 requires the customer to first seek recourse to the ABF or civil mediation in disputes regarding bank and financial contracts before turning to the ordinary justice system.

CIVIL MEDIATION

In 2022, proceedings involving mediators decreased by 7 per cent overall; those relating to bank and financial contracts declined less than the other areas as a whole (Figure A).

Figure A

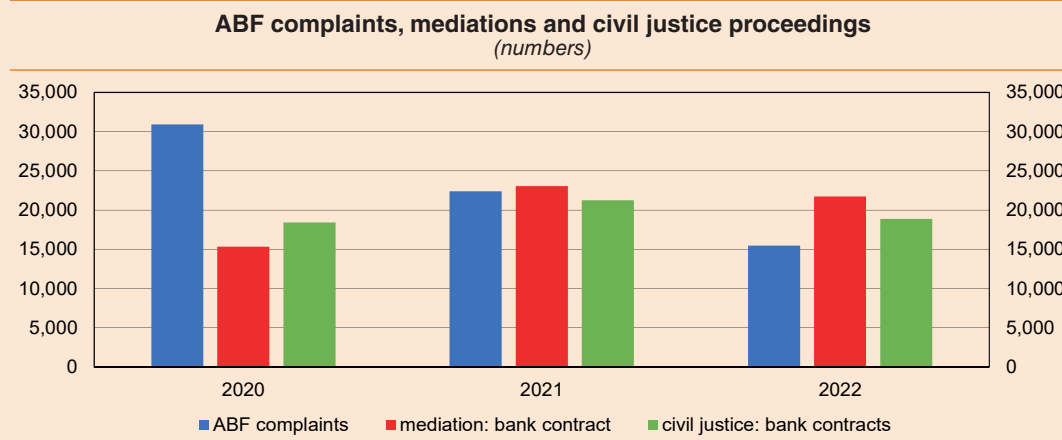


Source: Ministry of Justice.

In 2022, the median economic value of all mediation proceedings stood at €10,000; those for bank and financial contracts were respectively €18,500 and €8,500.

The number of complaints received by the ABF was lower than the number of new mediation proceedings and those brought before the civil courts regarding banking contracts (Figure B). The two types of proceedings decreased by 6 and 12 per cent respectively over the year.

Figure B



Source: Ministry of Justice.

Supply

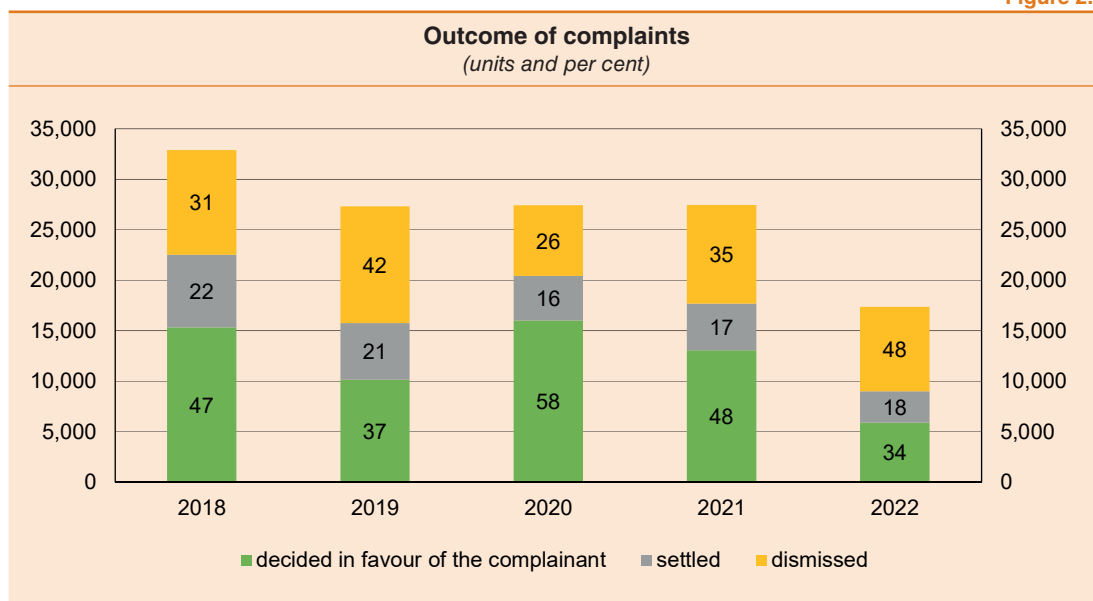
Outcomes

In line with the fall in complaints received, the Panels issued 17,372 decisions in 2022, compared with 27,458 in 2021.

The average time for concluding a procedure,⁵ which is decreasing, was 120 days net of suspension periods; 140 days gross (137 and 158 respectively in 2021). The median duration net of suspension periods was 119 days and the 95th percentile stood at 190 days; 93 per cent of the proceedings were concluded within the 180-day period laid down in the legislation and more than 99 per cent within 270 days.⁶

In 34 per cent of the cases the outcome in favour of customers was upheld, and in 18 per cent of cases the parties reached an agreement without a decision being necessary. The decline in the share of complaints upheld (14 percentage points) partly reflected the trend in matters under dispute and, especially, the further drop in complaints regarding salary-backed loans,⁷ which have a high upheld rate. The remaining 48 per cent of the complaints were dismissed as these are cases where the Panels considered the customer's

Figure 2.4



⁵ The average time is calculated from the date the complaint is received to the date the decision is communicated to the parties and also refers to complaints concluded through settlement or that were withdrawn by the complainant, for which the ABF Panels only notify the parties of the outcome.

