



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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Printed copies may be requested from the Paolo Baffi Library by writing to: richieste.pubblicazioni@bancaditalia.it

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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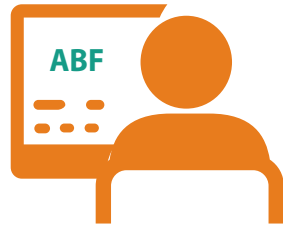
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Data for 2019

Complaints received

22,059
(-18%)

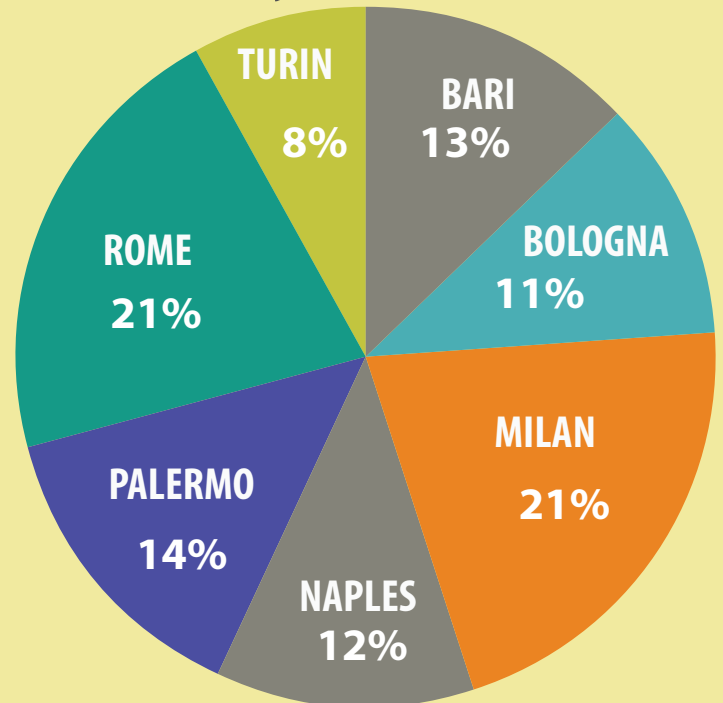


of which

48%

regarding loans
secured by pledge
of 1/5 of salary

Complaints received by Panel



Panel meetings

452



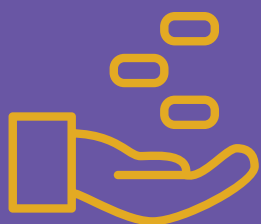
Panel decisions

27,346



58%

of complaints
resolved were
substantially in
favour of the
complainant



€28 million
awarded to customers

The ABF in brief



What is the ABF?

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

What can the ABF decide on?

The ABF decides on 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 of the activity of the Banking and Financial Ombudsman in 2019 (Arbitro Bancario Finanziario, ABF).

The ten-year anniversary of the ABF, established in October 2009, provides an opportunity to reflect on the purpose of this system, made available to the clients of banks and financial intermediaries, which is essentially free of charge and faster in response than the ordinary justice system. Over the years, the Ombudsman has established itself as an alternative dispute resolution system, receiving a total of over 146,000 complaints from clients.

This result has been achieved thanks to the activity of the Territorial Panels, which are autonomous and independent from the Bank of Italy and highly qualified in banking and financial law, consumer protection and economic matters. During the decade, roughly 132,000 decisions were issued and despite the fact that they are not legally binding, intermediaries generally complied. In just the last four years, more than €83 million have been awarded to complainants.

The institution in 2016 of four Panels in Bari, Bologna, Palermo and Turin – in addition to those operating in Milan, Rome and Naples – was an important achievement for the system, marked by a significant increase in the volume of litigation, particularly with regard to the early repayment of loans secured by a pledge of one-fifth of salary or pension.

After a start-up period, the activity of the new Panels has significantly contributed to a progressive reduction in the average time taken to decide the complaints, despite their increase in number; in the last three years, the average time has decreased from 261 days (in 2017) to 209 days (in 2019).

The case law expressed by the Territorial Panels has been the subject of growing interest and analysis both by scholars and the Courts: the ABF has been called upon to decide on issues not yet brought to the attention of the ordinary Courts, whose judgements often refer to the decisions of the Ombudsman. In this decade, important issues in the relations between banks and clients have been addressed, which are complex from both a legal and interpretative point of view and characterized by new elements.

The ABF has seized the opportunities offered by technological innovation to make it easier for citizens to access this form of protection, also promoted by the Directive 2013/11/EU on alternative dispute resolution (ADR) for consumer disputes. The ABF web portal has been active for over two years and allows clients to file complaints online without professional assistance, thanks to a guided path, and offers the possibility to receive immediate support online. Work is ongoing on the development of a new IT

procedure that will ensure higher levels of system efficiency, also due to the extension of online access to intermediaries.

Over the past ten years, the Ombudsman has often exchanged views with other out-of-court dispute resolution systems involved in financial matters. On the national front, there is an intense and ongoing cooperation between the ABF and the Financial Dispute Arbitrator (ACF), operating since 2017 at the National Commission for Companies and the Stock Exchange (Consob). On 19 March 2020, the Bank of Italy and Consob signed a memorandum of understanding aimed at regulating forms of cooperation between the ABF and the ACF. In order to guarantee a higher and more effective level of client protection, the protocol promotes the establishment of coordination and information exchange mechanisms between the two systems on issues of common interest and on information and financial education initiatives for the public.

With reference to the forthcoming establishment of the Insurance Arbitrator at the Italian Institute for Insurance Supervision (IVASS), the Bank of Italy has collaborated in drawing up the regulatory framework and in implementing the supporting IT procedure. Specific forms of collaboration will be identified in the future. On the international front, the ABF has been part of Fin-Net since 2011, a network composed of European ADR systems active in the banking, financial and insurance sectors. Upon the initiative of the Bank of Italy, two surveys have been conducted in recent years to compare ADR systems belonging to Fin-Net and to encourage the sharing of best practices. The ABF is still one of the largest ADR bodies; like the other European systems, it also operates as a protection tool which, in addition to resolving individual disputes, ensures high levels of information and transparency on its activity, provides aggregated information on the disputes that it receives and useful references also for financial education purposes, contributing to the smooth functioning of the markets.

The revision of the provisions governing the ABF was completed in 2019,¹ with the aim of ensuring full compliance with the ADR Directive and managing complaints more efficiently.

* * *

Last year, the number of complaints received by the ABF continued to decrease (22,059, -18 per cent). The decrease was due to the alignment by intermediaries, during the stage that precedes the complaint, with the case law provided by the Panels, making it unnecessary for clients to subsequently file a complaint with the ABF.

As in 2018, the decrease in the number of complaints especially concerned those on the early repayment of loans guaranteed by one-fifth of salary or pension (-39 per cent). The trend was once again affected by the adoption of supervisory guidelines and by the Bank of Italy's actions against intermediaries. In 2019, the Territorial Panels took 27,346 decisions (-17 per cent compared with 2018). The decrease was influenced by the reduction in the overall number of complaints received and by the suspension of litigation

¹ Following the publication of the Annual Report for 2019, the ABF provisions were issued on 12 August 2020 and are now available, in Italian, on the ABF's website (see the section, *Legislation*). The provisions entered into force on 1 October 2020.

on salary-backed loans in the latter part of the year.² In 58 per cent of cases, the outcome was essentially favourable to clients, with total or partial acceptance of the requests (37 per cent), or with the declaration of the termination of the dispute due to an agreement between the parties (21 per cent).

* * *

The Report is divided into four chapters. The first provides a description of the ABF's main features and how it operates, with some references to the new ABF provisions; the second contains statistical information on complaints, decisions and the activities of the Panels, as well as the results of a survey on complainants' satisfaction and an investigation into the litigation 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 2019 and in the first months of 2020. 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 is completed by an Appendix containing statistical data and methodological notes, available online on the ABF website but only in Italian (www.arbitrobancariofinanziario.it).

The publication of the annual Report on the ABF's activity also fulfils the current legal obligations.³

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

² Following the Lexitor judgement, the issue concerning the repayment of costs in the event of early termination of loans was referred to the Coordinating Panel, and the handling of all complaints that involved the same issue was deferred.

³ Credit Committee Resolution 275/2008, Bank of Italy provisions issued on 18 June 2009 as amended, Legislative Decree 130/2015.

The Chairs of the territorial Panels of the Banking and Financial Ombudsman



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.

In view of the imminent adoption of the new ABF provisions, amended in order to ensure full alignment with the provisions of the Directive 2013/11/EU on Alternative Dispute Resolution (ADR Directive, transposed by Legislative Decree 130/2015) and to introduce tools for a more efficient management of complaints, the main innovations are highlighted in the text from time to time.

The relationship between the ABF and the Bank of Italy's supervisory activity, the initiatives adopted to raise awareness of the Ombudsman, and the actions owing to the COVID-19 emergency are also illustrated.

From an international perspective, a description of Fin-Net, the cooperation network set up by the European Commission and formed by national organizations responsible for out-of-court settlements of complaints (alternative dispute resolution - ADR) in banking, financial and insurance matters, is also provided. Specific attention is dedicated to the analysis of the results of a new survey promoted by the Bank of Italy in order to identify the main characteristics of ADR systems belonging to Fin-Net.



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 types 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.



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 as referred to in Article 112 of Legislative Decree 385/1993;
- payment institutions;
- electronic money institutions;
- the Post Office as regards its BancoPosta activity.¹

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),² 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.

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*', in this report).



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;

¹ The ABF retains jurisdiction for disputes relating to postal savings bonds.

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

- 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.



According to the new ABF provisions, after a transitional period, the time frame within which you may file a complaint will change.



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

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.

THE MEMORANDUM OF UNDERSTANDING BETWEEN THE BANK OF ITALY AND CONSOB ON ALTERNATIVE DISPUTE RESOLUTION

On 19 March 2020, the Bank of Italy and Consob drew up a **Memorandum of Understanding** (only available in Italian) aimed at regulating cooperation between the ABF and the ACF.

