



BANCA D'ITALIA  
EUROSISTEMA



Arbitro Bancario Finanziario  
Risoluzione Stragiudiziale Controversie

# The Banking and Financial Ombudsman: Annual Report



Abridged Version



BANCA D'ITALIA  
EUROSISTEMA

# The Banking and Financial Ombudsman: Annual Report

Abridged Version

2018

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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.*

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# Data for 2018

complaints received

27,041

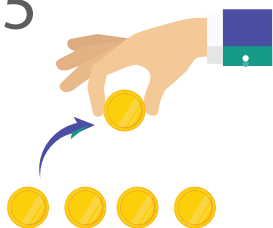
(-12%)



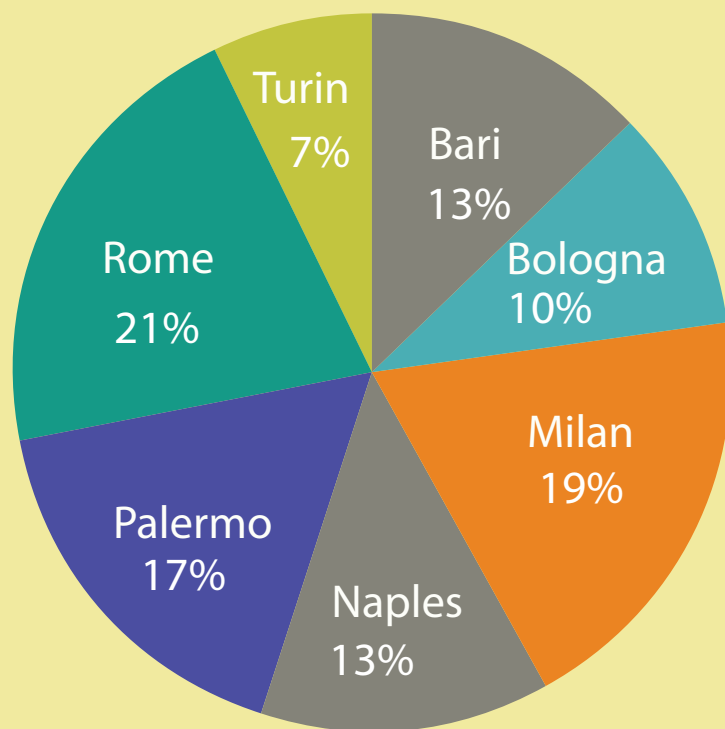
of which

64%

regarding loans secured  
by pledge of 1/5  
of salary



## Complaints received by Panel



509

Panel meetings

32,905

Panel decisions



69%

of complaints  
resolved were  
substantially in  
favour of  
complainants



21 million euros  
awarded to customers

# The ABF in brief



## What is the ABF?

The ABF is an alternative resolution system for banking and financial disputes

## What can the ABF decide on?

The ABF decides disputes concerning banking and financial transactions and services, and payment services



## Is there a ceiling on the amounts involved?

- Up to €100,000, if you are requesting a sum of money
- No ceiling on the amounts if you ask for the ascertainment of rights, obligations and prerogatives



## Are there any time limits?

The ABF rules on disputes relating to transactions or conduct after 1 January 2009



## Do I need a lawyer or a professional person?

No, the complaint may be filed autonomously by using the web portal



## How much does it cost?

Only €20, which is reimbursed if the complaint is upheld



## FOREWORD

This Report gives an account for 2018 of the activity of the Banking and Financial Ombudsman (Arbitro Bancario Finanziario, ABF).

Since the ABF system was established in 2009, more than 104,000 customers of banking and financial intermediaries have received an answer to their complaints through the Ombudsman's decisions. Banks and financial intermediaries comply with almost all of the ABF's decisions, even though they are not legally binding. The case law of the ordinary courts often refers to the ABF's decisions. In the last three years alone, more than €54 million have been awarded to complainants.

In 2018, almost 27,000 complaints were filed. Even if the number of complaints is still significant, for the first time since the institution of the ABF, there has been a considerable reduction compared with the previous year (minus 12 per cent). The alignment of the banks and financial intermediaries with the panels' consolidated case law has contributed to the decrease in complaints.

The reduction in complaints has particularly involved those concerning loans secured by a pledge of one-fifth of salary or pension (minus 22 per cent). This decrease was due in part to the Bank of Italy's supervisory work, which has adopted supervisory guidelines on the loans secured by a pledge of one-fifth of salary or pension. In this way, details on the application of the principles contained in the regulation were provided to banks and financial intermediaries, in order to prevent misconduct and to promote the adoption of fair behaviour towards clients, also through the recognition of customers' claims during the handling of complaints. These guidelines were followed by specific interventions regarding intermediaries.

These results have been achieved thanks to all the actors involved in the procedure: the Chairs and members of the panels, the staff of the technical secretariats established at the Bank of Italy's branches, and the various divisions of the Bank of Italy that work together to make the system function smoothly.

In 2018, the ABF issued more decisions (37 per cent up on the previous year), and more than 32,000 complaints have been decided, thereby reducing the number of pending disputes. In 69 per cent of the cases, the outcomes were substantially in favour of complainants, 47 per cent of complaints resulted in total or partial acceptance of the complainant's request and 22 per cent of complaints were settled by the parties prior to the ABF's decision.



The average duration of the ABF procedure was 266 days, less than the maximum time limit provided for by the legislation (270 days, taking into account the complexity of the case). In the first quarter of 2019, the average duration was 237 days.

In order to facilitate access to the system, an online portal has been available since February 2018. Any client can submit their claim using the portal and no professional assistance is required. If necessary, the user can send an email asking for support and receives a prompt reply.

The Bank of Italy is currently developing a new online procedure that will further increase the efficiency of the system. At the end of last year, the Bank of Italy launched a public consultation on the proposed amendment of the current ABF Provisions. The revision aims to ensure the full alignment of the legislation with Directive 2013/11/EU on alternative dispute resolution (ADR) for consumer disputes, and to introduce new tools that will allow disputes brought before the Ombudsman to be handled more efficiently.

\* \* \*

This year's Report has a streamlined structure and less technical content; it is addressed to non-expert readers.

The staff working in the complaints offices of banking and financial intermediaries, trade associations, professionals, academics and anyone else who is interested can also visit the archive of the panels' decisions available on the ABF website, which is regularly updated and contains more than 54,000 published decisions.

The first Chapter provides a description of the ABF's main features and how it operates. The second Chapter contains some statistical data on the complaints received by the ABF, the decisions it issues and the work of the panels. There are also the results of a survey carried out during the first months of 2019 to assess the claimants' satisfaction, together with an investigation aimed at obtaining information about the disputes submitted to the ordinary courts after the ABF's decision.

The third and fourth Chapters outline the main decisions adopted by the territorial panels and by the Coordinating Panel in 2018 and in the first months of 2019; a comparison between the ABF's decisions and the case law of the ordinary courts in the matters falling under the ABF's jurisdiction is also provided.

The Report includes an Appendix containing statistical data and methodological notes, available online on the ABF website, only in Italian ([www.arbitrobancariofinanziario.it](http://www.arbitrobancariofinanziario.it)).

The publication of the annual Report on the ABF's activity also fulfils the current legal obligations.<sup>1</sup>

This abridged version contains Chapter 1, 2 and a summary of Chapter 3.

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<sup>1</sup> Credit Committee Resolution 275/2008, Bank of Italy provisions issued on 18 June 2009 as amended, Legislative Decree 130/2015.

## 1. The main characteristics of the ABF

This chapter describes the main characteristics of the Banking and Financial Ombudsman (ABF), as well as how complaints are submitted and examined. The relationship between the ABF and the Bank of Italy's supervisory activity, and the initiatives adopted to spread information about the Ombudsman, are also explained. From an international perspective, a description of Fin-Net, the cooperation network formed by national organizations responsible for out-of-court settlements of complaints (alternative dispute resolution - ADR) in banking, financial and insurance matters, which was set up by the European Commission, is also provided.



### *What is the ABF?*

The Banking and Financial Ombudsman (ABF) is a decision-making alternative dispute resolution scheme aimed at solving controversies between customers on the one hand, and banks and financial intermediaries on the other. The ABF was established in 2009 to introduce an alternative mechanism that is faster and less expensive than civil litigation.

- The ABF is autonomous and impartial with respect to the Bank of Italy.
- Recourse to the ABF is simple and does not require any legal or professional assistance.
- The ABF applies the law to decide who is right and who is wrong, taking into account the content of the complaint and the documents submitted by the parties. Other means of evidence (e.g. expert reports) are not allowed.
- The ABF's decisions, although not legally binding, are complied with in almost all cases; any non-compliance is made public on the ABF's website.

For more information, *A simple guide to the ABF* is available on the ABF web-site (only in Italian).



### *Who can customers file a complaint against?*

Customers may file a complaint against:

- banks;

- financial intermediaries listed on the register referred to in Article 106 of the Consolidated Law on Banking (Legislative Decree 385/1993);
- collective loan guarantee consortia referred to in Article 112 of Legislative Decree 385/1993;<sup>1</sup>
- payment institutions;
- electronic money institutions;
- the Post Office as regards its BancoPosta activity.

If the financial intermediary does not fall into one of the abovementioned categories (e.g. if it is removed from the registers and lists kept by the Bank of Italy) the ABF cannot review the complaint: if the complaint is filed, it will be declared inadmissible and the fees to cover the costs of the procedure will not be reimbursed.<sup>2</sup>

In order to verify whether the financial intermediary falls under the ABF's jurisdiction, it is possible to access **the registers and lists** kept by the Bank of Italy on its website.

It is also possible to file a complaint against foreign banks and intermediaries that operate in Italy under the freedom to provide services and do not adhere to another out-of-court dispute settlement system that is a member of Fin-Net (see the section '*Fin-Net*').



### ***What can you ask the ABF?***

The Ombudsman rules on disputes concerning banking and financial transactions and services (for instance, current accounts, mortgages and consumer credit), including payment services, except those relating to transactions or conduct prior to 1 January 2009.

You can ask the ABF to:

- recognize an amount of money not exceeding € 100,000;
- ascertain rights, obligations and prerogatives (for instance the right to receive transparency documents or the right to extinguish a mortgage after the repayment of the debt), irrespective of the amount involved.

The **ABF website** describes in detail the necessary steps to verify whether the controversy may be submitted to the Ombudsman.

<sup>1</sup> Up until the creation of the list provided for by Article 112 of the Consolidated Law on Banking, for the collective loan guarantee consortia other than those obliged to enrol in the register of financial intermediaries pursuant to Article 106 of the Consolidated Law on Banking, please refer to the general list of minor collective loan guarantee consortia, pursuant to Article 155(4) of the Consolidated Law on Banking.

<sup>2</sup> The ABF retains its jurisdiction if the financial intermediary has been removed from the registers and lists after the complaint has been filed.



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### *When is it not possible to file a complaint with the ABF?*

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The ABF cannot decide disputes relating to:

- services or activities for investment purposes (for instance, the trading or placement of securities, investment advice and asset management. Investment services fall within the jurisdiction of the **Financial Disputes Arbitrator**);
- goods and services that are not banking and financial in nature;
- issues already submitted to a judicial authority;
- issues already under examination by an arbitrator or mediator; however, recourse to the ABF is possible if the arbitration, conciliation or mediation procedure failed or if the financial intermediary commenced it and the customer did not participate.



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### *What to do before filing a complaint*

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Filing a complaint with the Ombudsman is only possible after having submitted a written claim to the financial intermediary on the same issue. If the financial intermediary does not respond within 30 days from the date of the submission or if the response is unsatisfactory, the customer may file a complaint with the ABF within 12 months of the date of the claim submission.



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### *How much does it cost to file a complaint?*

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To file a complaint with the ABF, the customer must pay a fee of €20 to cover the costs of the procedure. If the ABF upholds the complaint (in whole or in part), the financial intermediary must reimburse that amount to the customer and pay a fee of €200 to the Bank of Italy.



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### *What to do after the decision is issued*

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It is only possible to ask for an amendment of the decision when omissions, clerical errors or miscalculations occur; the Ombudsman's decisions may not be appealed: the parties cannot ask for a review of the merits of the dispute. However, they are allowed to submit their dispute to an ordinary court after the decision is issued by the Ombudsman.

The submission of the dispute to the ABF, as an alternative to mediation, fulfils the requirements prescribed by the Legislative Decree 28/2010, namely the mandatory submission of any civil case to an ADR system before filing a lawsuit with the courts.



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### *How to file a complaint with the ABF*

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The ABF's web portal has been operational since 2018, enabling customers to file and manage complaints entirely on their own.

In order to access the web portal, customers must register online through the reserved area of the **ABF's website**. The web portal allows customers to submit complaints and their supporting documents.

Created pursuant to Directive 2013/11/EU on alternative dispute resolution for consumers and to Legislative Decree 130/2015 that transposes it into law, the web portal satisfies the need to enhance the ABF's efficiency and improve its capacity to respond to claimants. The submission of hard copy complaints has been limited to specific cases (see the section of the website *How to file a complaint*).

For further information on submitting complaints online, see the *Guide On How To Use The Web Portal*, available on the ABF's website (only in Italian).



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### *Who handles the complaints?*

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The disputes received by the Ombudsman are submitted to one of the seven territorial panels (Milan, Turin, Bologna, Rome, Naples, Bari and Palermo). Jurisdiction is based on the domicile of the complainant.

Each territorial panel is composed of five members, appointed by the Bank of Italy:

- the Chair and two members are selected by the Bank of Italy;
- one member is selected by associations representing financial intermediaries;
- one member is selected by associations representing customers (consumers and non-consumers).<sup>3</sup>

Alternate members are selected and appointed in the same manner, and are called upon to stand in for members not only in the event of absence, impediment or abstention, but also in order to respond to the functional needs of the panels in relation to the flow of complaints and the workload.

To be appointed, specific requirements relating to experience, professionalism, integrity and independence are required; furthermore, all panel members must abide by a code of conduct.