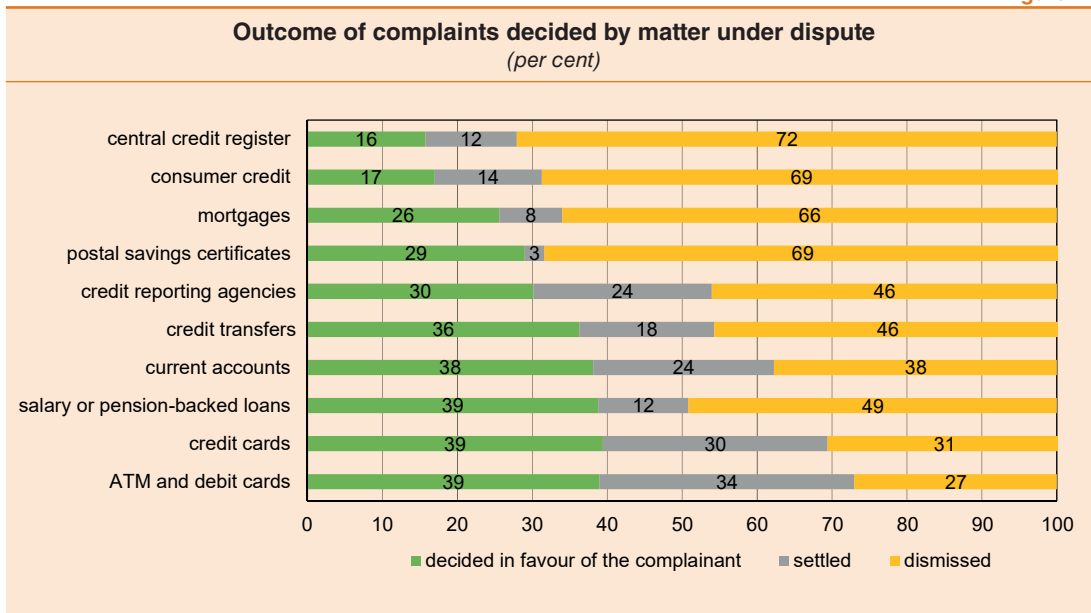
⁶ The 180-day deadline may be extended by a further 90 days if the dispute is particularly complex.

⁷ In 2021, complaints about salary-backed loans accounted for 34 per cent of the complaints received by the system (see Table 2.1); they obtained an essentially favourable outcome in around 80 per cent of cases. The legislative changes introduced in July 2021 by Decree Law 73/2021 ('Support-bis' Decree) affected the ABF's position (Coordinating Panel, Decision **21676/2021**) and therefore the rate of upheld complaints. For more information, see the section: 'salary or pension-back loans' in Chapter 3.

request to be unfounded or unproven, or inadmissible owing to failure to comply with the rules of procedure (Figure 2.4).

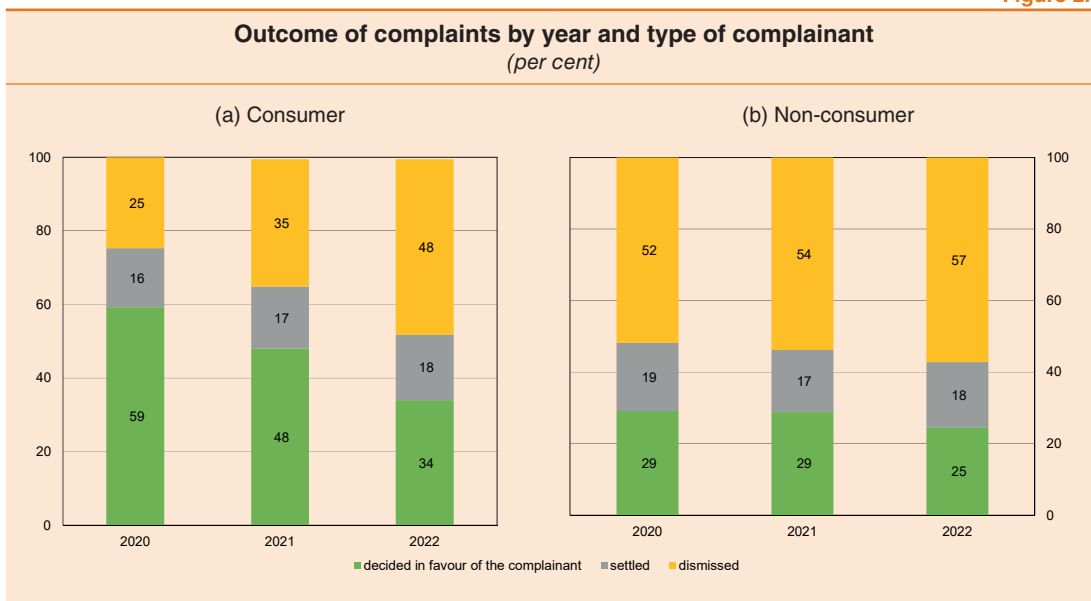
The percentage of complaints upheld or settled between parties was lower for cases involving the Central Credit Register (28 per cent; 29 per cent in 2021) and consumer credit (31 per cent; 46 per cent in 2021), while it was very high for complaints concerning ATMs and debit and credit cards, 73 and 69 per cent respectively (Figure 2.5).