The Memorandum, which guarantees a higher and more effective level of client protection, promotes the establishment of coordination and information exchange mechanisms between the ABF and the ACF systems, respecting the independence of their respective Panels, on issues of common interest as well as on public information and financial education initiatives.



What to do before filing a complaint

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 of 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.



The new ABF provisions, have extended the period of time available to the intermediary to respond to the written claim: the response may be given to the client within 60 days (compared with the current 30 days) of its submission, except in special cases (e.g. in the case of payment services).



How much does it cost to file a complaint?

To file a complaint with the ABF, the customer must pay a fee of €20 to cover the costs of the procedure; this is reimbursed by the intermediary if the ABF upholds the complaint, in whole or in part.

If, after having paid the €20 fee, the client no longer wants to file a claim, he or she may request a refund (see the ABF website, *Filing a complaint*).

In the event that the complaint is upheld (in whole or in part), the financial intermediary must pay a fee of €200 to the Bank of Italy.



How to file a complaint

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

After registering through the reserved area of the ABF website, a complaint can be submitted directly online, with the necessary supporting documents attached.

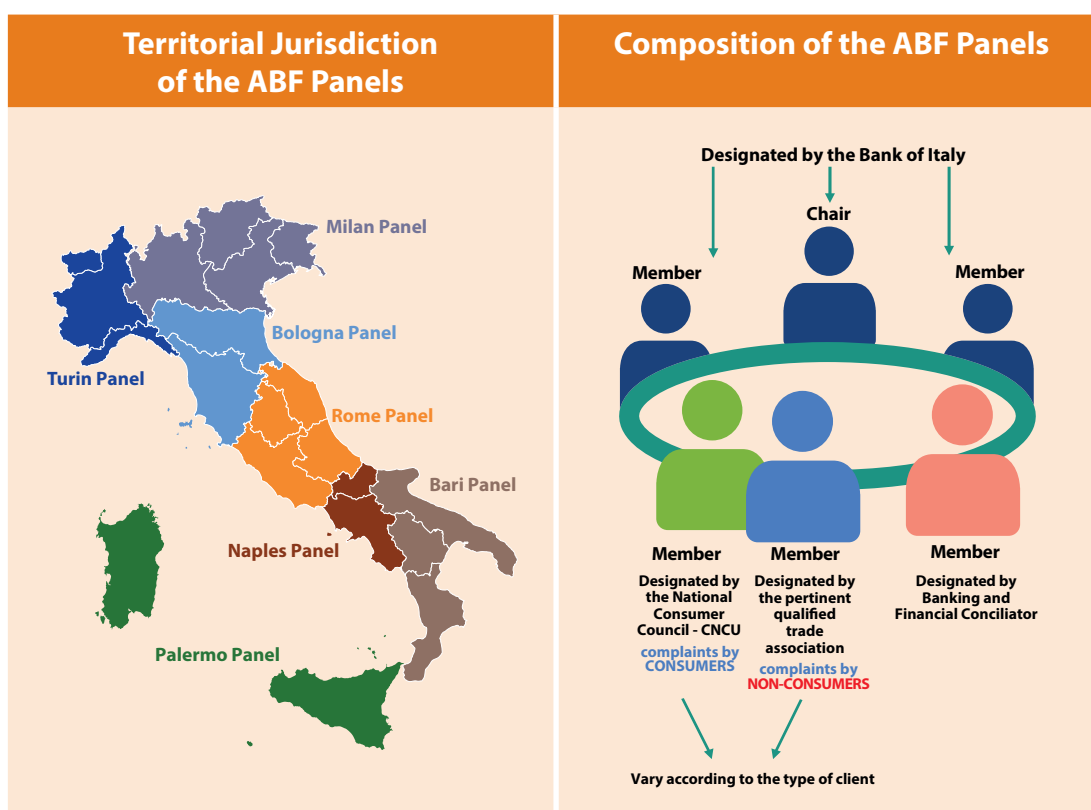
The portal, which was also created pursuant to the ADR Directive (transposed into law by Legislative Decree 130/2015), satisfies the need to enhance the ABF's efficiency and improve its capacity to respond to claimants. The submission of hard copy complaints has been limited to specific cases (see the ABF 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).



Who handles the complaints?

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.



As provided for by the new ABF provisions, the jurisdiction of the seven territorial Panels may be modified for periods of up to 18 months, due to the functional requirements of the system, taking into account the workload of individual Panels.

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).³

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 necessary; furthermore, all Panel members must abide by a code of conduct.

³ For the definition of consumers and non-consumers, see footnote 4 of Chapter 2 (Data on complaints and operations).

Each member is entitled to a remuneration determined by the Bank of Italy (see the ABF website, **Table of the fees for the members of the Panel**, available in Italian).



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.

The Panel Conference is composed of two members from each Panel, one of whom is the Chair. It is held at least twice a year and is an important opportunity to explore the issues, both substantive and procedural, of particular relevance for the Panel and of interest for the system. The matters that are addressed during the Panel Conference are shared by the Chairs with the members of the respective Panels during informal meetings. In 2019, the Panel Conference was held twice in June and November; in 2020, it was held once in the month of March.



Response times

Pursuant to the ADR Directive and its implementing national law, 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 180 days, extendable for a further 90 days if the case is complex (270 days in total).

In 2019, the overall average duration of an ABF case was 209 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 average duration was 238 days.

THE MEASURES TO DEAL WITH THE EPIDEMIOLOGICAL EMERGENCY CAUSED BY COVID-19

With reference to the COVID-19 emergency, in line with the legislative measures adopted at national level, all the terms regarding proceedings before the ABF and provided for by the ABF Provisions were suspended from 9 March until 11 May.

During the period of suspension, for those applicants who deemed it a priority to obtain the settlement of the dispute by the Board, it was possible to waive the right to submit a reply to the defence brief filed by the intermediary.

The decision-making activity of the Panels - normally carried out with meetings in attendance - has continued through the remote connection of participants made possible by innovative technical solutions.



The new ABF Provisions transpose the terms of the procedure provided for by the ADR Directive and Legislative Decree 130/2015.

These provisions require that the outcome of the dispute is communicated to the parties within 90 days from when the complaint file is complete, coinciding with the time when the documents submitted by both parties have been collected or when the terms for sending the latter have expired (intermediary's counterclaims, plaintiff's replies, intermediary's rejoinders).

The deadline of 90 days may be extended for a total period not exceeding 90 days if the dispute is particularly complex.

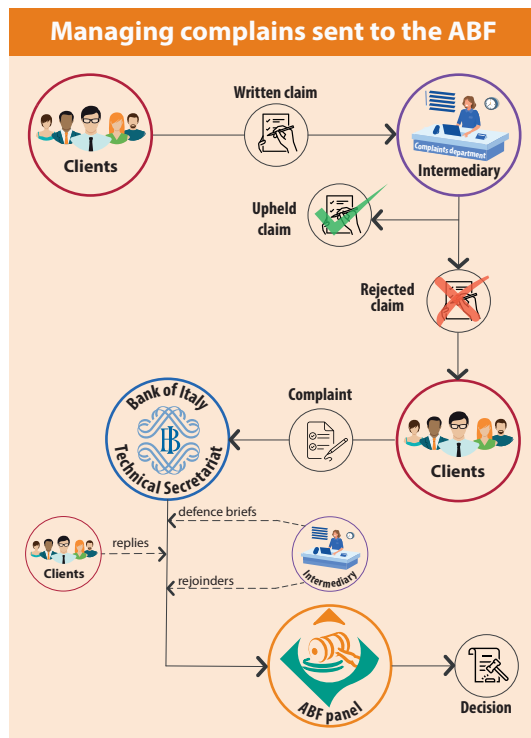


What to do after the decision is issued

The Ombudsman's decisions may not be appealed: the parties cannot ask for a review of the merits of the dispute; it is only possible to ask for an amendment of the decision when omissions, clerical errors or miscalculations occur.

However, if the client or the intermediary are not satisfied with the decision issued by the Ombudsman, they may submit their dispute to an ordinary court.

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





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 70,000 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 downloads of the Report on the activity of the ABF in the year in which the publication took place remained substantially stable with respect to the previous year.

YouTube. – With the launch of the web portal, the communication campaign helped to broaden awareness of the role of the ABF. In 2019, the **video presentation** got 1,213 views, **the commercial** 1,128 and the **video tutorial** 3,690.

Twitter. – On the twitter account @bancaditalia, 18 tweets were about the ABF; they had almost 23,067 views.

Also in 2019, several conferences were held on the ABF. The presentations of the *Annual Report for 2018* at the Federico II University of Naples and at the Courthouse in Potenza were an opportunity for discussions with various institutional and private stakeholders on the ABF's activity. Further conferences were held in the other cities where the territorial Panels are located.

The functions of the ABF and how to access the web portal to lodge complaints were explained to the public during events organized in 13 cities, on the topic of stability in the financial sector and consumer protection in banking and financial services.

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 and carries out fundamental tasks that assist in the functioning of the Panels, without prejudice to the clear distinction of roles and responsibilities.

The technical secretariat's workforce currently consists of 146 staff members, more than half of whom are women, and the average age is 42 (as of 30 March 2020). Last year, 107 recent law graduates completed six-month internships at the technical secretariats and at the central coordinating unit to supplement their university studies with experience within the ABF system. Other branches of the Bank of Italy also contribute to the technical secretariats' activities in the form of on- or off-site cooperation. The ABF's 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,¹ 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 2019, the queries to the toll-free number increased by about 27 per cent compared with the previous year and represented 29 per cent of the total number of calls; the queries dealt predominantly with the procedural aspects of filing complaints (23 per cent).

Assistance in using the web portal. – Since 5 February 2018, when the web portal was launched, assistance on how to use it has been made available to users. Users may submit a query online concerning complaints that have already been submitted and complaints only in draft form, and the Bank of Italy's staff will contact them within a few hours. In 2019, 4,800 requests for assistance were submitted, concerning information on the complaint, the functioning of the ABF system and IT aspects, in 60, 34 and 6 per cent respectively of the cases.

Cooperation with the Italian Institute for Insurance Supervision (IVASS). – In relation to the forthcoming establishment of the Insurance Arbitrator at IVASS, the Bank of Italy has confirmed its collaboration on the design of the new regulatory framework and on the implementation of the IT support procedure.