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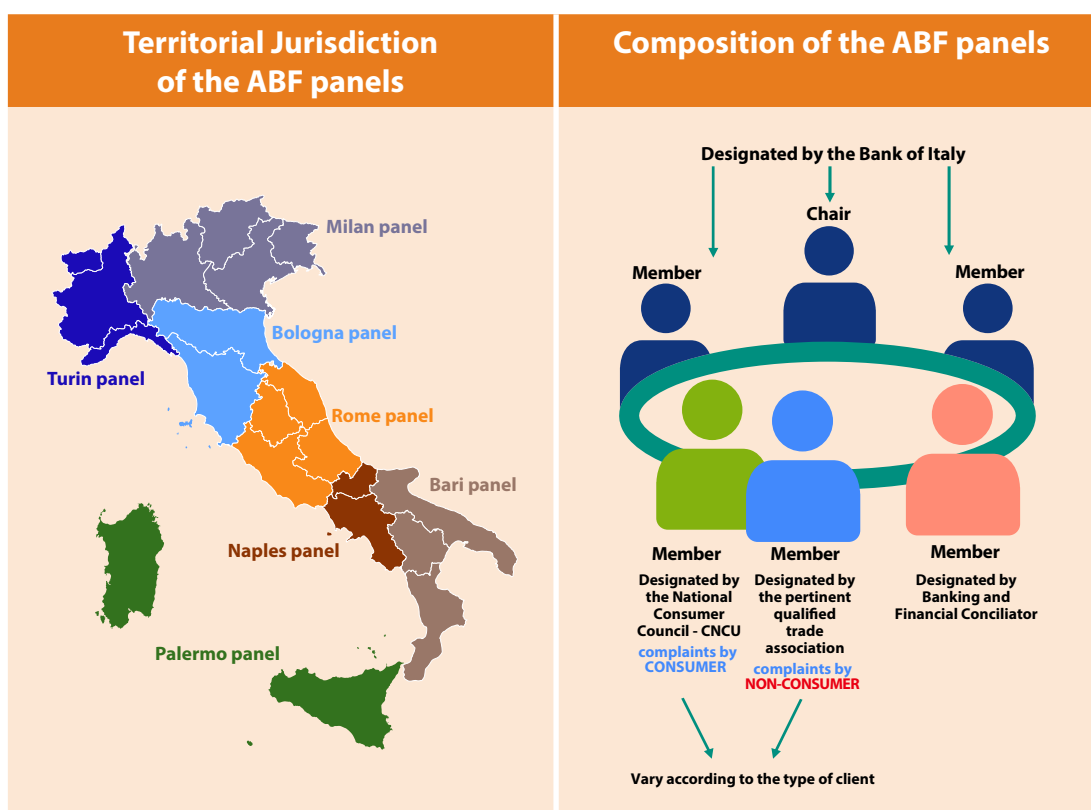
<sup>3</sup> For the definition of consumers and non-consumers, see footnote 3 of chapter 2 (Data on complaints and operations).

## THE CURRENT COMPOSITION OF THE PANELS

The panels consist of 133 members (7 Chairs, 34 regular members and 92 alternates). Of these, 58 were designated by the Bank of Italy, 32 by the Banking and Financial Conciliator, 27 by the National Consumer Council and 16 by Confindustria.

The average age of the members is 52. Some 26 per cent of members are women; 87 per cent are experts in legal matters, while the others are experts on economic or technical subjects; and 77 per cent of the members are in their first term of office (as of 31 May 2019).

For more information concerning the composition of the territorial panel, see the *Territorial Panels* section of the ABF website.



### Coordination between panels

The Coordinating Panel and the Panel Conference, introduced in 2012 and 2016 respectively, aim to ensure greater consistency among the single panels' decisions.

The Coordinating Panel decides in cases where a territorial panel deems the issue at stake to be of particular significance or finds that the dispute under its review has given or could give rise to inconsistent decisions. The Coordinating Panel consists of three

of the seven Chairs and of two members from the territorial panels (one designated by the Banking and Financial Conciliator and the other by the associations representing customers), all selected annually by lot.

For 2019, following the selection by lot, the members of the Coordinating Panel consist of the Chair of the Rome panel (serving as Chair), and the Chairs of the Bari and Naples panels (for more information, see *The Coordinating Panel Section of the ABF website*).

The Panel Conference, held at least twice a year, consists of two members from each panel (one of whom is the Chair) and deals with substantive and procedural issues that are of particular interest to the ABF or to the system as a whole.

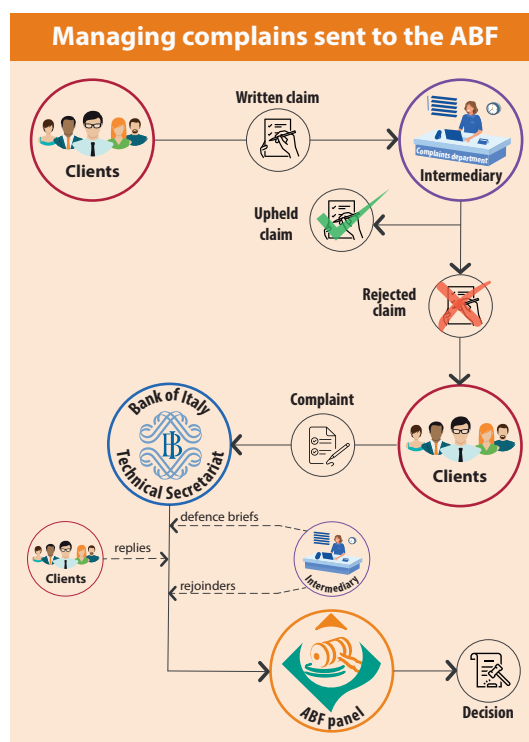


## Response times

Pursuant to the ADR Directive and its implementing national law (Legislative Decree 130/2015), and in accordance with the guidelines issued by the Steering and Coordination Committee set up by the Ministry of Economic Development, the procedure may last a maximum of 270 days, also taking into account the complexity of the case.

In 2018, the overall average duration of an ABF case was 266 days (calculated from the date of filing the complaint to the notification of the decision), net of any period of suspension provided for by the Provisions; including the suspension periods, the duration was 304 days.

In the first quarter of 2019, the average duration of an ABF procedure was 237 days, net of any period of suspension.



## THE NEW ABF PROVISIONS

The functioning of the ABF is regulated by Credit Committee (CICR) Resolution 275/2008 and the Bank of Italy's provisions dated 18 June 2009 (subsequently amended in November 2016 with the introduction of the new panels).

At the end of December 2018, the Bank of Italy started a public consultation procedure for the amendment of the CICR Resolution and of the abovementioned Bank of Italy ABF Provisions.



The amendments aim both at ensuring the full compliance of the ABF rules with the ADR Directive (implemented via Legislative Decree 130/2015) and at introducing new instruments in order to handle disputes more efficiently.

The timeframe for completing ABF procedures will also be adapted in accordance with the Directive and the implementing Legislative Decree.



### *Initiatives to raise awareness of the ABF's activities*

Last year the Bank of Italy increased and diversified its communication activities, also using social media to spread awareness of the ABF system to the general public.

## THE WEBSITE AND SOCIAL MEDIA

*The website.* – Panels' decisions are made public on the ABF website: some 54,000 decisions are easily available thanks to a search engine; as in previous years, the website's most frequently visited page was the archive of the panels' decisions.

The number of document downloads also rose by 54 per cent.

*YouTube.* – With the launch of the web portal, the the Youtube Channel helped to broaden awareness of the role of the ABF . In 2018, the **video presentation** got 4,975 views, **the commercial** 2,385 and the **video tutorial** 8,279.

*Twitter.* – On the twitter account @bancaditalia, 20 tweets were about the ABF; they had almost 32,188 views.

*LinkedIn.* – In 2018, one post dealt with the ABF on the Bank of Italy's webpage and was addressed to more than 40,000 people.

Also in 2018, several conferences were held on the ABF. The presentation of the Annual Report for 2017 at University La Sapienza (Rome) and at the Suor Orsola Benincasa University (Naples), were opportunities to organize discussions on the ABF's activities with institutional and private operators. Other conferences were held in the cities where the panels are located.

During the meetings organized by the Bank of Italy in 2018, a specific section was dedicated to the ABF in order to make citizens aware of its tasks and functions.

## SUPPORT PROVIDED BY THE BANK OF ITALY

*Technical Secretariat.* – Each panel is assisted by a Technical Secretariat that operates out of the Bank of Italy branch associated with the territorial jurisdiction of the panel. Without prejudice to the clear distinction of roles and responsibilities, the technical secretariats carry out fundamental tasks that assist in the functioning of the panels.



The technical secretariat's workforce currently consists of 137 staff members, more than half of whom are women, and the average age is 42 (as of 31 March 2019). Last year, 58 recent law graduates completed six-month internships at the technical secretariats and at the central coordinating unit to add work experience within the ABF system to their CVs.

Other branches of the Bank of Italy also contribute to the technical secretariats' activities in the form of on- or off-site cooperation (for instance, through delocalized working).

The ABF functions are also supported by the Information Technology Directorate General of the Bank of Italy – that deals with IT support procedures – and also by the Consumer Protection and Anti-Money Laundering Directorate, which coordinates the technical secretariats' work and monitors the entire system.

*The toll-free number.* – The toll-free number 800 19 69 69, managed by the Bank of Italy, provides information on the ABF and on how to file a complaint. Users receive general information on the ABF and may make a query by leaving a voice message; the Bank of Italy's staff will try to contact them within a few hours. In 2018, the queries to the toll-free number increased by about 53 per cent compared with the previous year and represented around one third of the total number of calls. They dealt predominantly with the procedural aspects of filing complaints (24 per cent).

*Assistance in using the web portal.* – Since the launch of the web portal, assistance on how to use it has been made available to users. Users may submit a query online and the Bank of Italy's staff will contact them within a few hours. In 2018, 2,200 requests for assistance concerning information on the complaint (58 per cent), the functioning of the ABF system (32 per cent) and IT aspects (10 per cent) were submitted.



### *The Bank of Italy and the role of National Competent Authority*

As national competent authority, pursuant to Legislative Decree 130/2015, the Bank of Italy has verified that the ABF meets the requirements of stability, efficiency and impartiality, and the obligation to ensure low-cost access for consumers.



### *The ABF and the goals of the Supervisory Authority*

The outcomes of the Ombudsman's proceedings contribute significantly to the supervision of the banking and financial system. According to the ABF's Provisions, the decisions become part of the broader pool of information at the Bank's disposal for its regulatory and control functions.

In March 2018, **supervisory guidelines** regarding loans secured by a pledge of one-fifth of salary or pension were issued, taking into account the panels' consolidated case law.

Subsequently, steps were taken to raise the awareness of the intermediaries most affected by loans secured by a pledge of one-fifth of salary or pension.



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### *Fin-Net*

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Fin-Net is a network of national ADR schemes in the banking, financial and insurance services sector, set up by the European Commission in 2001.

The network promotes cooperation between the adhering systems and provides consumers with easy access to out-of-court resolution of disputes in cases concerning cross-border litigation relating to financial services: the client can use the ADR system operating in their State to file a complaint against an intermediary of another member State.

Fin-Net currently has 60 members; these systems operate within the European Union and in Iceland, Liechtenstein and Norway. The ABF has been a member of Fin-Net since 2011. A Memorandum of Understanding, signed in 2016, describes the cooperation between the different schemes that participate in the network (**Memorandum of Understanding on a Cross-Border Out-of-Court Complaints Network for Financial Services**).

During the 2018 annual meetings, the results of a survey carried out by the Bank of Italy on the main characteristics of the members of Fin-Net were presented.<sup>4</sup>

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<sup>4</sup> For more information on the survey, see *The ABF Annual Report* on 2016, and *The ABF Annual Report* on 2017 (abridged versions).





## 2. DATA ON COMPLAINTS AND OPERATIONS

### Overview

In 2018, the Banking and Financial Ombudsman (ABF) received 27,041 complaints. In the first 12 months of activity of the Portal (which began operating in February 2018), around 22,200 complaints were submitted online. After the strong growth in previous years, in 2018 the number of complaints received decreased for the first time since its institution in 2009. This reduction was mainly caused by that in complaints regarding loans secured by a pledge of one-fifth of salary or pension, whereas complaints on other matters overall increased with respect to the previous year.

The majority of complaints were filed by consumers (97 per cent), and were particularly concentrated in Lazio and in some southern regions.

In 2017, the new panels instituted at the end of 2016 gradually started to operate fully; this led to a considerable growth in the decisions taken by the ABF last year. With respect to 2017, the number of decisions rose significantly (from 24,029 to 32,905) and 509 meetings were held (390 in 2017). The Milan, Rome and Naples panels decided an average of 73 cases per meeting and the newly established panels decided an average of 56. In 69 per cent of the cases, the decision was substantially in favour of the complainant. The intermediaries almost always complied with the ABF's decisions (a compliance rate of more than 99 per cent).

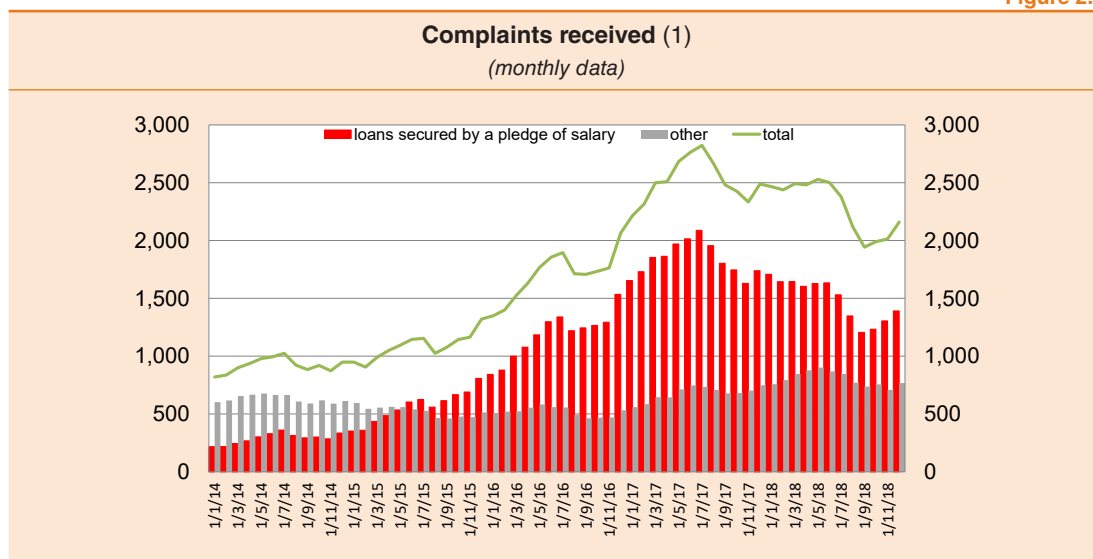
The subsections that follow provide data on the complaints submitted to the ABF (amounts and characteristics) as well as the outcomes and activities of the panels.

### Demand

In 2018, the ABF received 27,041 complaints, a slight reduction compared with 2017 (30,644). The reduction was mainly caused by that in complaints regarding loans secured by a pledge of one-fifth of salary or pension, which represent two thirds of the total: after growing in previous years until the peak in 2017, in 2018 there was a decrease for the first time (Figure 2.1).



Figure 2.1



(1) Four-month moving average ending in the reference month; based on seasonally adjusted data.

Complaints on other matters increased overall by 15 per cent. The increase was particularly sustained for complaints on savings accounts and postal savings certificates,<sup>1</sup> other forms of consumer credit,<sup>2</sup> and credit cards (Figure 2.2 a).