Figure 2.5



The share of rulings essentially in favour of customers (complaints upheld or settled) was higher for consumers than for non-consumers (Figures 2.6.a and 2.6.b).

Figure 2.6

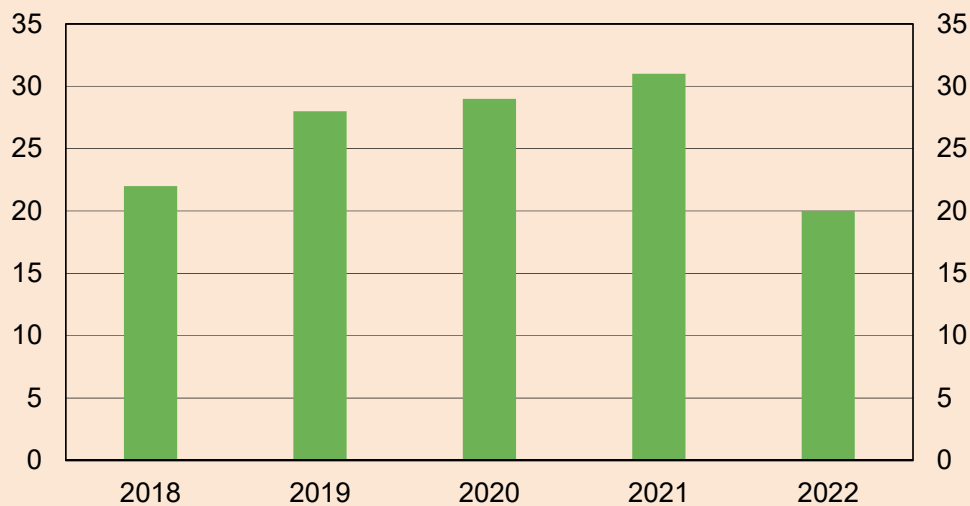


AMOUNTS AWARDED TO COMPLAINANTS IN 2022

The Panels awarded a total of €19.6 million to complainants (see the figure), of which €17.3 million have effectively been repaid to customers. The difference is attributable to the non-compliance of intermediaries, mainly in relation to salary-backed loans and postal savings certificates, although the non-compliance rate in these areas fell compared with 2021. The amount does not take into account the numerous cases in which repayment was made as part of a settlement between the parties prior to a decision being issued. The overall average amount increased from €2,200 in 2021 to around €3,400 in 2022; this increase is due in particular to the average amounts awarded for complaints about payment services and instruments, which are higher than those for complaints about salary-backed loans (approximately €5,000 and €1,000 respectively).

Figure

Amounts awarded
(millions of euros)



In 2022, intermediaries complied with the rulings on salary-backed loans⁸ and postal savings certificates in 74 per cent of decisions upheld on these matters (49 per cent in 2021). The increase was reflected in the overall rate for intermediaries' compliance with the Panels' decisions, which rose from 62 per cent in 2021 to 84 per cent.⁹ Excluding non-compliance with decisions on salary-backed loans and postal savings certificates, the rate was around 92 per cent,¹⁰ down slightly from last year (96 per cent).

⁸ For more information, see the section 'Salary or pension-backed loans' in Chapter 3.

⁹ Data updated to 30 April 2023; the comparison is with those as at 30 April 2022. The percentages may undergo changes as a result of updates made after the reference date.

¹⁰ The non-compliance of intermediaries is published on the ABF website in the section: [Intermediari inadempienti](#).

There were cases of non-compliance with decisions concerning revolving loans associated with the use of credit cards¹¹ and decisions on mortgage agreements indexed to the Swiss franc (the subject of similar proceedings under way before the judicial authorities). Non-compliance with regard to the fraudulent use of payment instruments was limited.

THE ABF AND THE CIVIL COURTS

In the early months of 2023, a survey was carried out on a sample of intermediaries¹ to gather information on the disputes filed by complainants or intermediaries with the civil courts following an ABF decision.² The survey showed that of the more than 72,000 complaints decided by the Ombudsman in the three years 2020-22, only 2.2 per cent of the decisions were subsequently brought before the civil courts; in 93 per cent of cases, the civil court proceedings were initiated by the customer (87 per cent in the previous survey). Some 82 per cent of the cases filed with the civil courts concerned salary-backed loans (79 per cent in the previous survey); the share of cases relating to postal savings certificates and payment instruments was 6 per cent each (it was 7 per cent last year for both categories). At the end of December 2022, some 28 per cent of the suits filed with the civil courts after the complaint had been submitted to the ABF had been decided; the Ombudsman's ruling was upheld in 73 per cent of these cases (see the figure). More than 80 per cent of the cases in which decisions were overturned concerned

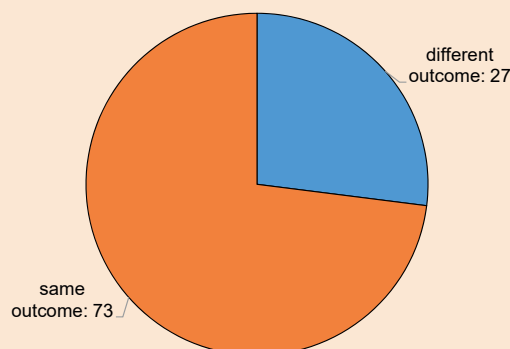
Figure

Disputes filed with the civil courts and their outcomes (per cent)

(a) Complaints submitted to the civil courts
(2020 to 2022)



(b) Outcome of these complaints
(as of 31 December 2022)



¹ Some 22 intermediaries were selected from among those that received the highest number of complaints; they accounted for about 77 per cent of the complaints decided by the ABF in the period 2020-22. The survey covered letters of complaint, ABF complaints, mediation and civil court cases.