¹ As of 22 June 2020, with the establishment of the Consumer Protection and Financial Education Directorate General, the function of coordinating the ABF is carried out by the Customer Protection Directorate.



The Bank of Italy and the role of National Competent Authority

As a national competent authority, pursuant to Legislative Decree 130/2015, the Bank of Italy has verified that the ABF met the requirements of stability, efficiency and impartiality, and the obligation to ensure low-cost access for consumers, also in 2019.



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: the decisions become part of the broader pool of information at the Bank's disposal for its regulatory and control functions.

In 2019, supervisory activity to ensure client protection with reference to banking and financial services continued, taking into account the main issues pending before the ABF.



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**).

In the second half of 2019, upon the initiative of the Bank of Italy, a second survey was carried out among the ADR systems belonging to Fin-Net. The survey, in which 31 bodies from 21 countries participated, focused in particular on the implementation of the ADR Directive, on the relationship between ADR entities, on the relations between ADR systems and supervisory authorities, as well as on the effectiveness of alternative dispute resolution. In general, the survey confirms that the process of transposing the Directive is not homogeneous across countries, especially with reference to areas where the Directive leaves more freedom to member states. For example, there are different interpretations regarding: the duration of the procedure; the notion of the complexity of the dispute, which allows the procedure to be lengthened; and the frequency with which the national competent authority assesses the conformity of ADR with the quality requirements set out in the Directive (see the section *The Bank of Italy and the role of the competent national authority*).

In most cases, ADRs do not simply resolve individual disputes, but allow - as in the case of the ABF - the identification of possible incorrect behaviour of intermediaries in their relationships with clients. In about half of the cases, ADRs ensure an adequate flow of information to the supervisory authority, including for the purposes of evaluating possible actions to undertake concerning the system or individual intermediaries. In some cases, the indications that emerged from the reporting were useful for introducing changes to sector regulations and for encouraging more correct behaviour by the intermediaries, sometimes contributing to the reduction of litigation.

The survey showed that a number of ADRs - including the ABF, which is confirmed as one of the largest systems - ensure high levels of transparency for their own activity

(e.g. with the publication of decisions, non-compliance with decisions, and of the intermediaries who receive the highest number of complaints per year). They have instruments aimed at fostering uniformity of decisions, promoting the development of financial education, and contributing to the smooth functioning of the markets.



1.65
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1.643
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1.793
1.793
1.853
1.838
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1.778
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2. DATA ON COMPLAINTS AND OPERATIONS

Overview

In 2019, the Banking and Financial Ombudsman (ABF) received 22,059 complaints, further decreasing with respect to the peak observed in 2017. This reduction was mainly determined 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.

Some 96 per cent of complaints were filed by consumers, and were particularly concentrated in Lazio and some southern regions.

The decrease in complaints received was reflected in the Panels' activity. With respect to 2018, the number of decisions fell considerably (from 32,885 to 27,346). This was also affected by the suspension of the Panels' activity in the last quarter on the matter of loans secured by a pledge of one-fifth of salary or pension, following the European Court of Justice's decision of 11 September 2019 on the Lexitor case.¹ The decision required an internal discussion within the Coordinating Panel and the Panel Conference. Some 452 meetings were held (509 in 2018); the Panels decided an average of 61 cases per meeting. In 58 per cent of meetings, the decision was substantially in favour of the complainant. In 2019, the compliance rate of the intermediaries remained equal to 99 per cent.²

The sub-sections 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

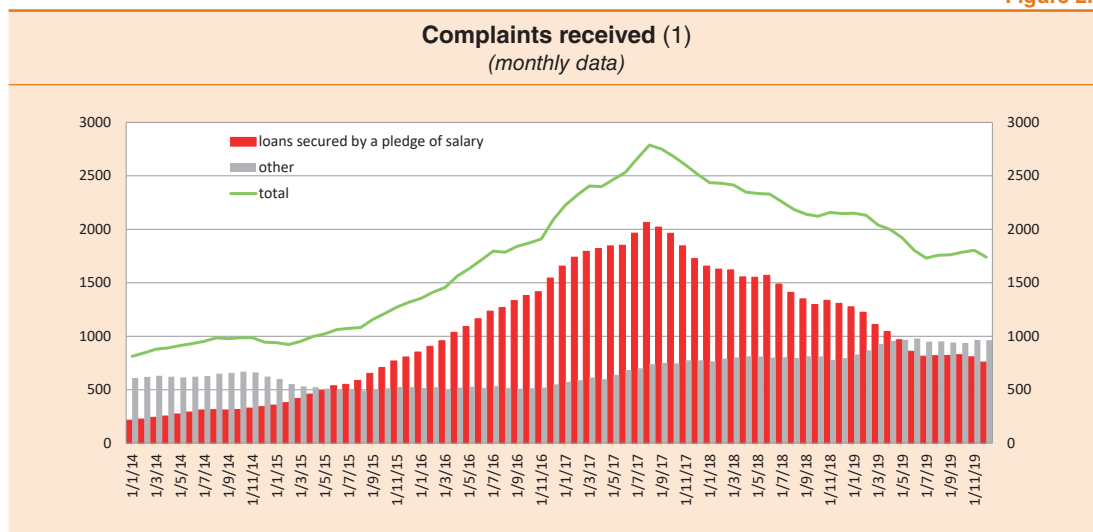
In 2019, the ABF received 22,059 complaints, a reduction compared with 2018 (-18 per cent). As in the previous year, the reduction was mainly caused by that in complaints regarding loans secured by a pledge of one-fifth of salary or pension³ (-39 per cent; Figure 2.1).

¹ Following this decision, the Coordinating Panel had to decide on the matter of refunding the costs in the event of early repayments, which led to the suspension of the deciding activity on the complaints pending on this matter in the last quarter.

² This percentage is computed with reference to decisions not complied with published on the ABF's website as of 15 June 2020.

³ 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 large amounts and the peculiarities of complaints on the matter; all data relating to consumer credit in this chapter is net of all such complaints.

Figure 2.1



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

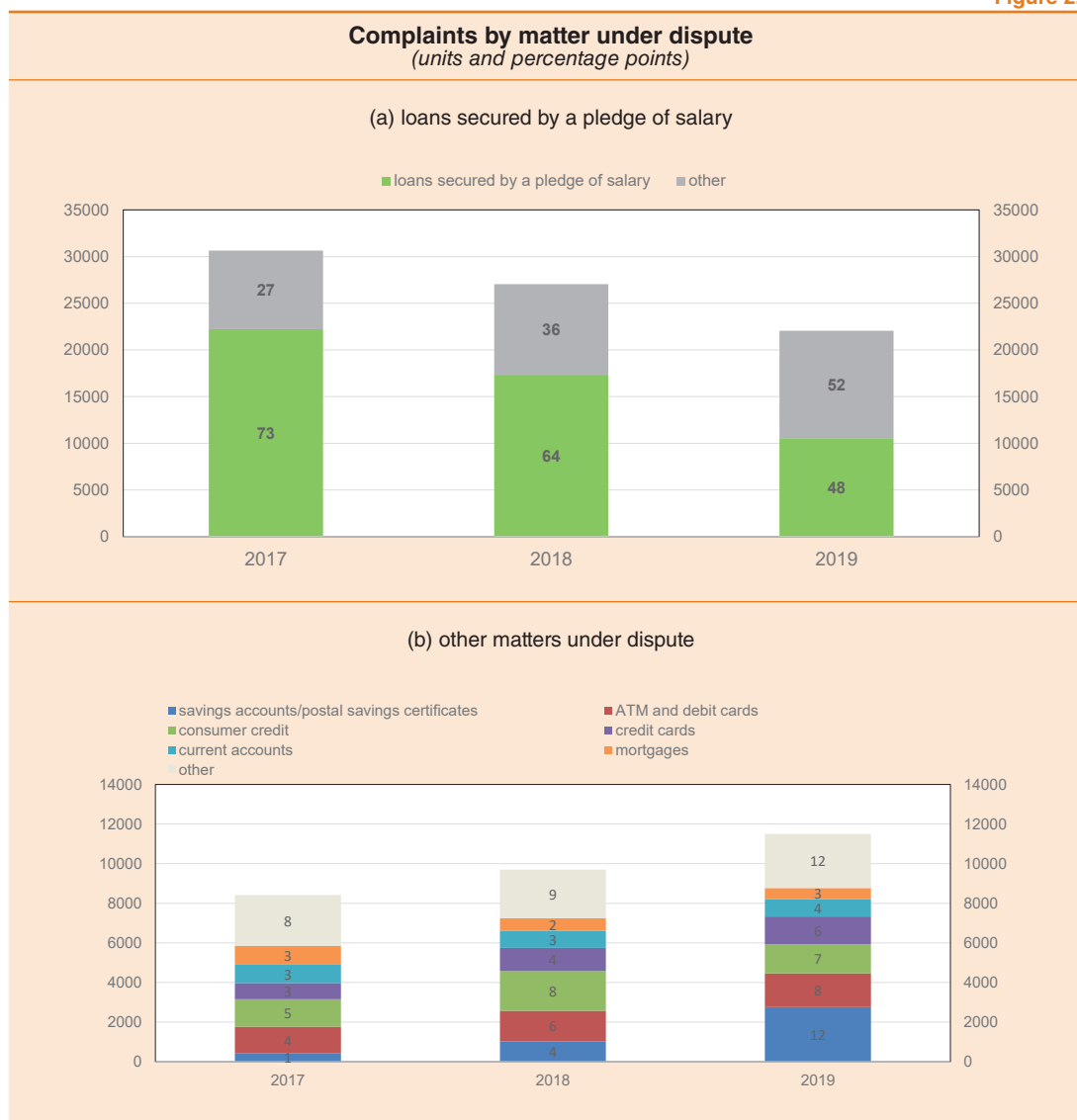
Complaints on the other matters increased overall by 19 per cent (Table 2.1). The increase was particularly significant for complaints on savings accounts and postal savings certificates, ATM and debit cards, and credit cards (Figure 2.2.b).