The decrease in complaints on loans secured by a pledge of one-fifth of salary or pension (which still represent 64 per cent of all complaints; Figure 2.2 b), coupled with the

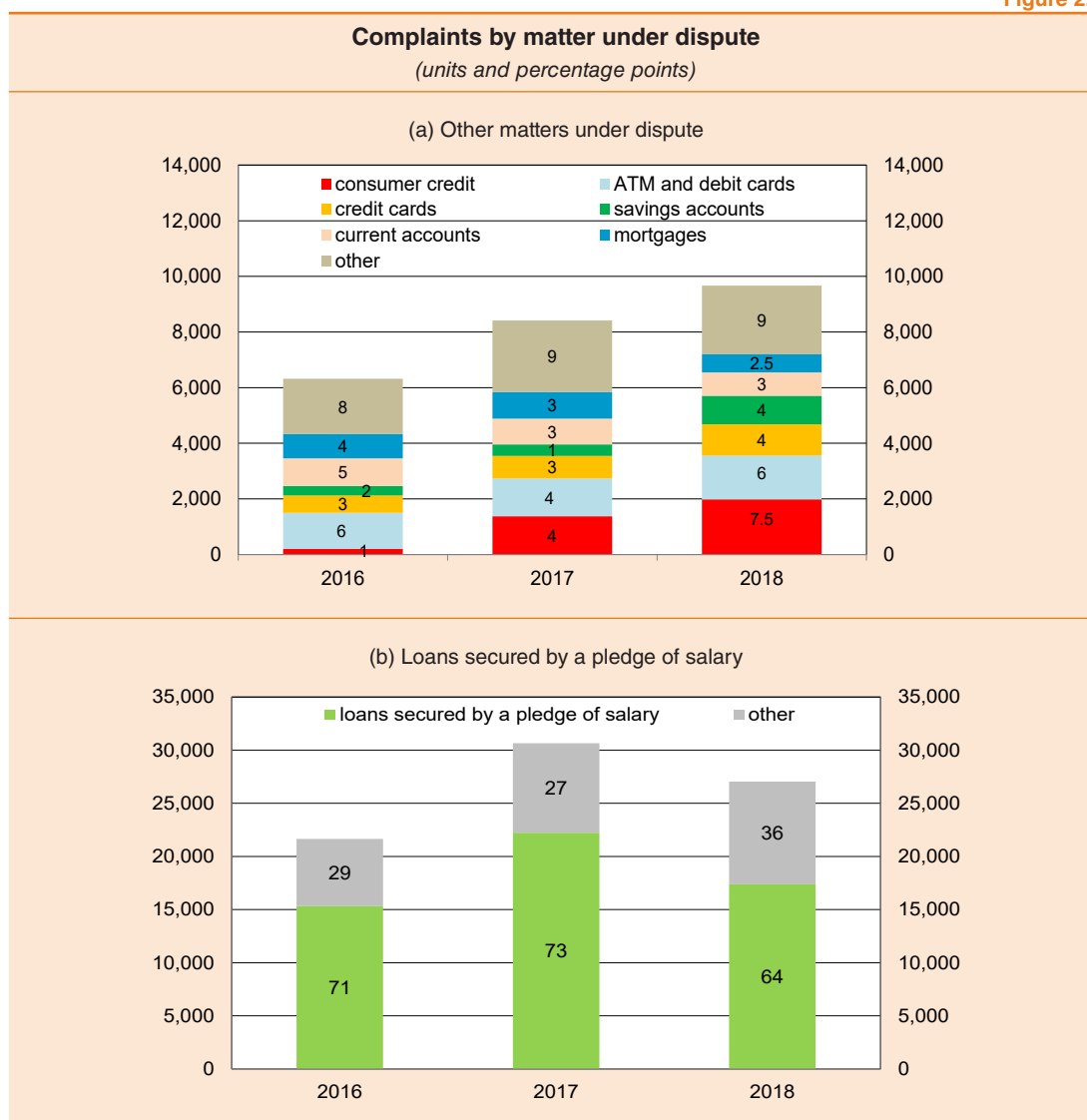
Table 2.1

Complaints received by matter under dispute: comparison with 2017					
MATTER UNDER DISPUTE	2017		2018		% Variation 2018-17
	No.	% of total	No.	% of total	
Loan secured by a pledge of salary	22,232	73	17,372	64	-22
Consumer credit	1,380	4	1,980	7	43
ATM and debit cards	1,356	4	1,575	6	16
Credit cards	809	3	1,129	4	40
Savings accounts	415	1	1,022	4	146
Current accounts	929	3	845	3	-9
Mortgages	950	3	645	2	-32
Credit reporting agencies	338	1	410	2	21
Checks	248	1	359	1	45
Central credit register	294	1	356	1	21
Other	1,693	6	1,348	5	-20
<b>Total complaints</b>	<b>30,644</b>	<b>100</b>	<b>27,041</b>	<b>100</b>	<b>-12</b>
Total complaints excluding loans secured by a pledge of salary	8,412	27	9,669	36	15

<sup>1</sup> In this chapter, complaints concerning savings accounts also include those concerning postal savings certificates.

<sup>2</sup> Even though they are a form of consumer credit, loans secured by a pledge of salary are considered separately in this Report, due to the significant amounts and the peculiarities of complaints on this matter; all data relating to consumer credit in this chapter are net of all such complaints.

Figure 2.2



increase in complaints regarding other matters, has led to the latter's incidence increasing by 9 percentage points, from 27 to 36 per cent.

The matters under dispute vary according to the nature of the complainant (consumers or non-consumers);<sup>3</sup> nonetheless, the overall trends strongly reflect those of consumers, given that they submit 97 per cent of complaints (Figure 2.3).

The weight of complaints on loans secured by a pledge of one-fifth of salary with respect to other matters also emerges from a survey conducted by the Bank of Italy on the main intermediaries: given the contracts outstanding in 2018, for every 1,000 contracts on loans secured by a pledge of salary, 7.8 complaints were submitted to

<sup>3</sup> Consumers are defined as natural persons, even when they submit a complaint with the help of a representative; non-consumers are professionals, owners of individual firms, micro-firms and other entities.

the ABF (9.8 in 2017), while only 0.6 complaints were submitted for other forms of consumer credit (0.1 in 2017).

Figure 2.3

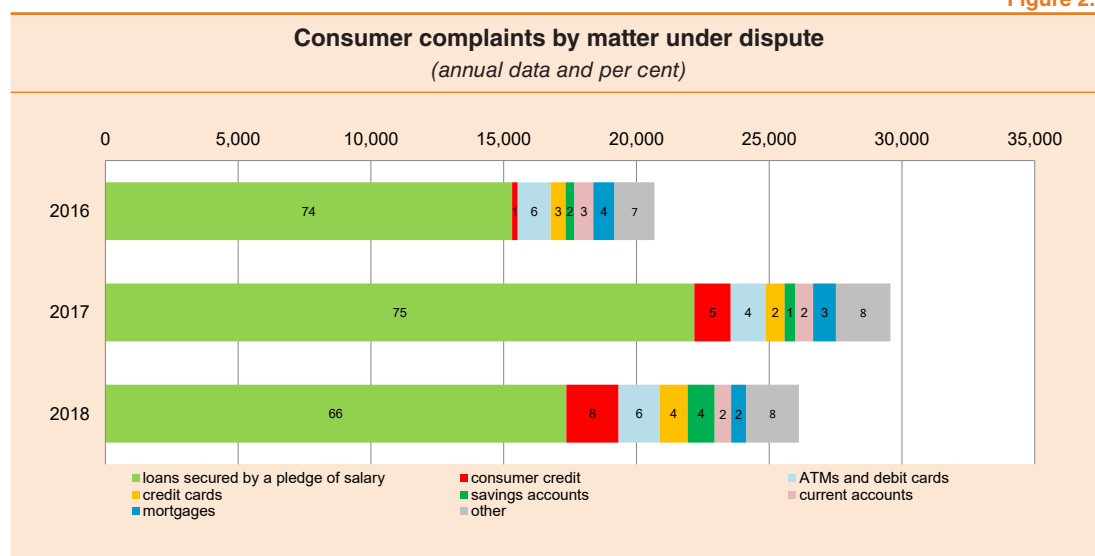
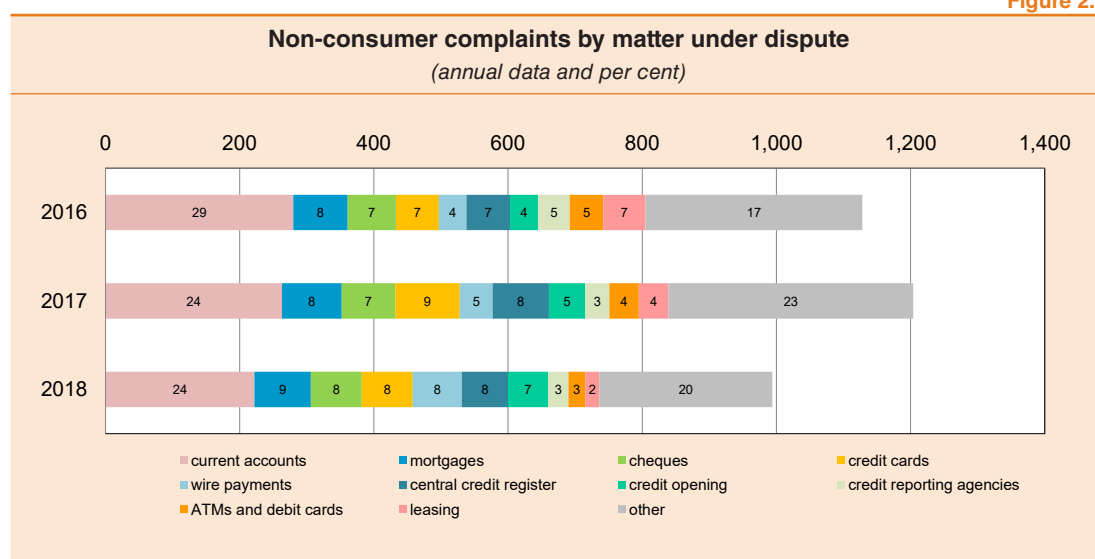


Figure 2.4

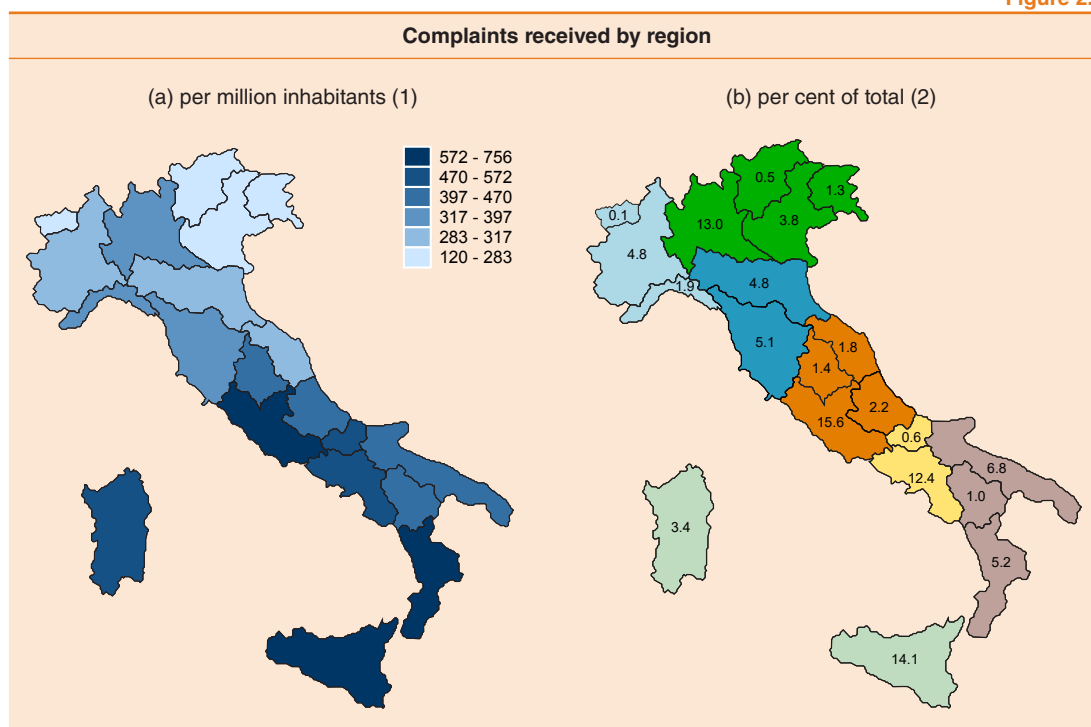


The share of non-consumers' complaints is only 3 per cent of the total, and the most common matter under dispute in their complaints is current accounts.

### Geographical distribution of complaints

Complaints to the ABF are not homogeneously distributed throughout Italy: southern regions have more complaints per capita on average than northern regions. In some regions, complaints per capita are particularly high: Sicily, Calabria and Lazio have the most complaints per million inhabitants (Figure 2.5.a).

Figure 2.5

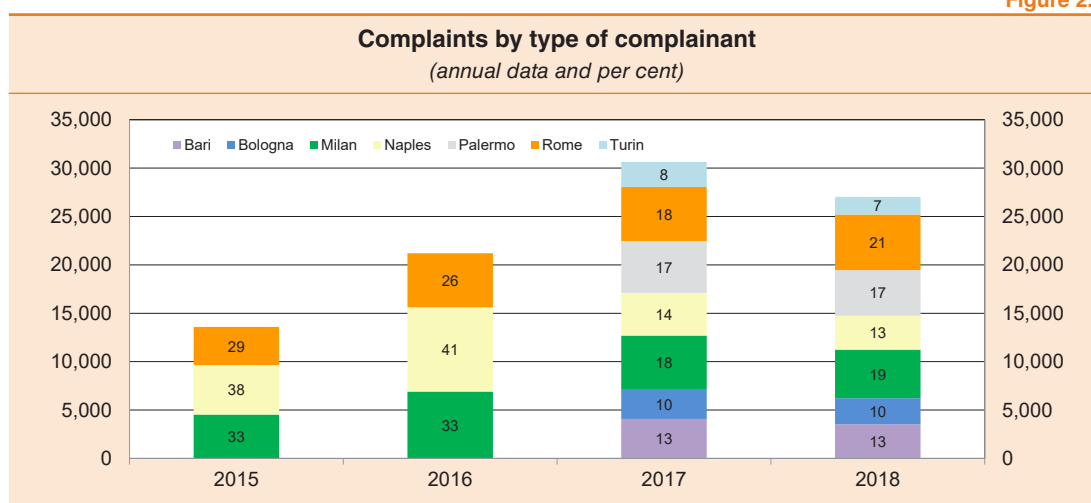


Sources: Based on ABF and Istat data.

(1) Resident population as at 1 January 2018. – (2) The colours identify the competent panels, while the numbers refer to the percentage of the total number of complaints.

Complaints are distributed across panels based on the complainants' domicile, which determines which panel has jurisdiction (see Chapter 1; Figure 2.5.b). The largest number of complaints was submitted to the panels of Rome, Milan and Palermo, due to the high number of complaints from Lazio, Lombardy and Sicily. The decrease observed in 2018 affected all panels except for that of Rome, for which the complaints received increased by 2 per cent with respect to 2017. Amongst the remaining panels, the greatest decrease occurred in Turin and Naples (-29 and -21 per cent, respectively; Figure 2.6).