² The reference period for the analysis was the three years 2020-22.

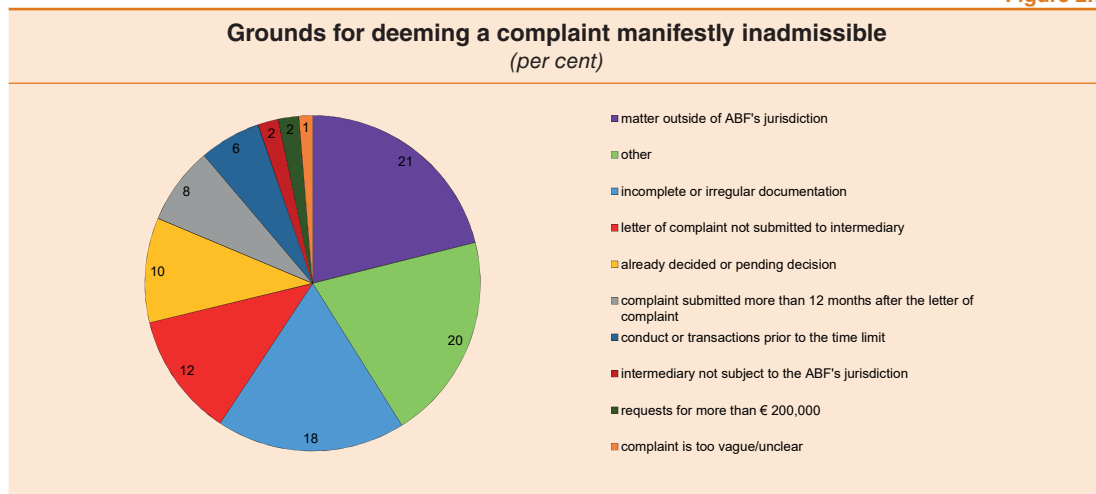
¹¹ For a definition of revolving credit, see the section 'Consumer loans' in Chapter 3.

salary-backed loans, where the principles and their interpretation have been affected by the Lexitor judgement and the subsequent regulatory changes and by the recent decision of the Italian Constitutional Court.³ With regard to payment instruments, the cases in which the outcome of the ABF ruling was not upheld were partly due to different reconstructions of the facts or formulations of the claims by the parties; for postal savings certificates, the courts' decisions to not uphold those of the ABF almost always came down to a difference in interpretation of the applicable legal principles.

³ For more details on the Constitutional Court's decision, see the section 'Salary or pension-backed loans' in Chapter 3.

In 2022, 453 complaints were declared manifestly inadmissible by the Chairs of the Panel, about 3 per cent of the total. The main reasons are still that the disputed matter does not fall under the jurisdiction of the Panels (21 per cent) and incomplete or incorrect documentation (18 per cent). The share not admissible due to failure to have sent a letter of complaint, which is the requirement for recourse to the Ombudsman (Figure 2.7), remained stable.

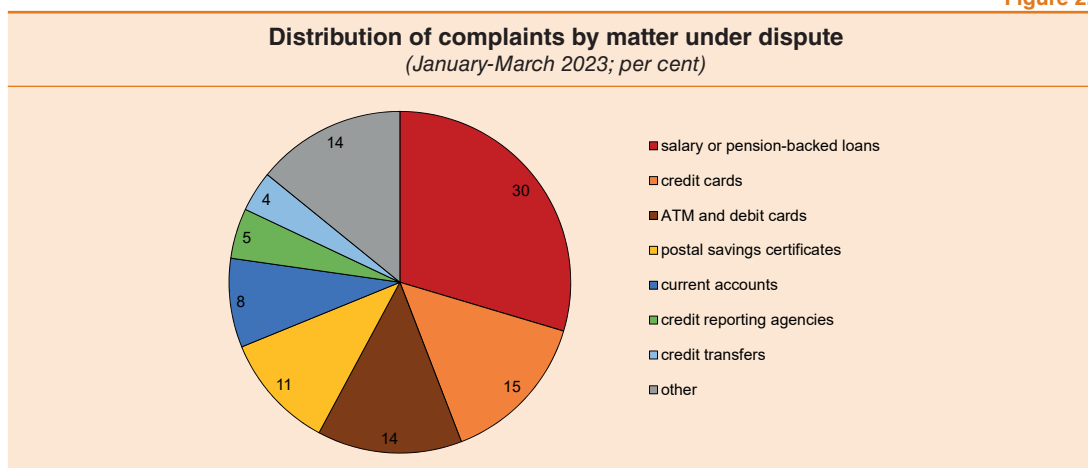
Figure 2.7



Data on the first quarter of 2023

In the first three months of 2023, the Ombudsman received over 4,100 complaints, down by 11 per cent compared with the same period of the previous year. This was due to the sharp decline in disputes concerning postal savings certificates, ATMs and debit cards, and current accounts, partially offset by the increase in complaints about other matters, such as credit cards and CRSs (Figure 2.8). The reduction in the number of complaints about fraudulent use (-13 per cent) is in line with that in complaints about payment services and instruments and in the total complaints to the Ombudsman.