The decrease in complaints on loans secured by a pledge of one-fifth of salary or pension (which still represent 48 per cent of all complaints; Figure 2.2a), coupled with the increase in complaints regarding other matters, has led to an increase of 16 percentage points in the latter's incidence (Table 2.1).

Table 2.1

| Complaints received by matters under dispute: comparison with 2018 | | | | | |
|--|---------------|------------|---------------|------------|------------------------------------|
| MATTER UNDER DISPUTE | 2018 | | 2019 | | % variation 2019-18 per cent |
| | No. | % of total | No. | % of total | |
| Loans secured by a pledge of salary | 17,350 | 64 | 10,557 | 48 | -39 |
| Savings accounts and postal savings certificates | 1,024 | 4 | 2,761 | 12 | 170 |
| ATM and debit cards | 1,552 | 6 | 1,699 | 8 | 9 |
| Consumer credit | 2,002 | 8 | 1,474 | 7 | -26 |
| Credit cards | 1,170 | 4 | 1,403 | 6 | 20 |
| Current accounts | 852 | 3 | 877 | 4 | 3 |
| Mortgages | 649 | 2 | 557 | 3 | -14 |
| Central credit register | 367 | 1 | 467 | 2 | 27 |
| Credit reporting agencies | 410 | 2 | 429 | 2 | 5 |
| Checks | 361 | 1 | 326 | 1 | 21 |
| Other | 1,310 | 5 | 1,509 | 7 | 15 |
| Total complaints | 27,047 | 100 | 22,059 | 100 | -18 |
| Total complaints excluding loans secured by a pledge of salary | 9,697 | 36 | 11,502 | 52 | 19 |

Figure 2.2

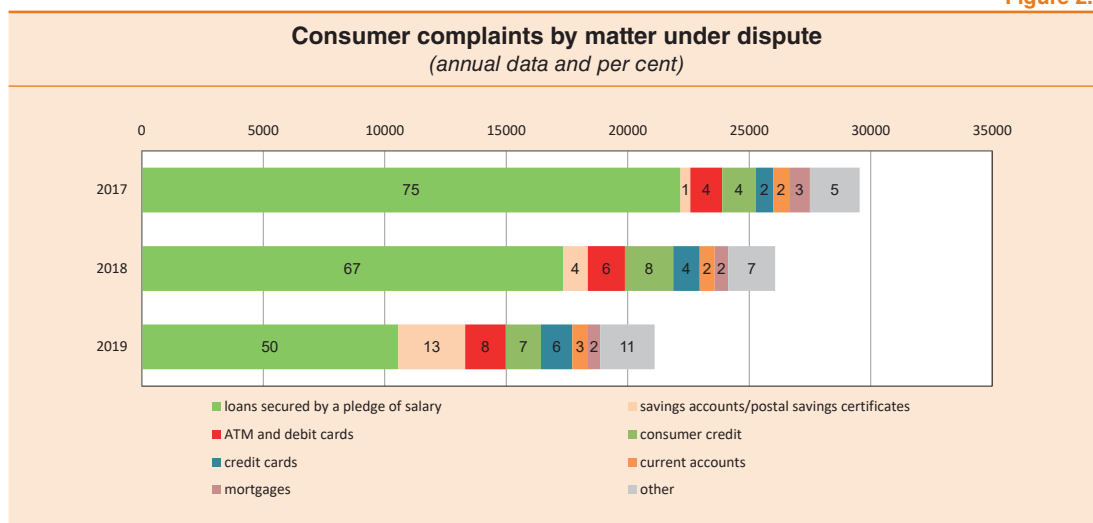


The matters under dispute vary according to the nature of the complainant (consumers or non-consumers);¹ nonetheless, the overall trends strongly reflect those of consumers, given that they submit 96 per cent of complaints (Figure 2.3).

The importance of complaints on loans secured by a pledge of one-fifth of the salary with respect to the other matters also emerges from a survey performed by the Bank of Italy on the main intermediaries. Given the contracts outstanding in 2019, for each 1,000 contracts on loans secured by a pledge of salary, 4.4 complaints were submitted to the ABF (7.8 in 2018), while only 0.1 complaints were submitted for other forms of consumer credit (0.6 in 2018).

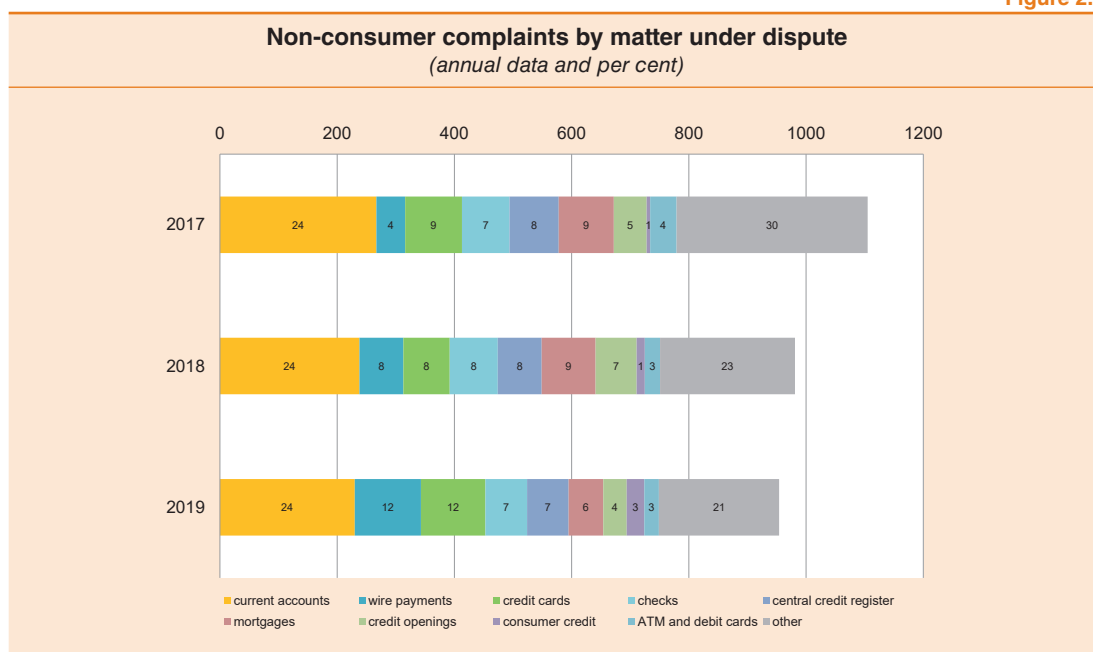
¹ A consumer is defined as a physical person, even when they submit a complaint with the help of a legal representative; non-consumers are professionals, owners of individual firms, micro-firms and any other entity.

Figure 2.3



The share of non-consumers' complaints is only 4 per cent of the total, and the most recurring matter under dispute of their complaints is still current accounts (24 per cent of complaints; Figure 2.4); complaints on wire transfers and credit cards are rising.

Figure 2.4

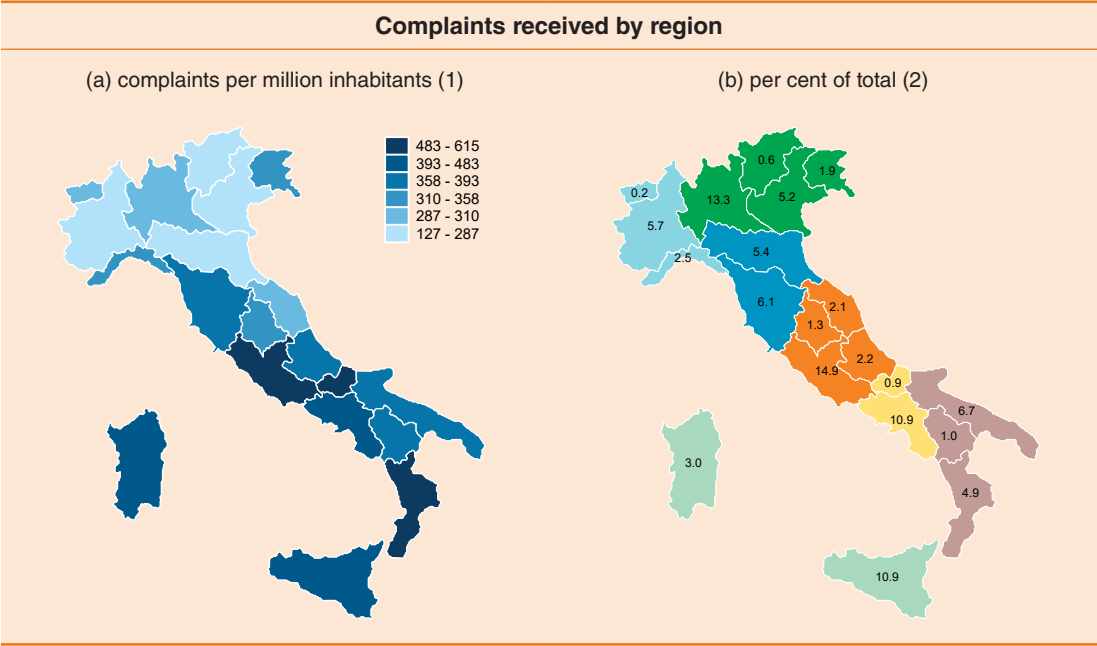


Geographical distribution of complaints

Complaints to the ABF are not evenly distributed across the Italian territory: central and southern regions have, on average, more complaints per capita than northern regions. Calabria, Lazio and Molise have the most complaints per million inhabitants (Figure 2.5.a).