Figure 2.6





## DISTRIBUTION BY MACROREGION OF BANKING PRODUCTS AND INSTRUMENTS: SURVEY ON HOUSEHOLD INCOME AND WEALTH

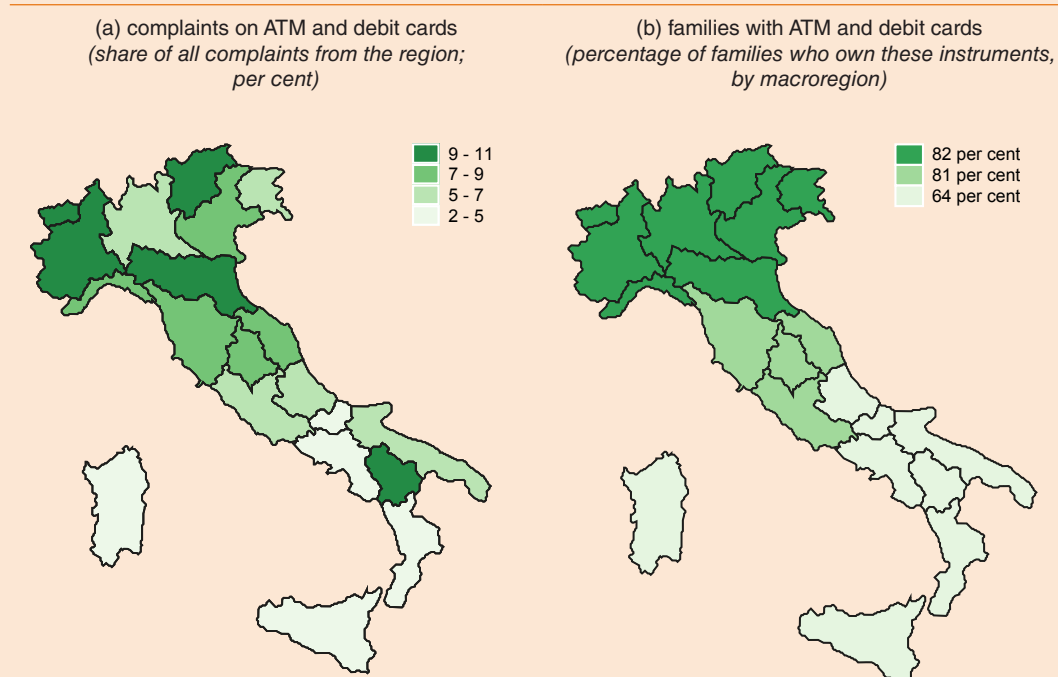
The Bank of Italy's Survey on Household Income and Wealth (SHIW) <sup>1</sup> provides information about the distribution of payment instruments and household indebtedness; it therefore provides useful indicators on some elements that contribute to determining the differences in the geographic distribution of ABF complaints.

From the joint analysis on data on both complaints and the SHIW, for instance, we can observe how the greater incidence of complaints on ATMs, debit cards and credit cards in northern regions could be influenced by how relatively more widespread these instruments are in those areas.

This is not the case with respect to financing, however, as complaints on consumer credit – which mostly involves complaints on loans secured by a pledge of salary – make up the biggest share of all complaints in southern regions, even though consumer credit is spread quite evenly across Italy.

Figure A

### ATM and debit cards



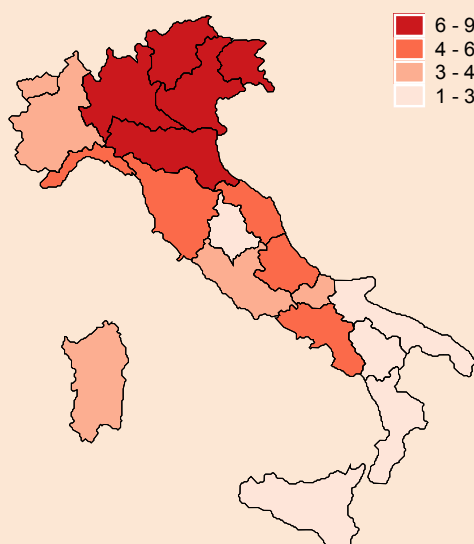
Source: for panel (b), Bank of Italy, SHIW 2018.

<sup>1</sup> Survey on Household Income and Wealth, Bank of Italy, Statistics Series, 12 March 2018.

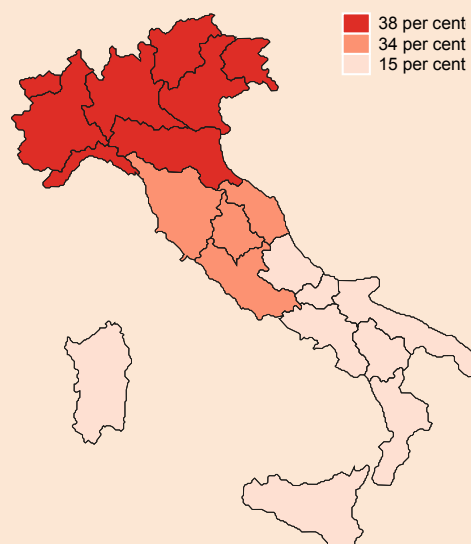
Figure B

### Credit cards

(a) complaints on credit cards  
(share of all complaints from the region; per cent)



(b) families with credit cards  
(percentage of families who own this instrument, by macroregion)

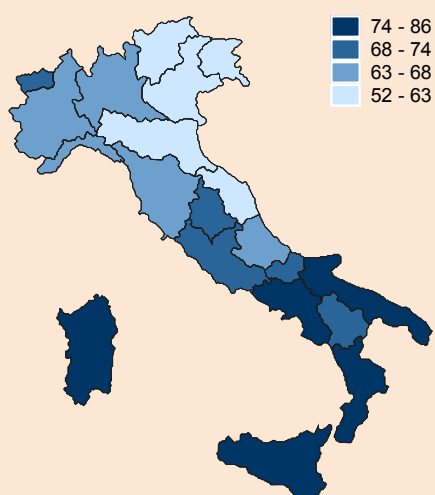


Source: for panel (b), Bank of Italy, SHIW, 2018.

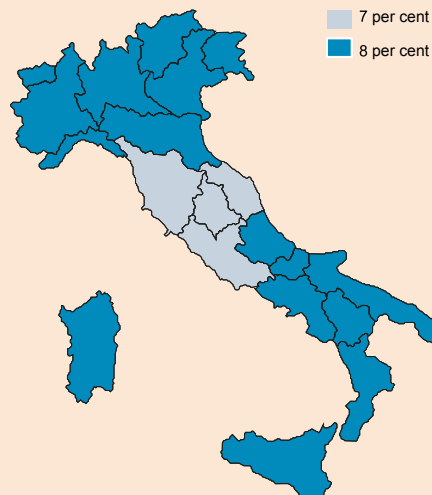
Figure C

### Consumer credit

(a) complaints on consumer credit  
(share of all complaints from the region; per cent)



(b) families with consumer credit financing  
(percentage of families who own this instrument, by macroregion)



Source: for panel (b), Bank of Italy, IBF, 2018.

## Characteristics of complainants

Complaints continue to be submitted predominantly by men (66 per cent; Figure 2.7).<sup>4</sup> The gender distribution across regions is still varied: complaints are submitted by men in less than 60 per cent of cases in Lombardy, Emilia-Romagna and Tuscany, and in close to 75 per cent of cases in Apulia, Campania and Molise.

Complaints concerning financing (loans secured by a pledge of salary, other forms of consumer credit, mortgages) were submitted by men two thirds of the time (Figure 2.8). Controversies on ATMs, debit cards, credit cards and deposit accounts were submitted by women in almost half of the cases.

Figure 2.7

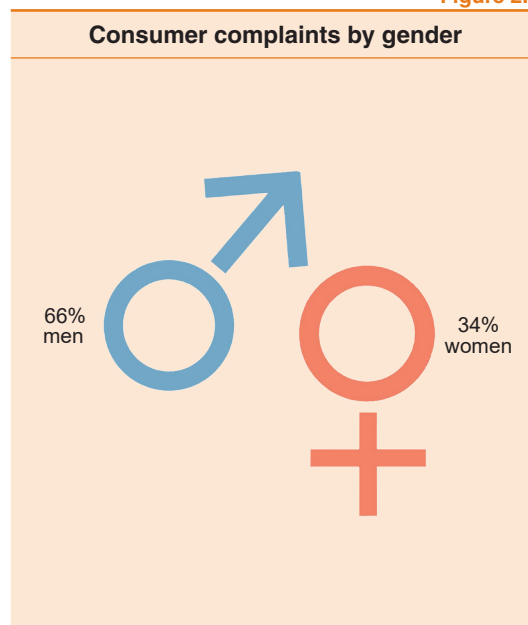
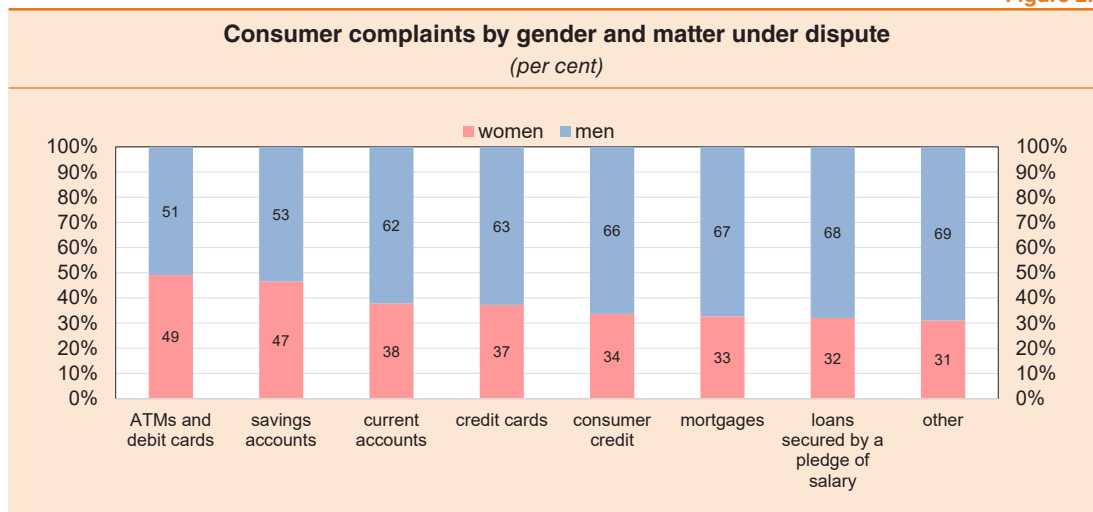


Figure 2.8



Complainants are 54 years old on average: the average age is higher for complainants on matters such as deposit accounts, postal savings certificates, and loans secured by a pledge of salary, while it is lower for credit cards, mortgages, ATMs and debit cards.

<sup>4</sup> The data in this paragraph only refer to consumer complainants.

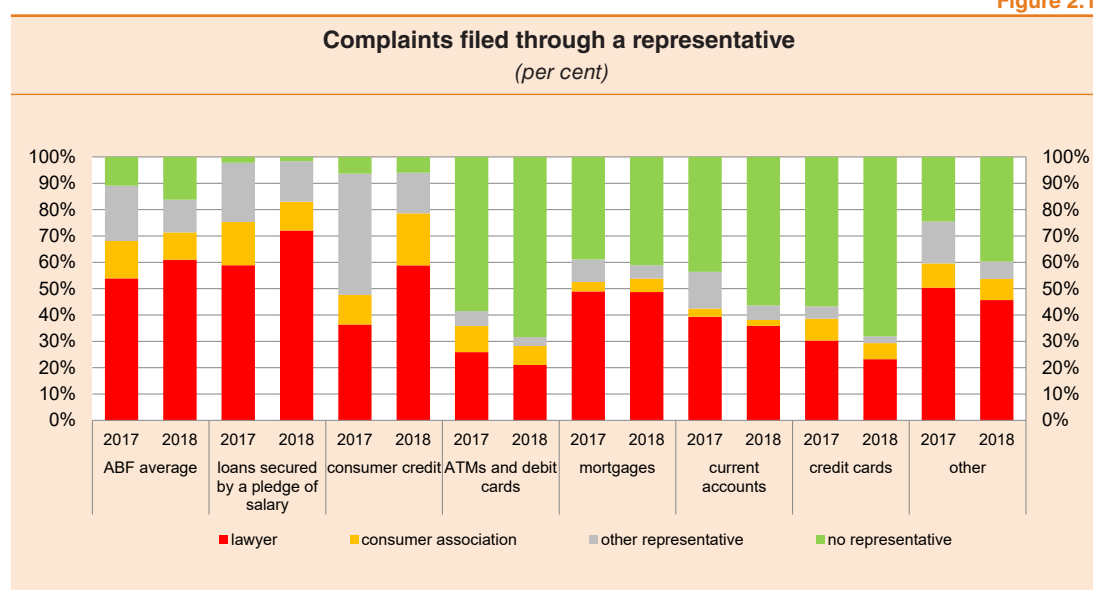
Most complaints continue to be filed with the assistance of a lawyer (61 per cent in 2018, more than the previous year); this is also due to the high incidence of complaints involving loans secured by a pledge of salary, where professional assistance is more common. In 2018, complaints filed without the assistance of a representative, while still a minority, grew with respect to the previous year.

On a geographic level, the incidence of complaints filed with the assistance of a representative is greater in southern regions, reflecting the different composition by matter under dispute (see Figures 2.9 and 2.10).

Figure 2.9



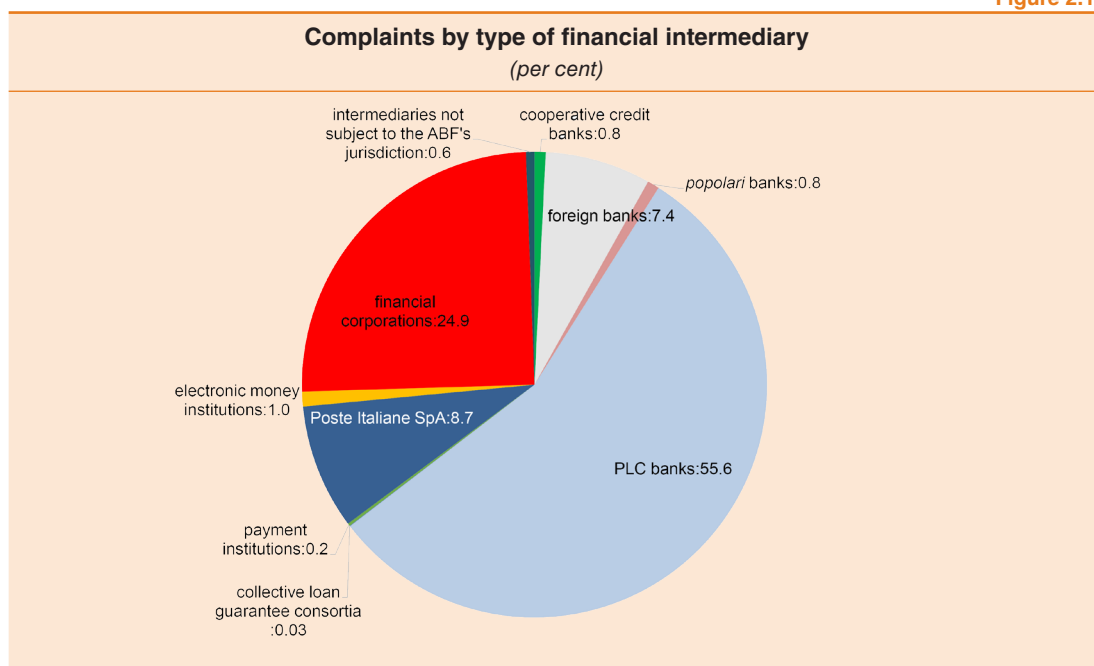
Figure 2.10



### *Types of financial intermediaries*

In 2018, the largest share of complaints continued to involve banks incorporated as limited companies (almost 56 per cent; 55 per cent in 2017); the share of complaints against financial corporations remained stable (close to 25 per cent), while there was an increase in the share of complaints against Poste Italiane SpA (Figure 2.11).