Figure 2.8



CUSTOMER SATISFACTION

In the early months of 2023 customers who submitted a complaint to the ABF were asked to participate in a customer satisfaction survey in order to identify any areas of weakness and to improve the system. Around 5,500 complainants were contacted and over 1,100 completed the questionnaire. The participation rate was in line with that for the 2022 survey, at around 20 per cent. Some 26 per cent of respondents filed a complaint with the help of a professional or an association; among these, 66 per cent said they became aware of the ABF through an attorney or an association. Among the main reasons cited for submitting a complaint to the ABF were: (a) the desire to receive a ruling made by a competent and impartial body; (b) a high probability that the intermediary will comply in the event of a favourable outcome for the complainant.¹

Some 97 per cent of respondents said they had read the Panel's decision and 84 per cent felt that the decision was written clearly; the latter percentage is lower (70 per cent) for those whose complaint was dismissed.

Some 68 per cent found the decision easy to read and 62 per cent understood the legal reasoning behind it.

The degree of customer satisfaction was high, in line with the previous surveys. Some 84 per cent found it easy to locate information on how to file a complaint; 79 per cent said that submitting a complaint was easy and 76 per cent said the procedure was clear; 63 per cent would recommend submitting a complaint to the ABF if needed; 65 per cent believed that the length of the procedure was appropriate and only 41 per cent would ask a professional for help if they made another complaint.

One section of the survey focused on how customers use banking and financial services. The results showed that about 88 per cent of respondents accessed their

¹ The complaints filed by those that took part in the survey were upheld in 56 per cent of cases, dismissed in 42 per cent of cases and settled in the remaining 2 per cent.

account via home banking at least once a month and 76 per cent made online credit transfers; about 86 per cent used a payments card or an ATM at least once a week.

Another section focused on the economic, financial and digital skills of the complainants. The responses showed that the balance between the share of the respondents who rated their skills as being above and below average was positive in both areas. The balance was particularly positive with regard to digital literacy in the area of online transactions.

The respondents demonstrated a higher level of financial literacy than the average Italian as measured by the IACOFI survey: specifically, 72 per cent of them correctly answered the question on simple interest and 51 per cent that on compound interest (60 and 29 per cent respectively in the IACOFI survey).² There was also a positive correlation between the actual economic and financial skills demonstrated and how these skills were self-assessed.

² The questions were chosen from those used in the *Survey on the literacy and financial skills of Italians* (IACOFI) carried out by the Bank of Italy at the beginning of 2020.



3. THE DECISIONS OF THE PANELS: MAIN ISSUES COVERED



Current accounts

Issuing a debit card is a service included in a basic account.¹ The ABF decided on a case in which the customer complained that they were not issued with a debit card following the opening of a basic bank account. The Panel observed that the basic bank account rules and the contract signed by the parties included the issuing of a debit card and access to home banking. The Ombudsman therefore recognized the conduct of the bank as being unlawful, as it delivered the payment instrument with a severe and unjustifiable delay (seven months after the opening of the account). It therefore awarded the customer compensation for damages, calculated on an equitable basis at €300, for the inconvenience due to the lack of availability of the payment instrument.²

A joint current account³ shall be closed upon the express request of the account holders. In the case of a joint current account, the complainant claimed that the death of a joint account holder had led to the automatic dissolution of the contract and therefore requested her share of the account balance. The Panel dismissed the complaint.

This confirms its consolidated approach,⁴ according to which a current account contract does not automatically cancel as a result of the death of one of the holders, but only where there is an express request to do so on the part of the surviving account holder(s).⁵

Each holder of a joint current account⁶ may request that it be closed. After referencing its case law,⁷ according to which the holders of a joint current account are regarded as joint and several debtors and creditors⁸ vis-à-vis the bank, the Panel stated

¹ For further information, go to the Bank of Italy's portal: 'Economics for everyone': *Debit cards*.

² Decision **13834/2022**.

³ In the case of a joint current account, transactions can only be carried out with the consent of all the joint account holders.

⁴ Coordinating Panel, Decision **24360/2019**.

⁵ Decision **9421/2022**.

⁶ In the case of a joint current account, each joint account holder may perform transactions without the consent of the others.

⁷ Coordinating Panel, Decision **2420/2016**.

⁸ If there are several debtors who are jointly and severally liable, the creditor can demand full performance from any of the debtors, payment by which will also release all the other debtors; if there is more than one joint and several creditors, each of them may request full performance from the debtor, payment by which will release the debt as regards the other creditors (Article 1292 of the Civil Code).

that each joint holder may request the closure of the joint account. In the present case, the Ombudsman therefore decided that the bank could not refuse the joint owner's request and ensured that the account was closed.⁹

The bank may set off different accounts held by the customer if the legal conditions are met. The complainant company claimed that the conduct of the bank was unlawful in that it set off the amount due on a loan against the positive balance of the current accounts in their name. The Panel reiterated its consolidated case-law,¹⁰ according to which it is possible to set off accounts if the legal conditions (that is to say, if the credit is certain, of a fixed amount and due)¹¹ are met and without needing to close the current account beforehand. In the case in question, the Panel dismissed the complaint because the legal conditions were met: proof of the existence and the actual amount of the credit had been provided and a copy of the loan giving rise to the customer's debt had been produced.¹²