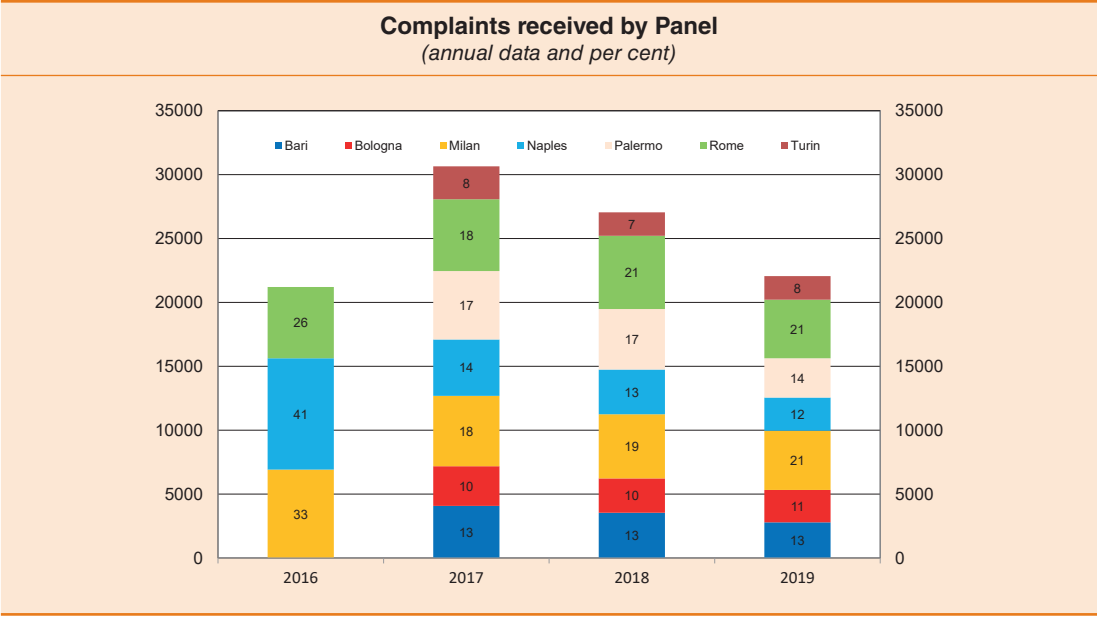
Complaints are distributed across Panels based on the complainant's domicile, which determines which Panel has jurisdiction (see Chapter 1; Figure 2.5.b). The greatest number of complaints was submitted to the Panels of Rome, Milan and Palermo, due to the high number of complaints coming from Lazio, Lombardy and Sicily (Figure 2.5.b). The decrease observed in 2019 has affected all Panels except for that of Turin, for which the complaints received remained essentially equal. Amongst the remaining Panels, the greatest decreases occurred in Naples and Palermo (-26 and -35 per cent, respectively; Figure 2.6).

Figure 2.5



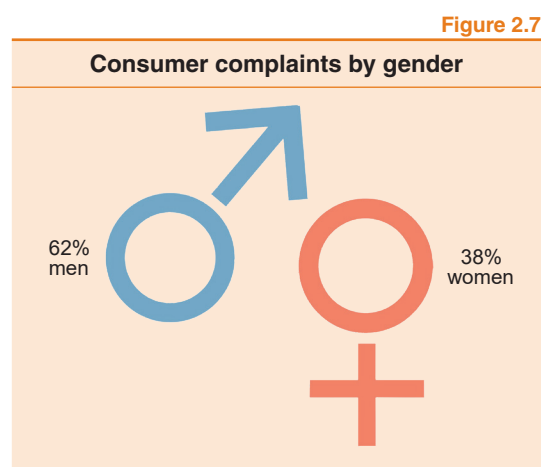
Sources: Based on ABF and Istat data.
 (1) Resident population as of 1 January 2019. – (2) The colours identify the competent Panels, while the numbers refer to the percentage of the total number of complaints.

Figure 2.6

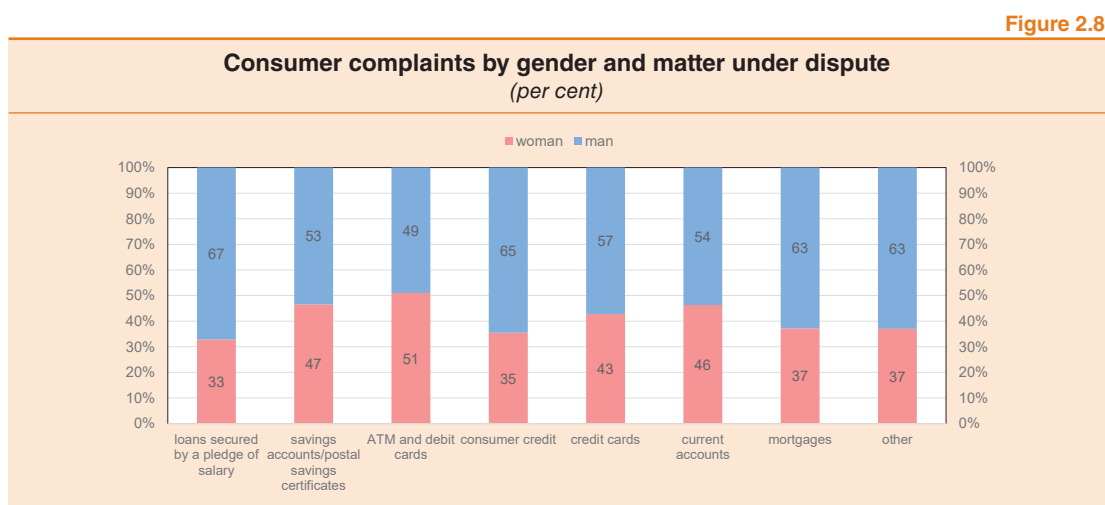


Characteristics of complainants

Complaints continue to be submitted predominantly by men (62 per cent; Figure 2.7),¹ even though the percentage of complaints presented by women has increased with respect to 2018 by 4 percentage points. The gender distribution across regions is still heterogeneous: complaints are submitted by men in less than 60 per cent of cases in Lombardy, Emilia-Romagna and Tuscany, while the figure is close to 70 per cent in Puglia, Campania and Sicily.



Complaints concerning financing (loans secured by a pledge of salary, other forms of consumer credit and mortgages) were submitted by men two thirds of the time (Figure 2.8). Women mostly submitted complaints on ATM and debit cards, savings accounts and postal savings certificates, and current accounts; in particular, most complaints on ATM and debit cards were submitted by women.



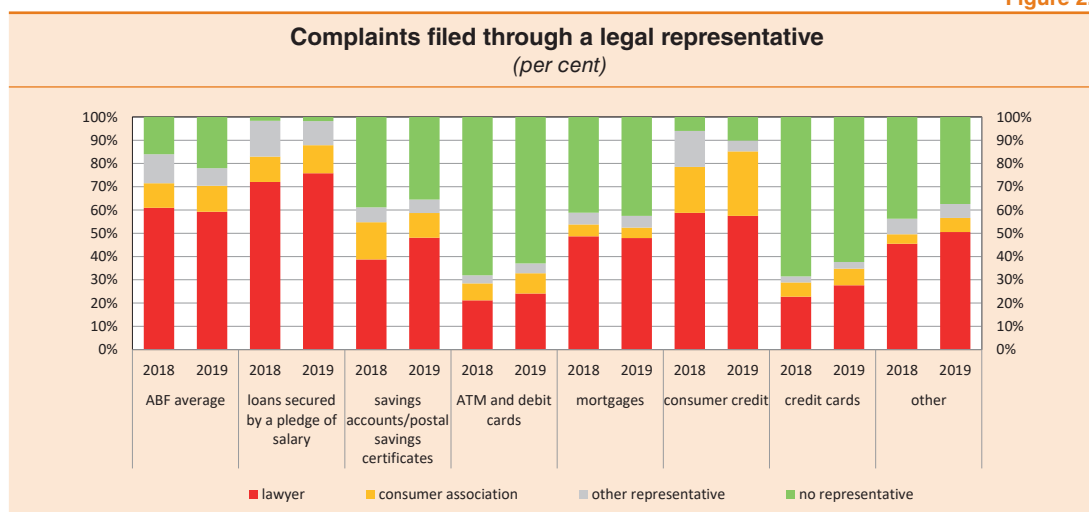
Complainants are 55 years old on average; the average age is higher for complainants on matters such as deposit accounts (postal savings certificates) and loans secured by a pledge of salary, while it is lower for credit cards, ATM and debit cards, and mortgages. This also reflects the different age distribution of banking and financial products (see ‘Survey on Household Income and Wealth, Banca d’Italia, Statistics, 12 March 2018).

Most complaints continue to be filed with the assistance of a legal representative (59 per cent in 2019, a slight decrease with respect to the previous year); this is also due

¹ Data in this paragraph only refer only to consumer complainants.

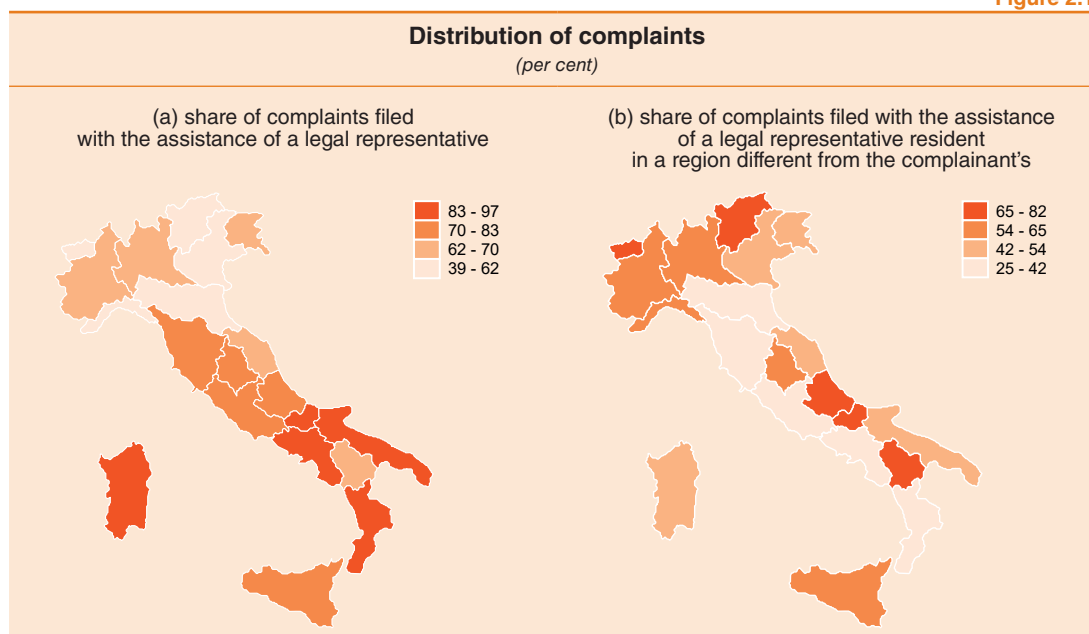
to the high incidence of complaints involving loans secured by a pledge of salary, where professional assistance is very common. The 6-percentage-point increase (from 16 to 22 per cent; Figure 2.9) in the share of complaints filed without the assistance of a legal representative can be attributed to the decrease in the share of complaints involving loans secured by a pledge of salary.