Figure 2.11



The share of the matters under dispute varies according to the type of financial intermediary, partly because they specialize in offering certain financial products. Complaints involving loans secured by a pledge of salary represent the main matter under dispute, in particular for financial corporations (87 per cent of all their complaints), for which these loans represent a significant share of all financing. Some 81 per cent of complaints against electronic money institutions involve credit cards (Table 2.2).

Table 2.2

Share of matters under dispute by type of financial intermediary								
MATTER UNDER DISPUTE	ABF System	PLC banks	Financial corporations	Poste Italiane SpA	Foreign banks	Payment institutions	Popolari banks	Cooperative credit banks
Loans secured by pledge of salary	64	64	87	0	85	0	33	0
Consumer credit	7	9	8	1	2	0	3	1
ATM/ debit cards	6	5	0	32	2	15	5	10
Credit cards	4	3	0	14	3	81	3	6
Savings deposits	4	0	0	41	0	0	0	1
Current accounts	3	4	0	5	1	2	11	21
Mortgages	2	3	0	0	3	0	5	17
Credit reporting agencies	2	2	1	0	1	0	6	2
Cheques	1	2	0	3	1	0	6	9
Central credit register	1	2	1	0	1	0	3	3
Other	5	6	1	4	2	0	24	27
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

The complaints submitted to the ABF represented around 8 per cent of the letters of complaint received by intermediaries, and 16 per cent of those rejected by them, even though the letters of complaint may concern matters other than those that can be submitted to the ABF.

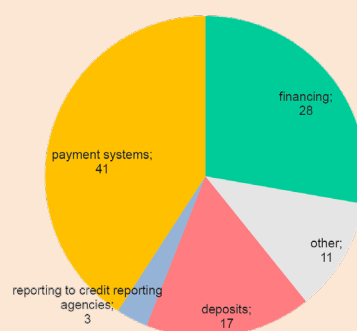
## LETTERS OF COMPLAINT TO INTERMEDIARIES

A quantitative analysis of the main issues and outcomes of the letters of complaint (which must precede the submission of a complaint to the ABF) provides a wealth of information. Based on data from supervisory reports, the number of letters of complaint received by intermediaries grew by 10 per cent in 2018, numbering just above 350,000. The most frequent issues related to payment systems and financing (41 and 28 per cent respectively; Figure A).

In 2018, approximately 36 per cent of the letters of complaint had a favourable outcome for the complainant, 7 per cent had a partially favourable outcome, while the other 57 per cent were dismissed (compared with 34, 8 and 58 per cent in 2017). With regard to the subject matter, the issues concerning payment systems had the highest percentage of favourable outcomes (Figure B).

Figure A

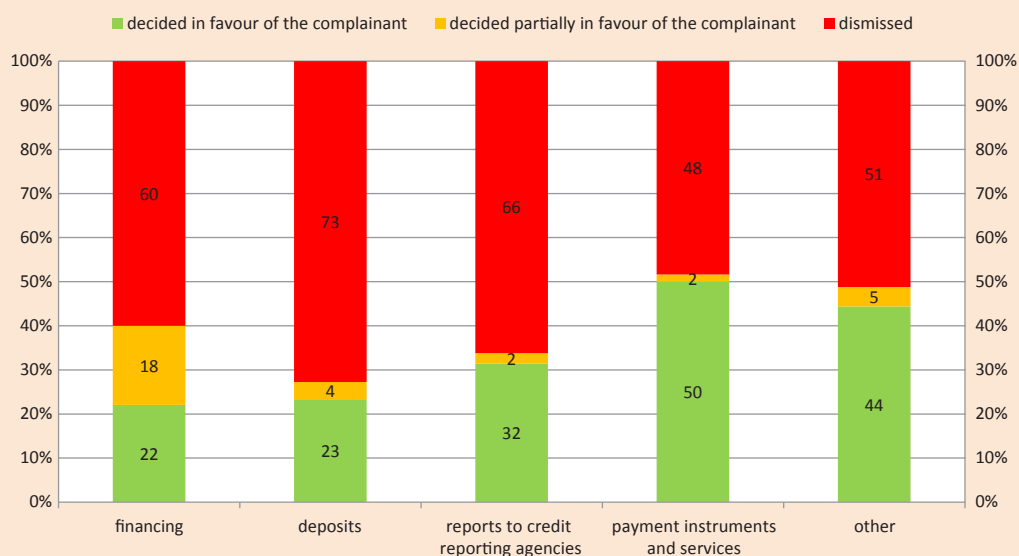
### Letters of complaint received in the banking system (per cent)



Source: Supervisory reports.

Figure B

### Outcomes (per cent)



Source: Supervisory reports.

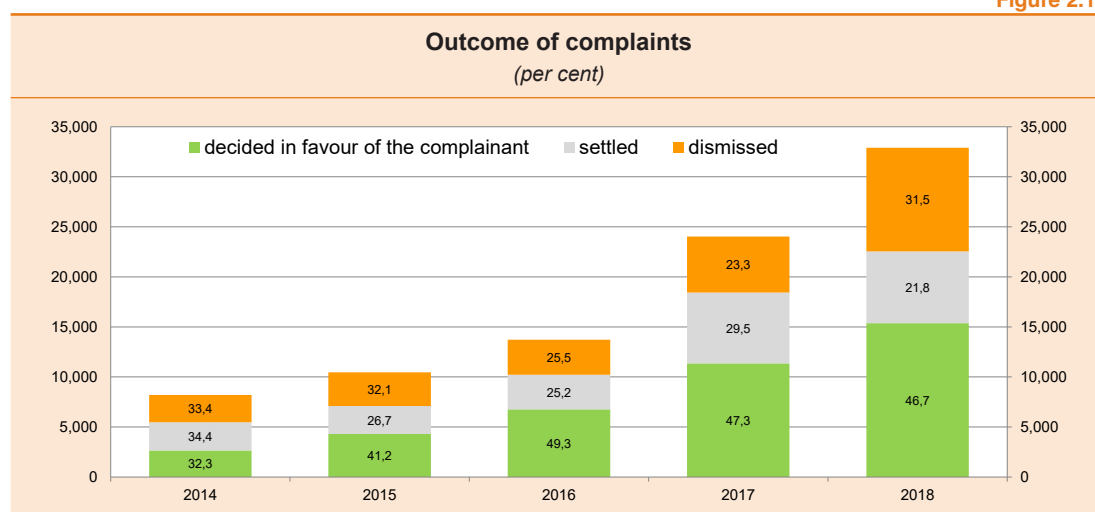
## Supply

### Outcomes

In 2018, the ABF panels issued decisions on 32,905 complaints (24,029 in 2017).<sup>5</sup> In 69 per cent of the cases that were resolved, the outcome was substantially in favour of the complainant (77 per cent in 2017). In 47 per cent of those cases,<sup>6</sup> the panels partially or totally upheld the complaint while in the other 22 per cent, the parties settled before a decision was issued.

The panels rejected 31 per cent of complaints, either because the customer's case was unfounded or not adequately proven, or on procedural grounds (Figure 2.12).

Figure 2.12



### AWARDS TO COMPLAINANTS

The total amount awarded by the ABF to customers in the past year increased further, reaching around €21 million (€19 million in 2017 and €14 million in 2016). The data only take into account the cases in which the panel determined the amount of the award, not those cases where the parties reached an agreement before the ABF issued a decision. As in 2017, in 2018 the amounts awarded by the top five intermediaries, ordered by the value of the amounts awarded, were equal to 60 per cent of the total. The amounts awarded to both consumers and non-consumers increased; 95 per cent of awards were in favour of consumers (Figure A). The average amount awarded decreased further, falling from €1,800 to €1,700 (€1,600 for consumers and €5,400 for non-consumers).

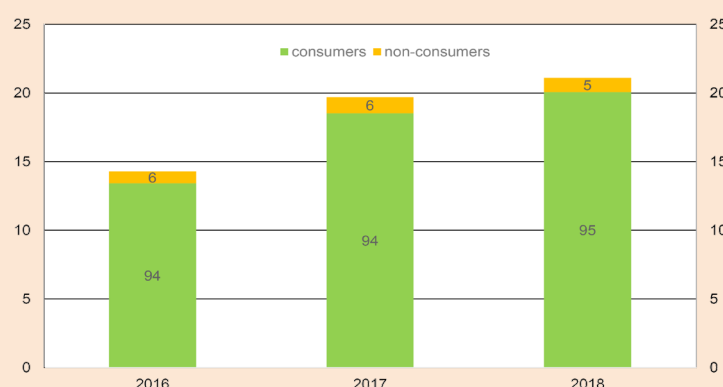
<sup>5</sup> The difference with respect to 2017 is also due to the new panels, established in December 2016, becoming fully operational.

<sup>6</sup> They include complaints decided fully or partially in favour of the complainant.

Among the more frequently raised matters, the highest amounts related to current accounts (Figure B). The average value of awards regarding loans secured by a pledge of salary was equal to approximately €1,500, and awards on this matter represented around 75 per cent of the total amount.

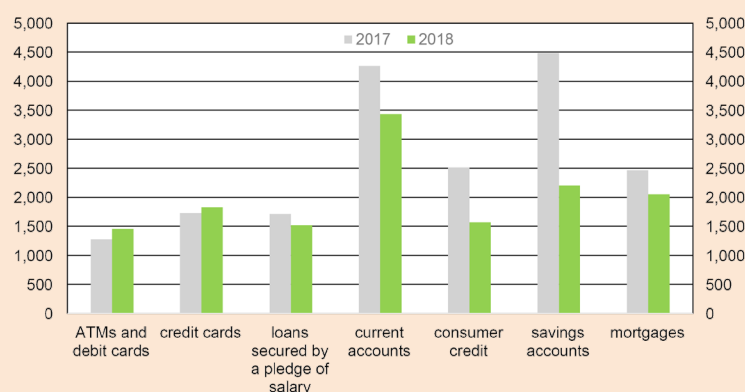
**Figure A**

**Amounts awarded**  
(millions of euros and per cent)



**Figure B**

**Awards per subject matter**  
(average amount in €)



Outcomes differed significantly depending on the matter under dispute: the percentage of cases decided in favour of the complainant or settled was lower for mortgages, while it was considerably higher for loans secured by a pledge of salary (Figure 2.13).

Outcomes also differed according to the type of financial intermediary (Figure 2.14). As in 2017, cooperative credit banks (BCCs) had the lowest incidence of adverse outcomes, while foreign banks and financial corporations had the highest, also as a consequence of the greater incidence of complaints on loans secured by a pledge of salary which characterizes their activity (Table 2.2).



Figure 2.13

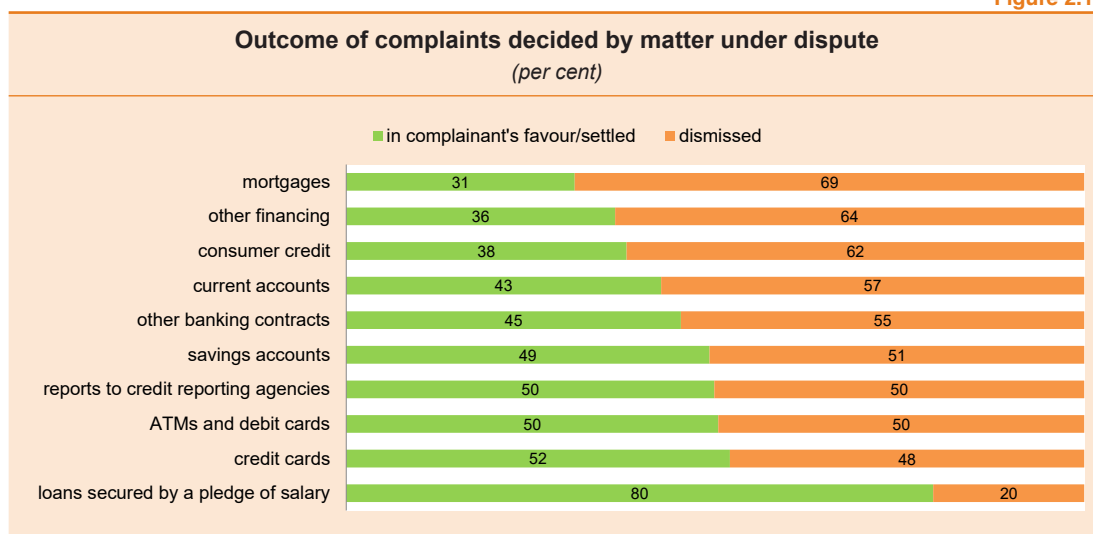
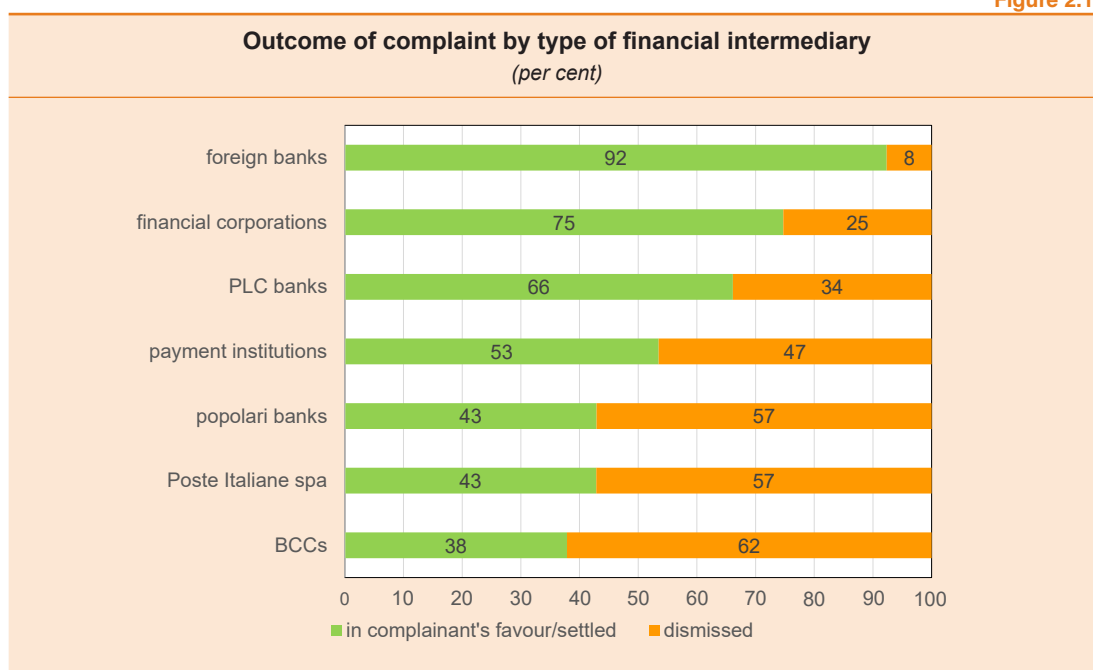


Figure 2.14



The shares of cases decided in favour of the complainant, settled by the parties or dismissed also differed greatly between individual financial intermediaries and banking groups (Figure 2.15).