The right to receive a copy of bank documents

The right to obtain a copy of the contract signed with the intermediary is subject to the ordinary limitation period, which starts when the contract ends. The Panels clarified that the right of the customer to obtain a copy of the contract signed with the intermediary is not governed by Article 119(4) of the Consolidated Law in Banking (TUB), which only concerns the right of access to documents for transactions carried out in the ten years prior to the request. Since these are documents relating to the banking relationship as a whole, the Panel held that Article 117 of the TUB was applicable and therefore established that the limitation period of ten years starts on the date when the contract ends. In a case in which, in 2021, the customer requested a copy of a deposit agreement that had lapsed in 2018, the Panel upheld the complaint.¹³

The right of a bank account holder to obtain a copy of their account statements is limited to the 10 years prior to the request. The Coordinating Panel ruled on a customer's claim to obtain copies of all the account statements for a current account that was opened in 1996. In accordance with its consolidated case law,¹⁴ the Panel stated that, since account statements are merely a summary of a number of individual transactions, they fall under Article 119 of the TUB. The customer's right to have copies of account statements is therefore limited to the decade preceding the request. In the case in question, given that the customer had requested copies of the

⁹ Decision [192/2022](#).

¹⁰ Coordinating Panel, Decision [2420/2016](#).

¹¹ A credit is defined as being certain once its existence has been established; it is of a fixed amount when its amount is stated specifically and not generically; it is due if it is not subject to conditions or a time limit.

¹² Decision [1656/2022](#).

¹³ Decision [577/2022](#).

¹⁴ Coordinating Panel, Decision [15404/2021](#).

account statements throughout the contractual relationship and that the bank had already provided the customer with a copy of the account statements for the ten years preceding the request, the ABF dismissed the complaint.¹⁵

The costs charged by the intermediary for producing bank documents must not be excessive. The Ombudsman has on several occasions taken a position on the reasonableness of the costs charged to customers to provide banking documents. In a case relating to the production of several account statements, the complainant considered the bank's charge to be excessive (initially €10.50, later reduced to €5 per document). The Panel pointed out that the expected costs for producing bank documents should not be excessive or seek to restrict the customer's right to view documents, but rather should aim to cover the costs of the service provided. Based on that approach, the ABF decided that the amount charged by the intermediary was inappropriate and upheld the complaint.¹⁶



Mortgages and other loans

The bank is not obliged to renegotiate a mortgage loan agreement at the request of the customer. According to the consolidated case law of the ABF, the decision to renegotiate the financial terms of a mortgage agreement is part of the entrepreneurial autonomy of the bank, which may legitimately refuse the customer's request. However, the refusal must always be accompanied by a suitable explanation for the customer, in accordance with the principles of good faith and fairness incumbent upon the bank.¹⁷

As part of a subrogation process, the bank may propose a change in the financial terms of a mortgage agreement, on the condition that it provides the customer with clear information. In one case, the customer complained of a bank's unfair conduct as, at the end of the subrogation application evaluation process, it had proposed a higher interest rate than both that initially envisaged and the original rate for the mortgage to be subrogated. The complainant withdrew their application for subrogation given that the financial terms were no longer favourable since the proposed interest rate had increased during the evaluation process, and sought damages from the intermediary. The Panel decided that the bank's conduct was fair, pointing out that it had adhered to the timetable laid down for the evaluation and had provided the customer with all the necessary information, including the date of validity of the various offers. The ABF therefore dismissed the complaint.¹⁸

¹⁵ Coordinating Panel, Decision [6887/2022](#).

¹⁶ Decision [7011/2022](#).

¹⁷ Decision [1362/2022](#).

¹⁸ Decision [8851/2022](#).



For a personal loan, the intermediary is not required to include the formula used to calculate interest in the loan agreement or to attach the amortization schedule. A customer with a personal loan claimed that the intermediary had not provided the information needed to assess the costs of the contract, in breach of transparency obligations. According to the customer, the intermediary had failed to specify the mathematical formula used to calculate interest and to provide information on the higher cost of the French amortization plan compared with other types of repayment plans. The Coordinating Panel dismissed the complaint, making it clear that the intermediary is legally obliged to provide certain essential information, as in this case, such as the APR (annual percentage rate), the interest rate and all the prices and conditions applied, but it is not required to attach the amortization schedule or to indicate the mathematical formula used to calculate the interest. It also clarified that the absence of an amortization schedule and/or the calculation formula does not translate into uncertainty of the terms of the contract. The Panel then pointed out that the customer is entitled to obtain at any time, free of charge, an amortization schedule including, among other things: the sums owed; the payment deadlines and conditions; the amortization schedule for the principal; and the interest and any additional costs.¹⁹

Credit insurance on a personal loan is considered mandatory in certain circumstances and should therefore be included when calculating the APR; however, the bank may provide evidence to the contrary and demonstrate its optional nature in relation to an individual loan. The Panel dealt once again with this matter and confirmed that, under certain circumstances, it must be presumed that the policy is essentially imposed on the customer, and is therefore mandatory, although it is described in the contract as optional. The policy is considered mandatory when all the following are present: (a) it serves as a loan protection function; (b) the policy and the loan are signed at the same time and the two agreements are of equal duration; (c) the fact that the insurance proceeds only cover the outstanding balance of the debt. The intermediary can provide evidence to the contrary by demonstrating the optionality of the policy.²⁰ In a case where a customer complained about the non-inclusion in the APR of the insurance costs of a credit protection policy, the intermediary demonstrated the optionality of the insurance coverage and the Panel therefore dismissed the complaint.²¹

For revolving loan contracts, the ‘cash advance’ fee should not be included in the calculation of the APR. The Coordinating Panel decided on whether the APR should include the fee charged on cash advances on revolving credit cards in the form of a percentage of the amount withdrawn via ATM. In the Panel’s view, in credit agreements that allow the customer to use the sums received in different ways (for example, withdrawal from an ATM or purchase through POS), only charges that are linked to the methods

¹⁹ Coordinating Panel, Decision [14376/2022](#).