Figure 2.9



The share of complaints filed with the assistance of a legal representative is greater in the southern and island regions, and partly reflects the wider diffusion of loans secured by a pledge of salary in the south of Italy (Figure 2.10.a). The data on the residence of complainants and their representatives shows how the latter were chosen outside of the complainants' region in 30 per cent of complaints filed with the assistance of a legal representative (Figure 2.10.b). Lazio is the region with the lowest share (around 25 per cent); Trentino-Alto Adige has the largest (82 per cent).

Figure 2.10



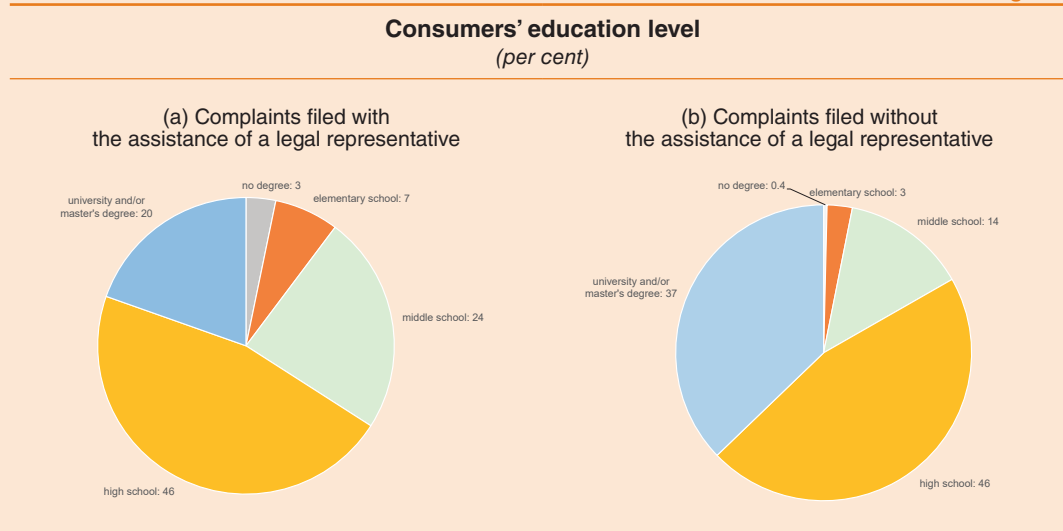
FOCUS ON THE COMPLAINANTS' PROFILE

By analysing the personal data of complainants, both consumers and non-consumers, who filed their complaint online through the ABF portal, it is possible to outline their profile. In particular, for consumers the focus is on their education level and current job; for non-consumers, the focus is on the industry and the number of employees in the firm.

The response rate¹ of consumers is higher when the complaint is filed without the assistance of a legal representative.

With respect to the education level,² the share of consumers who did not finish high school is higher amongst those who filed the complaint with the assistance of a legal representative; the share of complainants with a university degree is almost twice as large amongst those who filed the complaint without the assistance of a legal representative (Figure A).

Figure A



Source: Data processing on personal information provided when submitting the complaint online

The majority of consumers are currently office workers. Amongst complainants who file complaints with the assistance of a legal representative,³ the majority are office workers, manual workers or pensioners; amongst other complainants, the majority are office workers, pensioners or professionals (Figure B).

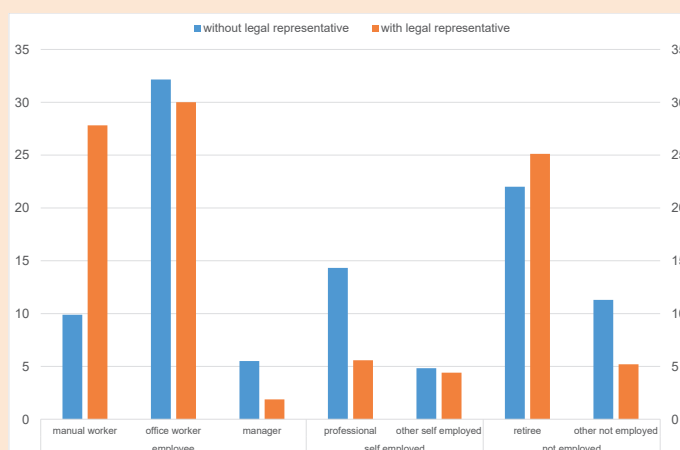
¹ With the response rate we refer to the percentage of complainants who did not select 'don't know/refuse to answer', indicating instead one of the other answers for the personal data section.

² For this question, the share that selected 'don't know/ refuse to answer' is 80 per cent amongst complainants who filed the complaint with the assistance of a legal representative, while it is 2 per cent amongst other complainants.

³ For this question, the share that selected 'don't know/ refuse to answer' is 68 per cent amongst complainants who filed the complaint with the assistance of a legal representative, while it is 5 per cent amongst other complainants.

Figure B

Job of consumers (per cent)

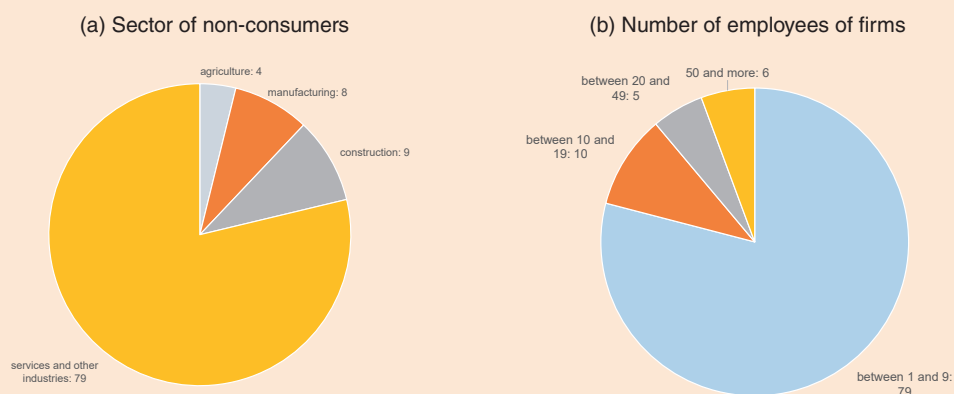


Source: Data processing on personal information provided when submitting the complaint online

Amongst the complainants who are non-consumers, there is a clear prevalence of those working in the service industry and in industries other than agriculture, construction and manufacturing (Figure C, panel a).

Figure C

Sector of non-consumers (per cent)



Source: Data processing on personal information provided when submitting the complaint online

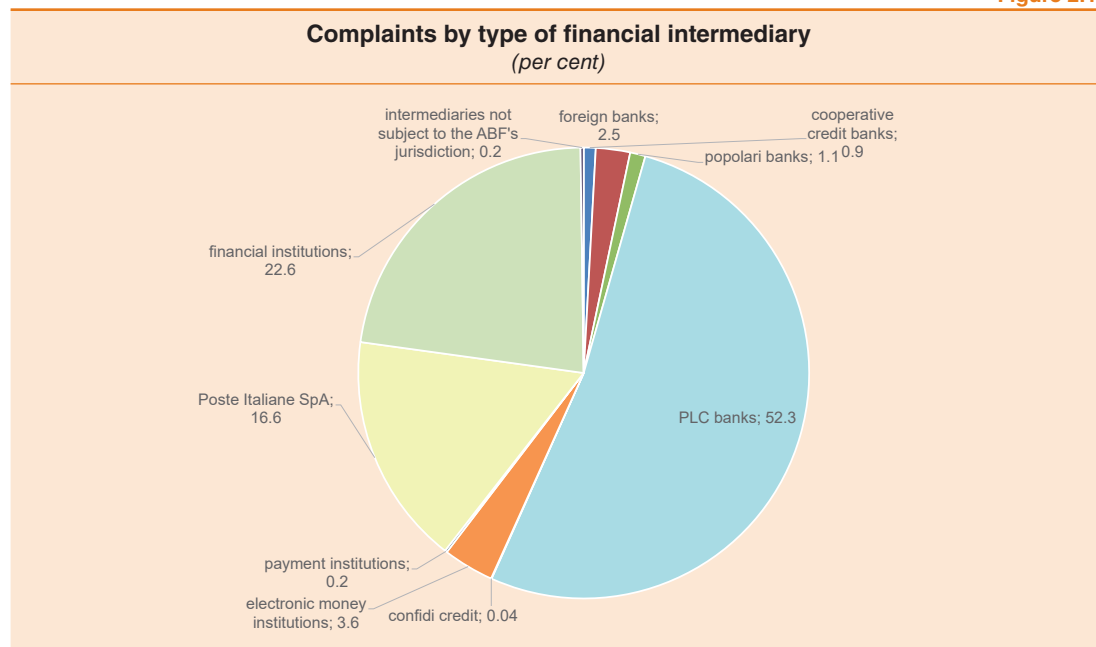
The majority of complainant firms are limited in size, with 79 per cent of them having fewer than ten employees (Figure C, panel b).

Types of financial intermediaries

In 2019, the largest share of complaints continued to involve banks incorporated as limited companies (52 per cent; 56 in 2018); the share of complaints against financial

corporations decreased slightly (22.6 per cent; 24.5 per cent in 2018), while there was a sharp increase in the share of complaints against Poste Italiane SpA (of 8 percentage points with respect to 2018; Figure 2.11).