The percentage of substantially positive outcomes (decisions in favour of the complainant and settlements before decision) was higher for consumers than for non-consumers (Figures 2.16.a and 2.17.b). This reflects the higher incidence of disputes involving loans secured by a pledge of salary, which had higher success rates.

In 2018, the non-compliance rate was less than 1 per cent, thus confirming the effectiveness of the ABF even though its decisions are not binding.

Figure 2.15

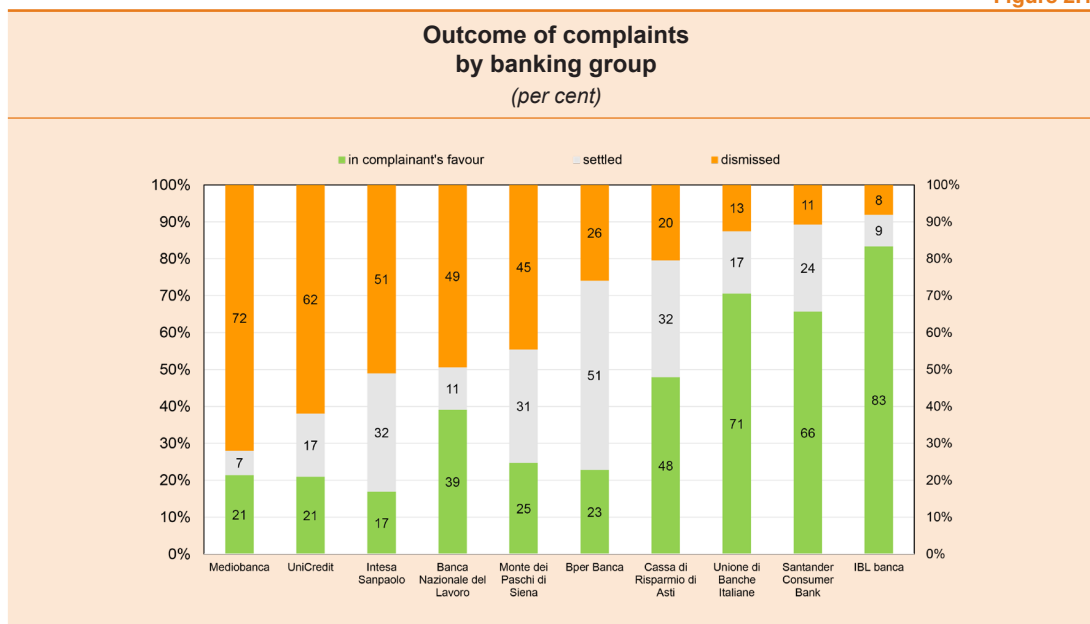
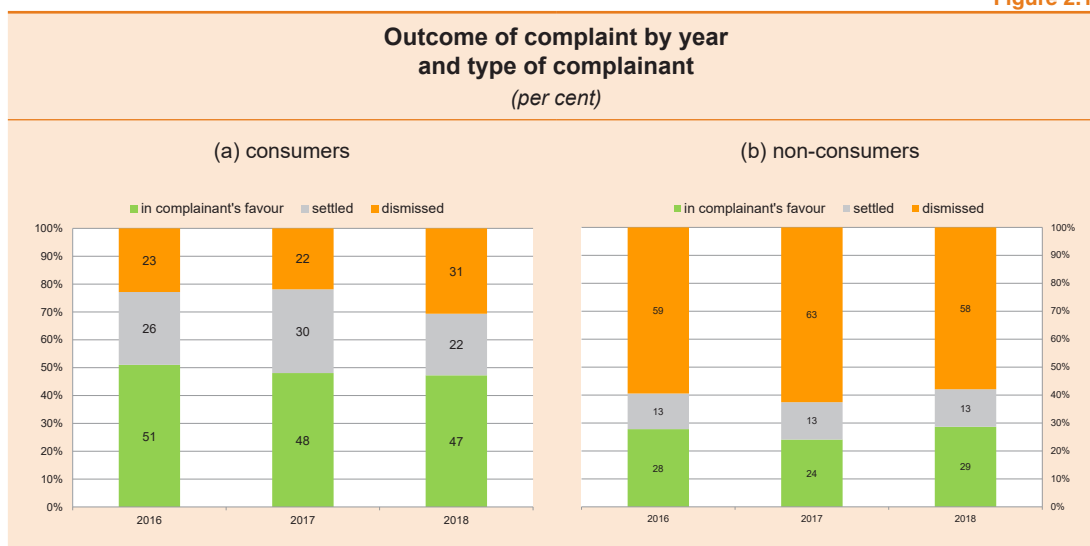


Figure 2.16



Non-compliance mainly related to specific issues. Sometimes (for instance, in cases concerning mortgages indexed to the Swiss franc), intermediaries justified their non-compliance by stating that a controversy involving a matter equivalent to the ABF decision was simultaneously pending before the courts. In other circumstances, for instance in matters concerning requests for documentation, non-compliance was not due to the intermediary's opposition to the ABF's decision, but rather to its inability to locate the document in question. Non-compliance regarding loans secured by a pledge of salary is also related to intermediaries which have been cancelled from the banking registers.

Finally, it should be noted that in 2018, as in 2017, many intermediaries belatedly complied with decisions after their non-compliance had already been made public.

## CIVIL MEDIATION

As an alternative to submitting a complaint to the ABF, civil mediation procedures meet the requirement under Legislative Decree 28/2010 for filing a dispute in court regarding banking and financial contracts.

In 2018, the number of proceedings brought before mediators decreased by 9 per cent overall. As regards proceedings involving banking matters, the reduction was more marked (-24 per cent, -18 per cent in 2017; Figure A), while those concerning financial agreements remained stable.

Figure A

**Civil mediation**  
(annual data and cases)

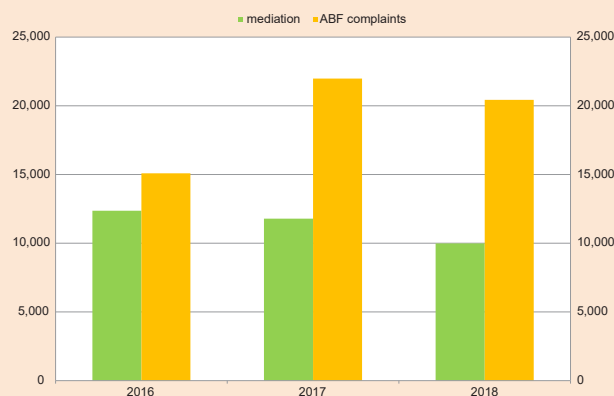


Source: Ministry of Justice.

The parties failed to participate in the mediation in 46 per cent of the cases (50 per cent for bank contracts, and 45 per cent for those regarding financial contracts). The absence of one of the parties makes it impossible to reach an agreement, resulting in a negative outcome for the mediation.

Figure B

**Number of mediation proceedings and ABF complaints**  
(annual data)



In cases in which both parties participated, the mediation resulted in an agreement in 27 per cent of the cases; the percentage was much lower for bank and financial contracts (6 and 12 per cent respectively).

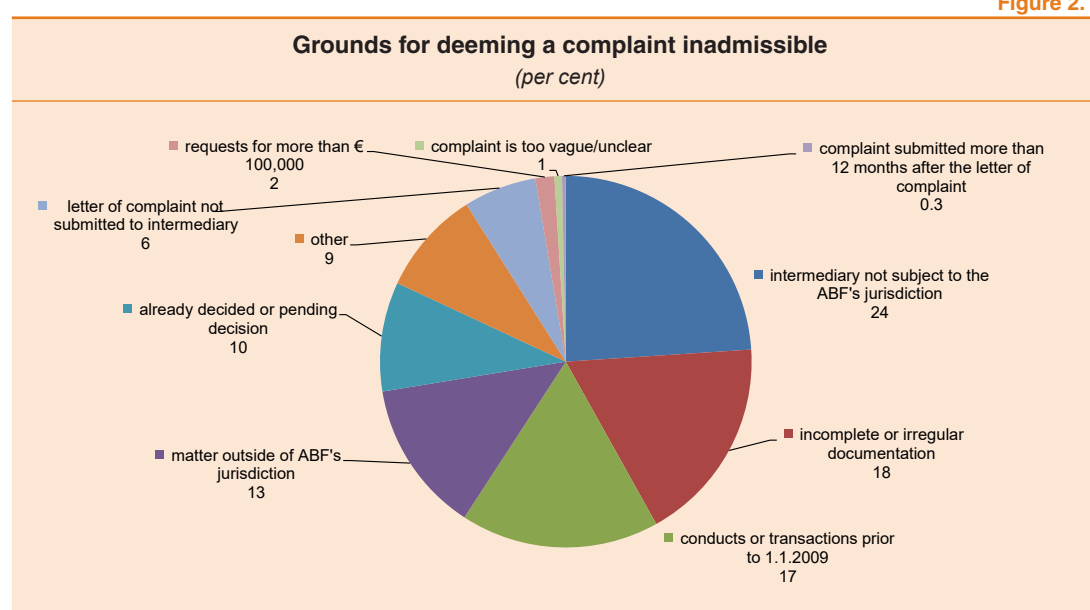
In 2018, the average sum involved in a mediation case was €37,500 for mediation cases involving a bank contract and €15,000 for both those involving a financial contract and all proceedings in general.

According to a survey carried out by Bank of Italy in 2019 on a sample of intermediaries, the number of mediation proceedings relating to bank contracts decreased by 15 per cent in 2018. In contrast, the number of complaints filed with the ABF only decreased by 7 per cent (Figure B).

According to the survey, moreover, the mediation resulted in an agreement in 4 per cent of cases (7 per cent in 2017); given the lack of agreement, 16 per cent of proceedings were brought to court (21 per cent in 2017).

In 2018, as in the previous year, 3 per cent of the complaints submitted were rejected as inadmissible by the Chair of the panel. Of these, 17 per cent (31 per cent in 2017) were dismissed because the conduct or transaction occurred prior to 1 January 2009 (Figure 2.17).

Figure 2.17



The average timeframe for reaching a decision on a complaint (calculated from the date the complaint is registered to the date the decision is sent to the parties) was 266 days, net of the suspension periods provided for by the ABF's Provisions; this becomes 304 days when the suspensions are taken into account (261 and 294 in 2017, respectively).<sup>7</sup>

<sup>7</sup> The average timeframe is computed from the reception of the complaint to the communication of the outcome to the parties involved. It also refers to complaints settled by the parties or withdrawn by the complainant; in these cases the ABF panels only notify the parties of the outcome.

## THE ABF AND THE CIVIL COURTS

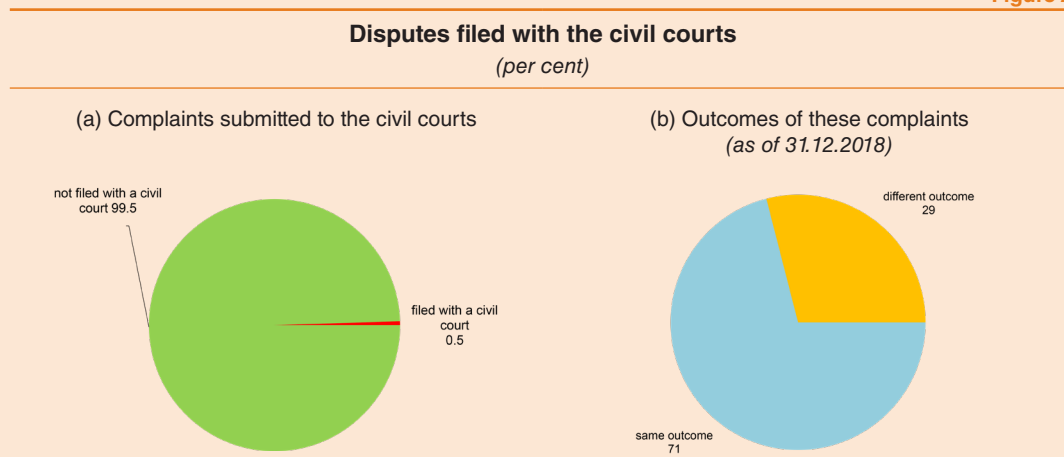
The Ombudsman's decisions are not legally binding on the customer or on the financial intermediary and they do not preclude the possibility of submitting the dispute to the civil courts.

In the first few months of 2019, a survey was carried out on the main intermediaries<sup>1</sup> in order to obtain information on the number of disputes filed (by complainants or intermediaries) with the civil courts following an ABF decision. The information obtained shows that 0.5 per cent of the disputes decided by the ABF were then brought before a civil court judge.

Two thirds of the cases brought before the civil courts concerned consumer credit (particularly loans secured by a pledge of one-fifth of salary, which alone represent more than half of all cases). In 94 per cent of cases, the civil court proceedings were initiated by the customer.

In 71 per cent of the cases, the ABF's decision was upheld (see Figure A). The differences in outcomes are due to a number of factors: sometimes there were marginal misalignments in the interpretation of the applicable laws or in the reconstruction of the facts, while confirming the ABF's case law.

Figure A



<sup>1</sup> Twenty-seven intermediaries participated in the survey, representing more than 70 per cent of the complaints decided by the ABF from 2016 to 2018. The survey dealt with letters of complaint, ABF complaints, mediation and civil courts.