²⁰ Coordinating Panel, Decisions [10617/2017](#), [10620/2017](#), [10621/2017](#) e [2397/2018](#).

²¹ Decision [16540/2022](#).

most commonly used for this type of contract are taken into account when calculating the APR. Withdrawing cash is not common when using a revolving credit card and is an alternative to the far more frequent use of this type of card for POS purchases. Given that revolving credit cards are mainly for cashless purchases of goods, the Coordinating Panel dismissed the complaint, specifying that the fee should not be included when calculating the APR.²²

For revolving credit agreements concluded before the reform of consumer credit (1 June 2011), the cost of sending account statements should be excluded when calculating the APR. After examining the legislation in force at the time,²³ the Coordinating Panel specified that, for revolving credit agreements concluded before the consumer credit reform, the costs of sending account statements should not be included in the APR, provided that the customer was free to choose how to have them sent and that the corresponding costs were set out separately from the APR; moreover, the costs must not be exceptionally high. Having ascertained that these conditions were met, the Panel held that the exclusion of this cost from the APR was correct and dismissed the complaint.²⁴



Salary or pension – backed loans

When the customer finishes paying off a salary-backed loan, they are entitled to reimbursement of the costs incurred when the contract was agreed, which includes both recurring and upfront costs. One customer had finished repayment of a salary-backed loan taken out in 2015 ahead of schedule and requested the proportional reimbursement of the upfront and recurring charges paid at the time of agreement.²⁵ The Panel upheld the complaint albeit for an amount lower than that indicated in the request. The ABF first referred to the ‘Support-bis’ decree which, in the case of salary-backed loan agreements signed before 25 July 2021, in the event of early termination, limited the right to reimbursement solely to recurring costs. As the transitional provision was subsequently declared illegal, the Panel concluded that, following the intervention of the Constitutional Court, the client should be reimbursed for both recurring and upfront costs (including brokerage fees).²⁶ As regards the criterion to be applied for calculating the amount due, the ABF referred to the linear proportional criterion for recurring charges,²⁷ while for the

²² Coordinating Panel, Decision [6856/2022](#).

²³ In addition to Article 122 of the TUB, in its previous version, the provisions of the Decree of the Minister for the Treasury of 8 July 1992 shall apply.

²⁴ Coordinating Panel, Decision [6858/2022](#).

²⁵ For a definition of upfront and recurring costs, see ‘The reference framework’, footnote 3 in this section.

²⁶ Decision [2701/2023](#).

²⁷ In the linear proportional criterion, the total amount of each cost item is broken down by total number of loan instalments and then multiplied by the number of instalments remaining until full repayment of the loan.

upfront costs it used the interest curve criterion,²⁸ in line with what had previously been established by the Coordinating Panel.²⁹

If the criterion for the repayment of interest not yet accrued when a salary-backed loan is paid off early is unclear, the criterion most favourable to the customer should apply. In two cases submitted to the Coordinating Panel, the customers complained that, upon their early repayment of salary-backed loans concluded in 2014 and 2015, the intermediary had reimbursed the interest not accrued at a rate lower than the amount due. Specifically, while the contract expressly provided that interest would be reimbursed together with certain fees according to the linear proportional criterion, the bank considered that it had to repay the interest in accordance with French-style amortization, where interest was reduced and reached zero on the last instalment. The ABF upheld the customers' complaints: the Coordinating Panel stated that, if the contract sets out in an ambiguous manner the criterion according to which interest that has not yet accrued must be repaid to the customer upon early termination of the loan, the criterion most favourable to customers (in this case the proportional criterion and not that of the interest curve) applies.³⁰



Unilateral modification of contract (i.e. ius variandi)

A bank cannot introduce new clauses via a unilateral proposal for amendment. The ABF recalled its case law, according to which Article 118 of the TUB, which allows the intermediary to amend the contractual conditions unilaterally, assumes that the proposed amendment relates to a clause already in the contract: however, new clauses cannot be inserted. In the case in question, the ABF therefore declared that the application of a new fee, introduced by a communication entitled 'Proposal for unilateral modification', was unlawful, as the fee was not present in the initial contract.³¹

A contractual amendment to introduce the possibility of making an 'extra' cash withdrawal exceeding the daily limit, which does not show the date when the new services would be operational and the right of the customer to withdraw, is not valid. In the case in question, the complainant had ignored a fraudulent transaction consisting of a cash withdrawal over the limit at a bank counter following the theft of their bank card. This type of withdrawal, which allows the daily limit to be exceeded, was not originally included in the contract and was introduced by the bank via a proposal for a unilateral modification of the contract. The customer stated that they had only become aware of it from the documentation provided when a new card was sent. With reference

²⁸ The interest curve criterion follows the model adopted to construct the amortization schedule for calculating interest, which decreases from instalment to instalment.

²⁹ Coordinating Panel, Decision 26525/2019, in which the ABF decided that the principles of the Lexitor judgment were applicable to cases of early repayment of salary-backed loans, recognizing the customer's right to a reduction in the total cost of the loan with no distinction between recurring and upfront costs.

³⁰ Coordinating Panel, Decision 6885/2022.