Figure 2.11



The share of the matters under dispute varies according to the type of financial intermediary, also as a consequence of them specializing 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 (83 per cent of all their complaints), for which they represent a significant share of all financing; they represent half of all complaints received by banks (more than 6,100), whose supply of products and services is more diversified. Around three quarters of all complaints against Poste Italiane SpA concern postal savings certificates (Table 2.2).

Table 2.2

| Incidence of matters under dispute by type of financial intermediary | | | | | | | | |
|--|------------|------------|------------------------|--------------------|---------------|----------------------|----------------|--------------------------|
| MATTER UNDER DISPUTE | PLC banks | Banche SpA | Financial corporations | Poste Italiane SpA | Foreign banks | Payment institutions | Popolari banks | Cooperative credit banks |
| Loans secured by a pledge of salary | 48 | 53 | 83 | 0 | 34 | 0 | 39 | 0 |
| Savings deposits/postal savings certificates | 12 | 0 | 0 | 74 | 1 | 0 | 0 | 3 |
| ATM and debit cards | 8 | 7 | 0 | 13 | 5 | 38 | 9 | 13 |
| Consumer credit | 7 | 8 | 9 | 0 | 10 | 0 | 2 | 2 |
| Credit cards | 6 | 5 | 0 | 6 | 10 | 58 | 4 | 3 |
| Current accounts | 4 | 6 | 0 | 3 | 8 | 1 | 5 | 17 |
| Mortgages | 3 | 4 | 0 | 0 | 12 | 0 | 9 | 10 |
| Central credit register | 2 | 3 | 2 | 0 | 2 | 0 | 6 | 9 |
| Credit reporting agencies | 2 | 3 | 1 | 0 | 4 | 0 | 3 | 8 |
| Checks | 1 | 2 | 0 | 1 | 1 | 0 | 5 | 10 |
| Other | 7 | 9 | 4 | 3 | 13 | 2 | 18 | 25 |
| Total | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Even when accounting for the fact that the letters of complaint may concern matters other than those that can be submitted to the ABF, the complaints submitted to the ABF only represented around 6 per cent of the letters of complaint received by the intermediaries, and 13 per cent of those rejected by them.

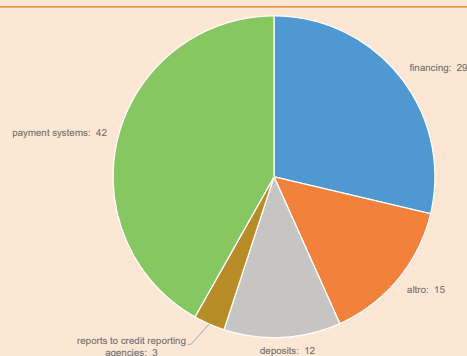
LETTERS OF COMPLAINT TO INTERMEDIARIES

A quantitative analysis of the main issues and outcomes of the letters of complaint (that must precede the submission of a complaint to ABF) provides a wealth of information. Based on data from supervisory reports, in 2019, the number of letters of complaint received by intermediaries rose by around 8 per cent, numbering above 360,000. The most frequent issues were payment systems and financing (42 and 29 per cent, respectively; Figure A).

In 2019, 39 per cent of the letters of complaint had a favourable outcome for the complainant, 12 per cent had a partially favourable outcome, while the other 49 per cent were dismissed (36, 7 and 57 per cent respectively in 2018). With regard to the subject matter, issues concerning payment systems had the highest percentage of favourable outcomes (Figure B).

Figure A

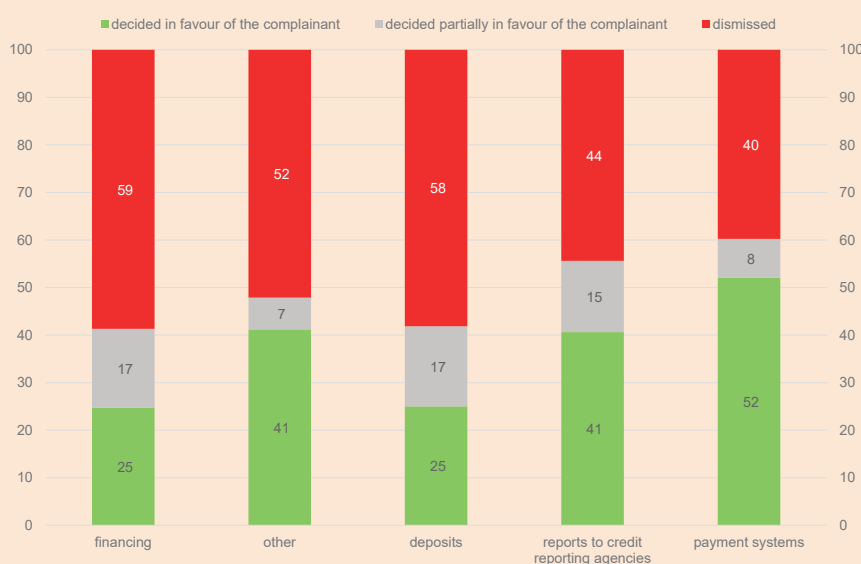
Letters of complaint received by the banking system (per cent)



Source: Data processing on supervisory reports.

Figure B

Outcomes (per cent)



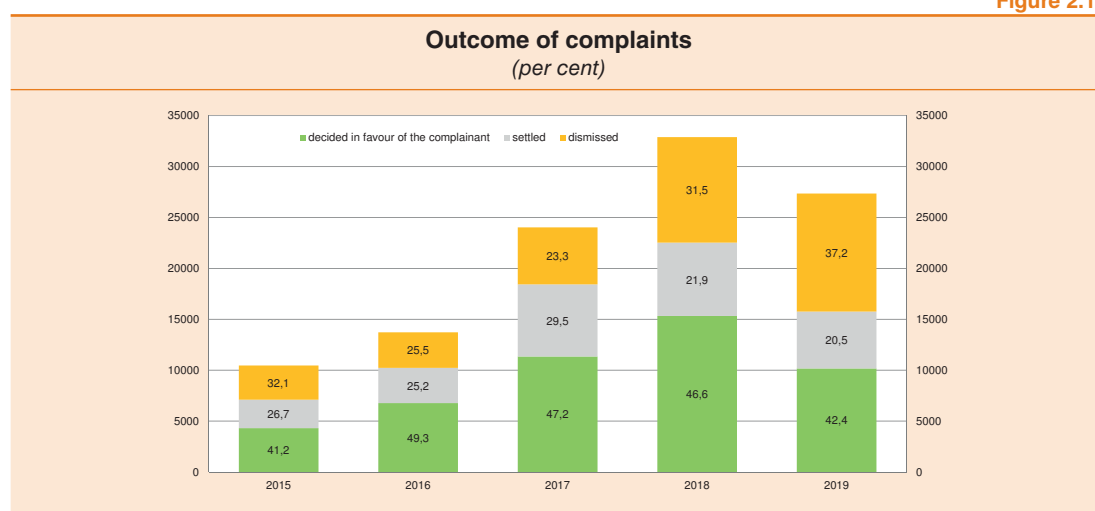
Source: Data processing on supervisory reports.

Supply

Outcomes

In 2019, the ABF Panels issued decisions on 27,346 complaints (32,885 in 2018). In 58 per cent of the cases that were resolved, the outcome was substantially in favour of the complainant (69 per cent in 2018).¹ In 37 per cent of those cases,² the Panels partially or totally upheld the complaint, while in the other 21 per cent the parties settled before a decision was issued. The Panels rejected 42 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, among those disputes with a positive outcome for the complainant, in the past year increased further, reaching around €28 million (€22 million in 2018 and 19 in 2017). The data does not take into account those cases where the parties reached an agreement before the ABF issued a decision.

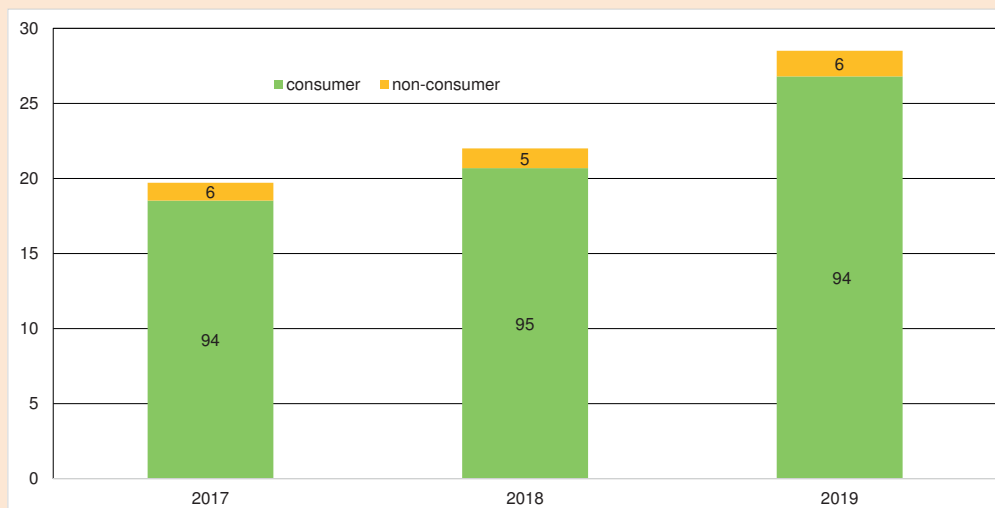
As in the previous two years, in 2019, the amounts awarded by the first five intermediaries, ordered by value of the amounts awarded, accounted for more than 60 per cent of the total. Some 94 per cent of awards were in favour of consumers; the amounts awarded increased by €5 million with respect to the previous year (Figure A). The average amount awarded rose from €1,700 in 2018 to €2,400 in 2019 (€2,300 for consumers and €5,600 for non-consumers).

¹ The higher percentage of favourable outcomes in 2018 is affected by the higher share of loans secured by a pledge of one-fifth of salary or pension on the total disputes decided.

² They include complaints decided fully or partially in favour of the complainant.

Figure A

Amounts awarded
(millions of euros and per cent)



Among the more frequently raised matters, the higher average amounts refer to savings account-interest bearing postal bonds (see Chapter 3, ‘The decisions of the Panels: main issues covered’) and current accounts. The average value of awards regarding loans secured by a pledge of salary was equal to approximately €1,300, slightly down compared with 2018, and awards on this matter represented around one third of the total amount (Figure B).