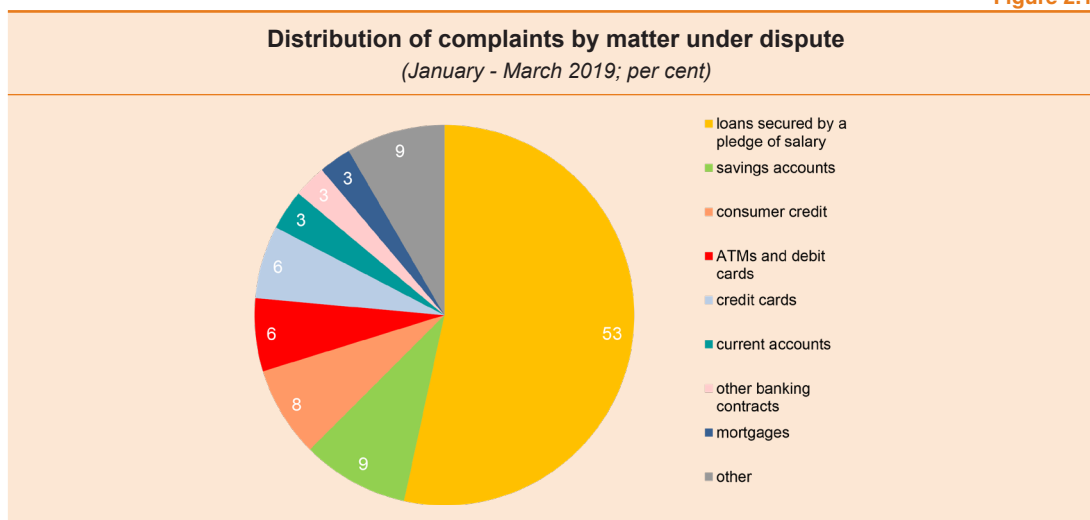
## Data for the first few months of 2019

In the first quarter of 2019, approximately 6,800 complaints were submitted to the Ombudsman, confirming the previous year's downward trend (-14 per cent; Figure 2.18).

The share of complaints involving loans secured by a pledge of salary decreased to 53 per cent of complaints (64 per cent in 2018); by contrast, controversies concerning savings

accounts tripled. Over the same period, the average timeframe for reaching a decision decreased to 237 days, net of the suspension periods provided for by the ABF's Provisions.

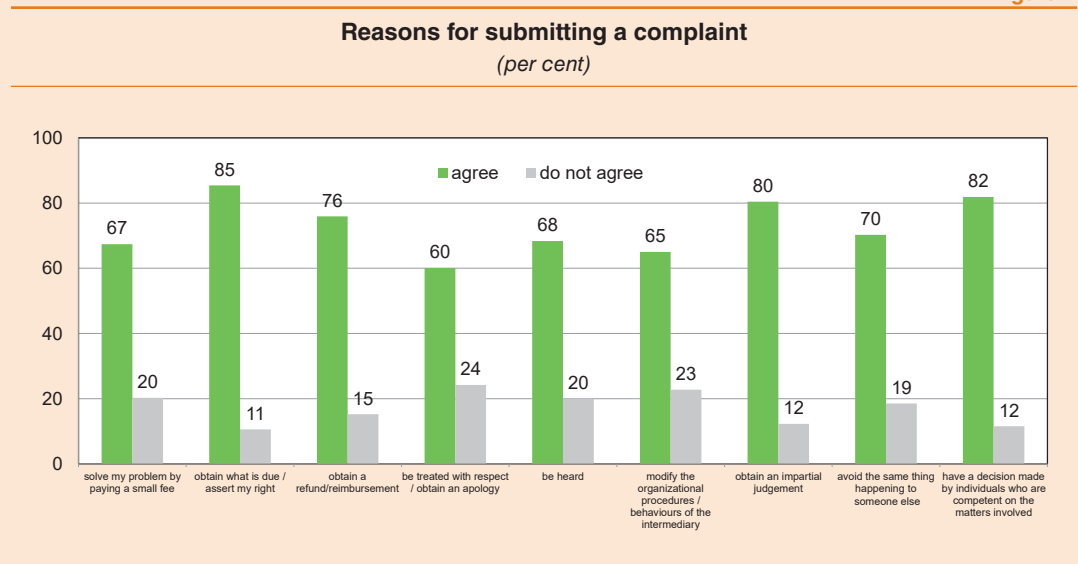
Figure 2.18



## LEVEL OF CUSTOMER SATISFACTION

In the first few months of 2019, 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 2,500 complainants were contacted and one fifth completed the questionnaire.<sup>1</sup> Among the main reasons cited for submitting a complaint to the ABF were the: (a) ascertainment of a right; (b) the desire to receive an impartial ruling; and (c) the desire to receive a ruling made by competent subjects.

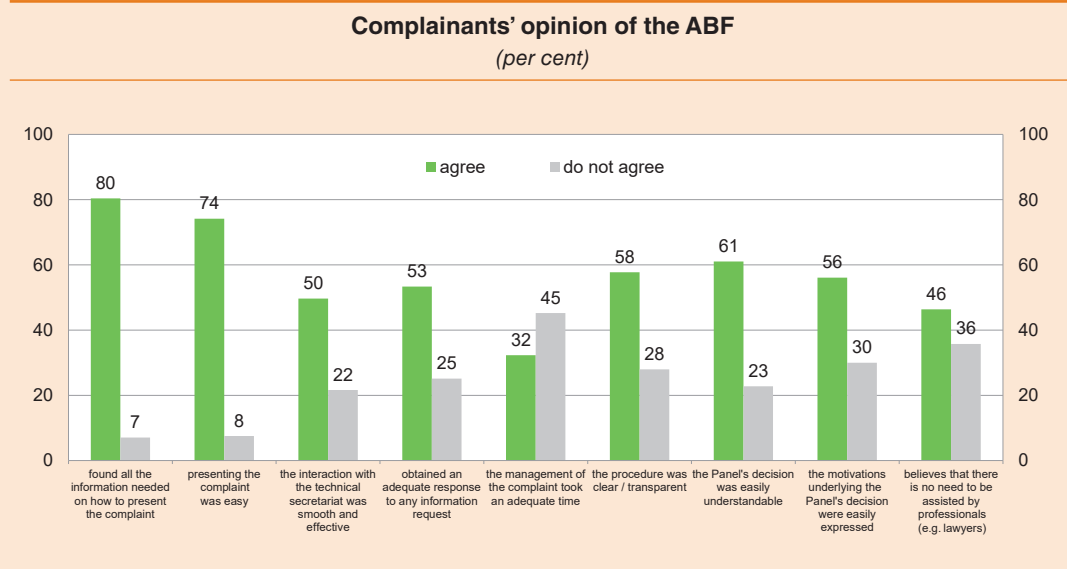
Figure A



<sup>1</sup> Of the persons surveyed, 77 per cent submitted their complaint without the help of a representative; 47 per cent of their complaints were upheld, 48 per cent were dismissed and 5 per cent were settled.

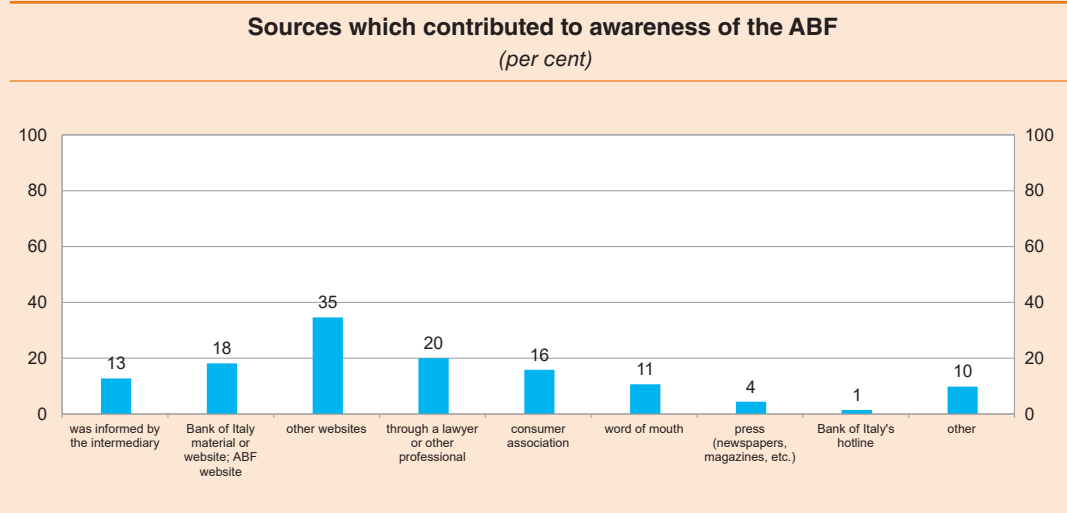
Of the customers surveyed, 80 per cent found that it was easy to locate the information needed to file the complaint; 74 per cent found that it was not difficult to file the complaint itself. Only 32 per cent believed that the length of the procedure was appropriate (Figure B).

**Figure B**



The main channels through which complainants became aware of the ABF are websites and the Bank of Italy's information material (Figure C). Internet communication is also the most suitable tool to further increase awareness.

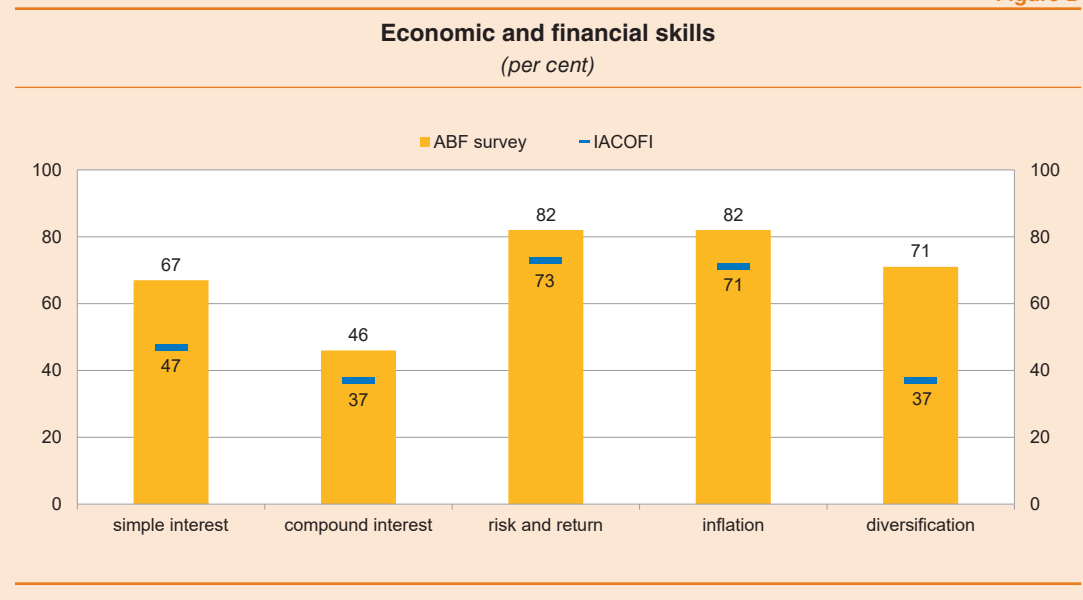
**Figure C**



One section of the survey focused on economic and financial skills. Questions were chosen from among those used in the 'Indagine sull'alfabetizzazione e le competenze finanziarie degli italiani' (Survey on the literacy and financial skills of Italians, Iacofi), carried out by the Bank of Italy at the beginning of 2017. The complainants surveyed

obtained better results than the average Italian citizen, with the question concerning simple interest answered correctly by 67 per cent and that relating to compound interest by 46 per cent (47 and 37 per cent in the Iacofi survey; figure D).

**Figure D**







### 3. THE DECISIONS OF THE PANELS: MAIN ISSUES COVERED

In 2018, the ABF continued to address the key issues in the relationship between intermediaries and customers. The contents of some decisions of the panels that express a consolidated case law or that may arouse interest due to the peculiarity of the issues examined are described below; in order to better understand the ABF's standpoint, some cases are also described.<sup>1</sup>



#### Current accounts

*Opening an account.* – The ABF examined disputes in which the complainants had requested that the intermediary be ordered to open an online current account in accordance with an advertised promotion.

In one case, the panel rejected the complaint, as it does not fall within the ABF's jurisdiction to force a bank to stipulate a current account contract. Opening an account is in fact subject to the signing of the relevant contract by the customer and the intermediary which, in the exercise of its business activity, has the right not to conclude it, not being subject to any obligation to do so: the ABF cannot replace the intermediary in assessing whether or not to stipulate, which is left to the discretion of the latter.<sup>2</sup>

*Joint accounts.* – Another strand of litigation concerned joint accounts. A complainant – a joint holder of a single signature current account – had asked the panel to revoke a credit transfer sent via home banking by the other joint holder, to order the bank to hand back the amount transferred and to compensate the damages. The intermediary had refused to initiate the revocation, claiming that it should have been notified by the payer spouse and not by the complainant.

The panel rejected the complaint, making it clear that the main feature of a single signature account is that the joint holders can use the account independently without restrictions, with the result that the intermediary could only have carried out the revocation if the actual payer had made the request.<sup>3</sup>

<sup>1</sup> The ABF decisions mentioned in the footnotes are available on the ABF website only in Italian

<sup>2</sup> Decision [84/2018](#).

<sup>3</sup> Decision [5909/2018](#).

*Portability of the account.* – The panel ascertained that the intermediary had not respected the 12-day deadline and had not provided sufficient or objectively appreciable reasons for not doing so; in fact, the bank had only made general reference to alleged reasons linked to the presence of a credit card, without providing further details. The delay in execution was therefore deemed to be completely unjustified and in breach of the intermediary's obligations. The panel therefore recognized the complainant's right to compensation decided on a fair basis.<sup>4</sup>



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### *The right to receive a copy of banking documentation*

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*The subject matter of the request.* – The ABF clarified that the complainant has the right to obtain a copy of all the transactions for the period in which he or she is effectively interested, in compliance with the ten-year time limit and with no obligation to specifically indicate the details of the legal relationship to which the documentation refers. It is sufficient for the interested party to provide the bank with the minimum elements necessary to enable it to identify the documents requested (in this case relating to a personal surety and an equity share); all the more so if it is a question of reconstructing a prior situation to which the client was not a party (e.g. an heir who requests access to the documentation of the deceased).<sup>5</sup>

*The joint holder.* – With regard to access to banking documentation pursuant to Article 119 of the Italian Consolidated Law on Banking, the Ombudsman clarified that the legal representative of the joint holder of a single signature current account is entitled to request a full copy of the relevant account statements. In specifying that the purpose of the rule in question is to facilitate access to information also for those who administer their client's assets, in order to safeguard their client's rights, the ABF has established that the request for documentation is not an act of extraordinary administration that would require a special power of attorney. A person who, as in the present case, has a general power of attorney signed only by one of the account holders can therefore make the request.<sup>6</sup>

*Costs.* – The ABF has also ruled on the fairness of the costs requested by the intermediary to release copies of documentation. According to the panel, the cost must be subject to an adequacy check, even if it complies with the information sheets made available to customers, in order to rule out the possibility that a fee is charged for the requested service in a non-transparent manner.

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<sup>4</sup> Decision [7672/2018](#).

<sup>5</sup> Decisions [7299/2018](#) and [1751/2019](#).

<sup>6</sup> Decision [16381/2018](#).