³¹ Decision 15346/2022.

to the legislation,³² the Panel took the view that features such as an ‘extra withdrawal’ may be introduced by way of a unilateral modification of the contract, provided that: (a) the option of modification is included in the contract; (b) the customer is notified of the modification in writing with at least two months’ notice prior to the date of application indicated in the proposal, specifying that the customer has the right to withdraw from the contract free of charge; (c) there is due cause to do so. The Panel upheld the complaint observing that the communication addressed to the customer did not mention the date from which the new service would be operational, nor did it highlight the right of the customer to terminate their contract.³³



The floor clause

The floor clause is not unfair if it is drafted in clear comprehensible language and if its inclusion in a loan agreement does not allow the contract to be reclassified as an embedded derivative. In one case, the complainant believed that the inclusion in a loan agreement of a floor clause required the contract to be classified as an embedded derivative,³⁴ with the application of the provisions of the Consolidated Law on Finance (TUF) and the obligations to provide the customer with adequate pre-contractual disclosure; the customer also argued that the clause was unfair. The Panel confirmed the previous case law on this point and stated that the presence of a floor clause does not mean that the agreement is classified as an embedded derivative, but that it is merely a factor in determining the interest rate. After noting that the floor clause cannot be regarded as unfair if it is formulated, as in the case that is the subject of the complaint, in a clear and comprehensible manner, the Ombudsman dismissed the complaint.³⁵



Computer fraud

If a phone is associated with several payment instruments, only a single ‘one-time password’ (OTP) needs to be sent. The complainant company complained about the bank’s breach of the principles of strong customer authentication (SCA) as it enabled scammers to change the customer mobile phone associated with four payment cards by sending a single OTP. The Coordinating Panel decided that, as clarified by the European Banking Authority (EBA), mobile phones must, for the purposes of a SCA, refer to the owner and not to the payment instrument. It follows that sending a single

³² As regards payment services, unilateral modification of the contractual provisions is governed by Article 126-sexies of the TUB.

³³ Decision **14495/2022**.

³⁴ Derivative instruments have this name because their value is derived from the performance of an underlying asset or from the occurrence of a future event that can be observed objectively. The asset and the event, whatever its nature or type, constitute the ‘underlying’ part of the derivative product.

³⁵ Decision **8843/2022**.

OTP to the mobile phone of a holder of several payment cards is sufficient to incorporate one of the factors of strong customer authentication, in accordance with the relevant rules; the Panel therefore did not grant the customer's request.³⁶

In the event of SMS spoofing, the user is guilty of gross negligence only if there are serious indications of unreliability or anomalies in the messages sent by fraudsters. In a case of non-recognition of unauthorized transactions, the ABF, in line with the Panels' case law, has reiterated that if a user is the victim of SMS spoofing, they are entitled to reimbursement of unauthorized transactions, unless it is the result of their gross negligence in having facilitated the scam. Indicators of anomalies or of the unreliability of the scam message are important for this purpose. In the case in question, the sender name in the text messages was the one used by the intermediary; they were part of the chat containing other authentic messages and contained links apparently referring to the bank. The Ombudsman therefore excluded gross negligence on the part of the complainant and upheld their request for repayment of the amount of the non-recognized transactions,³⁷ minus the deductible of €50.³⁸

The bank must use two different channels for sending one-time passwords and prove, at least putatively, gross negligence on the part of the user. In line with its consolidated case law, the Ombudsman reiterated that, if the intermediary's security system provides for sending an OTS (a dynamic password sent via SMS and used to authorize transactions deemed suspicious in addition to an ordinary OTP), a different transmission channel from that used for the first OTP communication must be utilized. In the case in question, the OTP had been generated by the intermediary's app and the OTS had been sent by SMS: the Panel therefore ruled that the authentication system was adequate. The user had also been sent a phone notification informing them of access via a browser other than the one normally used.

The Ombudsman stated that this notification, together with the sending of an OTS, was sufficient to enable the user to notice the transaction taking place; it therefore dismissed the complaint, taking the view that the gross negligence on the part of customer had been putatively established.³⁹ In another case, given the bank's lack of evidence of gross negligence on the part of the customer, the ABF ordered the intermediary to refund the sum of €199,950 to the complainant.⁴⁰

In the event of fraud aimed at changing the recipients of credit transfers, any contributory negligence on the part of the customer leads to a reduction in the repayment owed by the bank. The ABF dealt with the disputed bank transfers in favour of a beneficiary other than that indicated on the payment order. In the case in question, a company complained that two transfers that it had ordered, both for large

³⁶ Coordinating Panel, Decision [13398/2022](#).

³⁷ Decision [9862/2022](#).

³⁸ The rules provide that if the customer has behaved diligently (without deliberate intent or gross negligence), they will be liable for a maximum loss of €50 (threshold) in the event of unauthorized payment transactions resulting from the improper use of a payment instrument following its theft, loss or misappropriation.

³⁹ Decision [3835/2022](#).

⁴⁰ Decision [4996/2022](#).

amounts (over €50,000), had been credited to the account of unknown persons; it therefore attached the transaction orders, with the correct IBAN, which was missing from the final receipts. The Ombudsman observed that, after the first transfer, the bank had warned the customer of possible computer security breach aimed at changing the recipients of the transfers, suggesting certain actions that the company had not, however, implemented until after the second transfer had been executed. The ABF ordered the bank to repay to the company just €98,000, an amount corresponding to the sum of the first transfer and half of the second, for which the Panel found a contributory negligence on the part of the customer.⁴¹

⁴¹ Decision [1439/2022](#).