In the case in question, the intermediary demonstrated that it had calculated costs in a manner consistent with the criteria set out in the information sheets, but not that it had complied with the requirement that the costs actually incurred be closely linked to the costs actually charged to the customer (calculated as €6,560, or €20 for each of the 328 documents requested). The intermediary did not provide an adequate and full justification for the costs actually incurred, or for the criteria used to determine the amounts requested, which should only refer to production costs. The ABF therefore ascertained the customer's right to obtain the required documentation, paying expenses proportionate to the documents produced and sent only.<sup>7</sup>

*Data protection.* – The ABF confirmed that Article 119 of the Consolidated Law on Banking applies to the current account holder's right to receive a copy of the documents relating to their current account, instead of the regulations on data protection (in the examined case, Article 7 of the Data Protection Code); the latter only refer to a natural person's right to know, free of charge, whether the data that concern him or her have been processed.<sup>8</sup>



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## *Mortgages and other loans*

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*The granting of credit.* – The ABF has stated that there is generally no obligation for intermediaries to grant credit or to review the conditions under which it has been granted; there is only the duty to respect the principle of fairness in contractual relations when assessing and responding to a client's request for renegotiation. Assessing creditworthiness is part of the intermediaries' operational autonomy.<sup>9</sup>

*The pre-contractual stage.* – In relation to the pre-contractual phase, a complainant claimed that the intermediary, when signing a mortgage loan, had requested a payment of €880, as preliminary costs, but the client had not been made aware of this charge. The ABF stated that Legislative Decree 72/2016 imposes a double obligation on the lending bank: (a) to keep the offer firm for a period of reflection of at least seven days, in which the client may at any time accept; and (b) to provide the client with an indication of the contractual conditions by giving them both the contract and the European Standardised Information Sheet (ESIS) on paper or on another durable medium.

The Ombudsman found that these obligations had not been properly fulfilled by the intermediary, which had not demonstrated that they had informed the customer about the preliminary costs in advance and had only handed over the contract and the ESIS at the signing of the contract. The ABF stated that the client had not been properly informed of the terms of the loan and therefore ordered the reimbursement of the preliminary costs.<sup>10</sup>

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<sup>7</sup> Decision [11171/2018](#).

<sup>8</sup> Decision [18655/2018](#).

<sup>9</sup> Decision [1577/2018](#).

<sup>10</sup> Decision [10912/2018](#).

*Subrogation.* – The Ombudsman clarified some of the conditions under which the original lender must compensate the damage suffered by the client in connection with the subrogation process being completed late.<sup>11</sup>

First, the originating bank may only be asked to compensate the customer when it is responsible for the delay, either for having caused the delay or for having contributed to causing it. In the latter case, the originating lender may have recourse to the new bank to which the client has turned in order to carry out the subrogation (the subrogee lender). The original lender is also responsible for demonstrating any reasons that exclude it from liability, including any facts that refer exclusively to the new lender.

The Ombudsman then pointed out that the deadline of 30 working days within which the subrogation shall be completed begins from the date on which the client asks the new bank to acquire the exact amount of its residual debt from the original lender; in calculating the 30 working days, neither the starting date nor the non-working days, including Saturdays, must be taken into account.

The compensation, equal to 1 per cent of the loan's value for each month or fraction of month of delay, must be established by considering the remaining capital on the 30th working day following the starting date, which is the date on which the legal term for the conclusion of the subrogation procedure expires.<sup>12</sup>



## Consumer loans

*Cost indicators.* – The coordination panel dealt with the question of the qualification (mandatory versus optional) of ancillary insurance policies and whether or not they should be included in the APR calculation. According to the ABF's case law in this matter,<sup>13</sup> even when the insurance policy is defined as optional in the contract, it shall be assumed to be compulsory when the following circumstances occur all together: (a) it is a credit protection insurance; (b) the policy and the credit agreement are signed at the same time and have the same duration; and (c) the insurance indemnity is linked to the residual debt. However, the intermediary may prove that the insurance policy was optional by providing the following alternative evidence: (a) it provided the client with a comparison of costs which shows that the loan would have been offered under the same conditions regardless of whether the policy was signed; (b) it granted loans with similar terms, without insurance policies, to other clients with the same creditworthiness; and (c) it provided for the claimant's right of withdrawal for the entire policy period, free of charge and with no negative consequences for the loan.

<sup>11</sup> Article 120 *quater* of the Consolidated Law on Banking.

<sup>12</sup> Coordinating panel, decision [15779/2018](#).

<sup>13</sup> Coordination panel's decisions [10617/2017](#), [10620/2017](#), [10621/2017](#), [2397/2018](#).



With regard to the granting of loans on similar terms and conditions, the ABF stated in which cases the other contracts can be considered similar to the claimant's credit agreement, if all customers are deemed to have the same creditworthiness.

Concerning the proposal of a cost comparison (and of the APR) to the client, leading to the offer of the same lending conditions regardless of whether an insurance policy was provided, the ABF established that the intermediary must give evidence that the interest rate would not have changed without the insurance policy. With reference to the right of withdrawal, the intermediary must give evidence that the it may be exercised if notice is given, but without limitations or consequences for the credit conditions until the end of the insurance period.<sup>14</sup>

Furthermore, the ABF dealt with cases in which there was a discrepancy between the APR indicated in the contract and the actual or effective APR. If some costs were not included in the APR (such as insurance premiums), the Ombudsman stated that: i) the clause concerning such a cost is to be considered null and void (the client shall therefore not pay these costs); and ii) the clause concerning the APR is also null and void, and the APR on the loan must be reduced to the interest rate of annual Treasury bonds (as provided for by Article 125-*bis*, paragraphs 6 and 7 of the Consolidated Law on Banking).

According to the ABF, these remedies are applicable even when the APR was wrong in loan agreements entered into before the implementation of the Consumer Credit Directive.



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### *Loan secured by a pledge of one-fifth of salary or pension*

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*Early repayment of the debt.* – Several decisions concern the early repayment of loans secured by a pledge of one-fifth of salary or pension<sup>15</sup> and the reduction of the costs related to the remaining duration of the contract. The ABF highlighted that intermediaries must set forth clear contract terms, which distinguish between costs relating to the signing of the contract or to other preliminary activities ('upfront' costs, that are not reimbursed in case of early termination of the contract) and costs referring to the duration of the contract ('recurring' costs, that shall be refunded in case of early repayment of the debt). Furthermore, the ABF stated that if full disclosure is not provided, the reduction shall include all costs. Hence, the Ombudsman considered as 'upfront' the costs relating to the

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<sup>14</sup> Coordinating Panel's decision **16291/2018**.

<sup>15</sup> This is a specific Italian consumer loan agreement for employees (both public and private) and pensioners, with a particular mode of reimbursement: the instalments are deducted directly from the salary or pension up to a maximum of one fifth, until the end of the repayment of the debt. This kind of financing is legally required in order to have an insurance policy to cover the risk of the borrower's death and loss of employment. At the start of the contract the client immediately pays all the interest and all other costs of the loan.

signing of the contract and the fees for the distribution of the credit through the financial agent, while the costs for the management of the loan were considered as ‘recurring’.<sup>16</sup>

With regard to calculating the refund, the ABF established that generally the ‘recurring’ costs, such as insurance premiums, must be reduced proportionally for the remaining duration of the contract. Since these costs are all paid at the start of the contract, the amount of the costs that refer to the remaining instalments shall be reimbursed to the client.<sup>17</sup>



### The *ius variandi*

*The ius variandi* or ‘justified reason’. – The Coordinating Panel has specified that the events constituting a justified reason for changes to the contractual conditions may be attributable either: (i) to the subjective sphere of the individual customer – whose creditworthiness could, for example, have worsened – or (ii) to events of a general nature, which may concern the general economic conditions (i.e. changes affecting the market, such as interest rates and inflation), and/or regulatory measures that have affected the costs incurred by the intermediaries.

As regards changes in market conditions, the new contractual conditions offered to customers need to be actually linked to the event underlying the justified reason (e.g. a change in the Euribor rate). In relation to the introduction of new regulations, however, these are not in themselves a justified reason under Article 118 of the Consolidated Law on Banking but, in some cases, may be relevant for the purposes indicated: for example, when the legislation provides for the possibility of unilateral changes or if these affect the cost of the activities or services concerned as in the case of the transition to the Single Euro Payments Area (SEPA). Furthermore, the explanation of the justified reason must always be clear and consistent with the proposed contractual variation and expressed in terms easily understandable to most clients, since it is only through an effective understanding of the justified reason underlying the contractual variation that the client is able to make an informed choice regarding the right of withdrawal that the legislation recognizes.<sup>18</sup>



### The floor clause

*Unfair contract terms.* – In one dispute in which the floor clause had been included among the conditions signed by the parties in respect of a variable-rate loan, the applicant

<sup>16</sup> Decision [24778/2018](#).

<sup>17</sup> Decision [9480/2018](#).

<sup>18</sup> Coordinating Panel, Decision [26498/2018](#).



requested that the ABF establish that it was unfair. The Ombudsman recalled that it is only possible to verify whether a contractual term is vexatious when it concerns the determination of the subject matter of the contract or the adequacy of the consideration if it is formulated in an obscure and unclear way:<sup>19</sup> as the terms were considered to be clear and understandable, the appeal was not upheld.<sup>20</sup>



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### *Usury in the banking sector*

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*Supervening usury.* – The ABF has ruled out the possibility of sanctioning supervening usury under the legislation in force, i.e. the hypothesis in which the interest rate of a loan, while respecting the threshold rate in force when the contract is concluded, exceeds the thresholds subsequently determined by the Ministry of Economy and Finance during the course of the contract. On this point, the Coordinating Panel has aligned itself with the position recently taken by the Court of Cassation in joint session,<sup>21</sup> according to which usury must be assessed having regard exclusively to the moment of the completion of the contract; this means that exceeding the threshold in the course of the contract does not determine the nullity or ineffectiveness of the contractual provision determining the rate; nor can the lender's claim to collect interest at the agreed rate be considered, solely on the grounds that it exceeds the threshold, contrary to the obligation to behave correctly in executing the contract.<sup>22</sup>

*The effects in the event of exceeding the threshold rate.* – The ABF considered that on the basis of Article 1815 of the Civil Code,<sup>23</sup> in the event of a loan whose rate is higher than the threshold, the financial intermediary is required to repay not only the interests strictly intended as such, but also any other charge covered by the contract (including insurance costs), only excluding expenses relating to taxes and duties. This is because the legislation on this matter shows the choice of the legislator to base the checking for the existence of usury in loans for criminal and civil purposes on a notion of interest that includes all the charges connected to the disbursement of credit, with the exception of those for taxes and duties. In the case under examination, the ABF - having ascertained that the threshold rate had been exceeded - therefore recognized the right to repayment of both interest and insurance costs for the customer.<sup>24</sup>

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<sup>19</sup> Article 34(2), Consumer Code.

<sup>20</sup> Decision **210/2019**.

<sup>21</sup> Court of Cassation, joint session, 7 October 2017, No. 24675.

<sup>22</sup> The Coordinating Panel, decision **7440/2018**.

<sup>23</sup> Article 1815(2) of the Italian Civil Code establishes that, where it is agreed that the interest is usurious, 'the clause is null and void and interest is not due'.

<sup>24</sup> The Coordinating Panel, decision **12830/2018**.



## Payment services

*The theft or loss of a debit card.* – The ABF has specified that, in order not to be held responsible for the losses suffered by the client as a result of the use of their card by criminals, the financial intermediary must demonstrate – according to the provisions of the law – both the authentication, the correct registration and the accounting for the payment transactions under dispute, and the absence of malfunctions in the computerized procedures; it must also prove the gross negligence of the payment card holder.

In one case of debit card theft that was followed by 16 payment transactions within 9 hours without the customer being notified by the SMS alert service, the ABF's panel observed that the bank had only shown how the criminals had typed the PIN code correctly at the first attempt. This in itself is not sufficient to prove the gross negligence of the cardholder: the techniques for stealing personal identification codes are increasingly sophisticated and make it possible for third parties to acquire the codes through no fault of the customer. The panel also noted that the number and frequency of payment transactions performed by criminals were a sign of fraud risk: according to the law,<sup>25</sup> seven or more transactions with the same payment card within 24 hours is indicative of a possible unauthorized use. The ABF therefore ordered the customer to be reimbursed for the amount of the disputed transactions with application of the relief provided for by the law.<sup>26</sup>

In one case, the customer declared that he had lost his contactless payment card<sup>27</sup> and that he realized that several payments had been made before the card was blocked. The ABF found that the transactions had taken place within a few minutes of each other at the same point of sale and that another payment attempt had occurred, prior to the disputed ones but not authorized by the financial intermediary: since this is a situation that the law deems as an expression of a fraud risk, i.e. a sign of a possible unauthorized use of the payment card,<sup>28</sup> and since the financial intermediary had not provided for security systems in the event of such anomalies, the ABF established that the financial intermediary was obliged to reimburse the customer for the full amount stolen.<sup>29</sup>

*The internet banking security system.* – The ABF dealt with some cases of fraud carried out by activating a mobile IT application (app) made available by the financial intermediary

<sup>25</sup> Article 8, letter b), No. 1, Ministerial Decree 112/2007 (regulation for implementing Law 166/2005, which established a system to prevent payment card fraud).

<sup>26</sup> Decision **20897/2018**.

<sup>27</sup> Contactless technology enables payment with a payment card without typing the PIN code, simply by placing the card next to the trader's POS equipment.

<sup>28</sup> Ministerial Decree 112/2007, Article 8, letter a), No. 2.

<sup>29</sup> Decision **25085/2018**.

for the home banking system on the mobile phone of the criminal.<sup>30</sup> The customer had been contacted by a fictitious financial intermediary operator and asked to provide their access codes to the internet banking service, including the one-time password (OTP)<sup>31</sup> received in a text message, in order to change the mobile number associated with the payment card. Since the customer made this request, the wrongdoer was able to activate the financial intermediary's app on their mobile phone and to associate their phone number with the card holder's home banking service, thus making payment transactions. The ABF considered that in this circumstance the client's behaviour was grossly negligent, as the fraud would not have been possible if they had not provided the criminal with all the access codes to the home banking service.

*Fraud through online transfers.* – With regard to making credit transfer orders, the ABF examined the customer's complaint concerning the bank's failure to check the correspondence between the IBAN code and the name of the beneficiary. The ABF rejected the request to reimburse the amounts of the two unrecognized credit transfer orders, as the law states that the transfer order is correctly executed on the basis of the IBAN code, and the financial intermediary is not obliged to verify that the beneficiary indicated in the order coincides with the account holder identified by the unique identifier. The financial intermediary of the customer who ordered the transfer order and the beneficiary's financial intermediary are authorized to carry out the transaction exclusively in compliance with the IBAN code. However, the ABF also recalled that when the customer indicates an incorrect unique identifier, the financial intermediary that carried out the transfer and the one that received it are required to undertake, with professional diligence, the recovery of the sum of the payment transaction.<sup>32</sup>

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<sup>30</sup> Home banking (or internet banking) enables customers to carry out banking transactions - such as transfers and payments - without going to the premises of the financial intermediary, but by connecting to the Internet using personal codes.

<sup>31</sup> The OTP is a temporary disposable security code, which allows users to access and make a payment operation using the home banking service.

<sup>32</sup> Decision [20085/2018](#).