Figure B

Awards per subject matter
(average amount in euros)

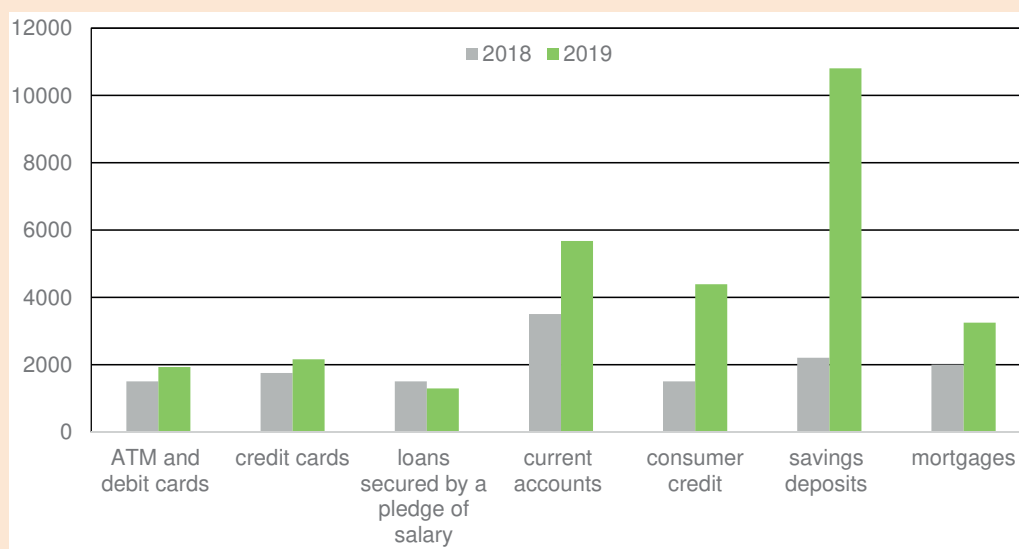
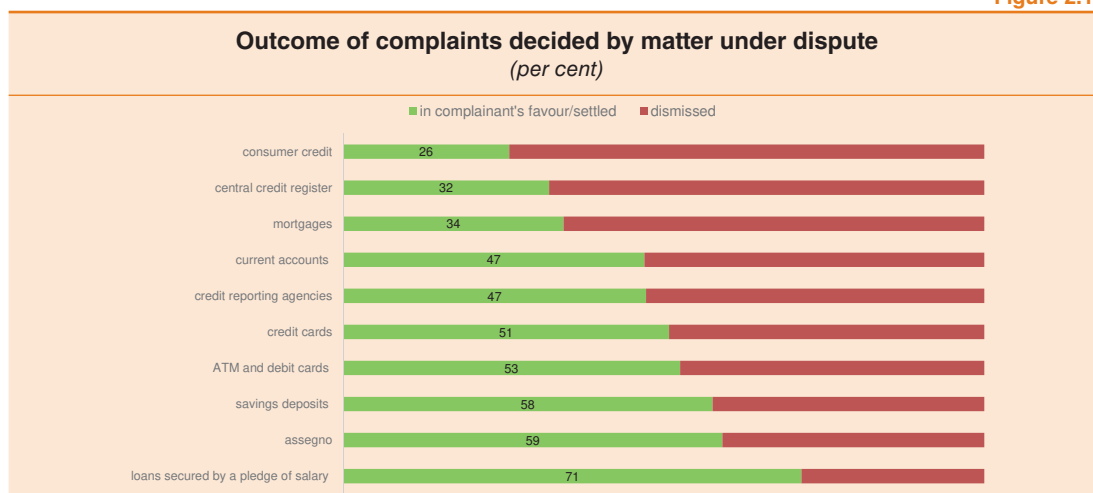
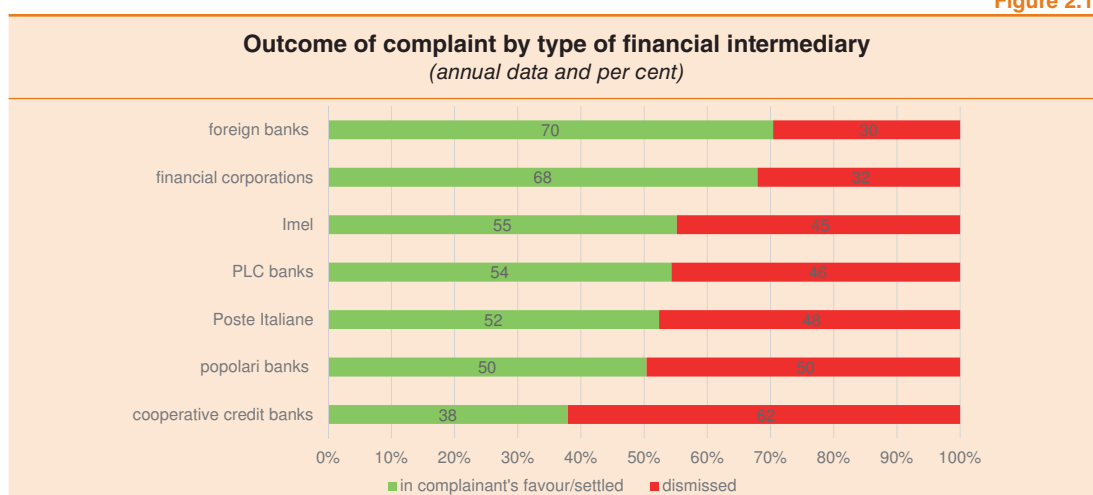


Figure 2.13



The outcomes differed significantly depending on the matter under dispute: the percentage of cases decided in favour of the complainant or settled was lower for consumer credit and mortgages, while it was considerably higher for loans secured by a pledge of salary (71 per cent; 80 in 2018; Figure 2.13).

Figure 2.14



Outcomes also differed according to the type of financial intermediary (Figure 2.14). As in the previous years, cooperative credit banks (BCCs) had the lowest incidence of adverse outcomes, while foreign banks and financial corporations had the highest (Table 2.2).

The share 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 the decision) was higher for consumers than for non-consumers (Figures 2.16.a and 2.16.b). This reflects the higher incidence of disputes involving loans secured by a pledge of salary, which had higher success rates.

Figure 2.15

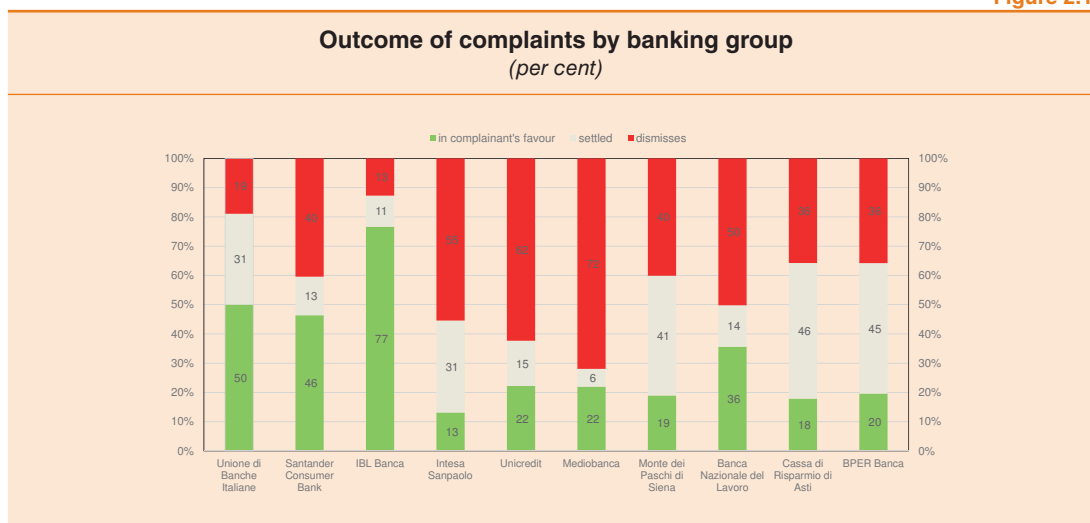
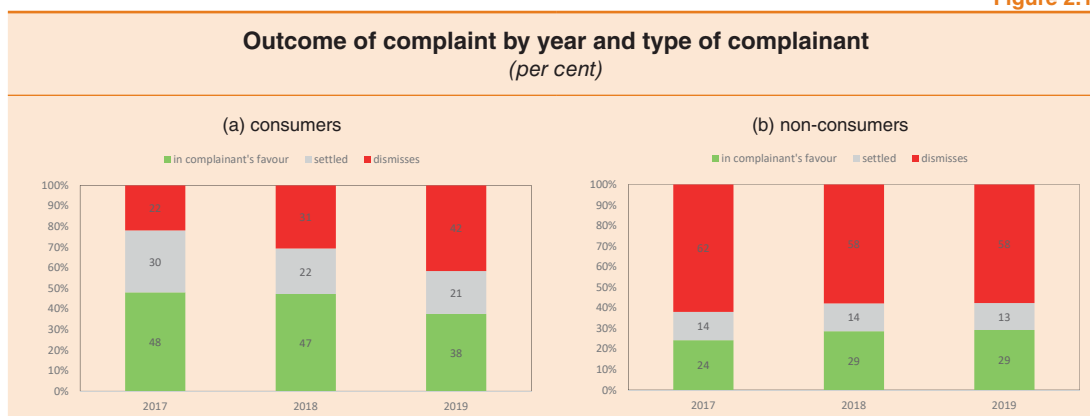


Figure 2.16



In 2019, using the data on the publication of non-compliance with decisions,¹ the non-compliance rate was less than 1 per cent.

As in the past, non-compliance mainly related to specific issues. Sometimes (for instance, in issues concerning mortgages indexed to the Swiss franc), intermediaries justified their non-compliance by stating that a dispute 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. Some other cases concerned bank drafts found to be counterfeit, in the context of transactions for the purchase of precious goods between individuals. Non-compliance on the matter of loans secured by a pledge of salary also involved intermediaries that have been cancelled from banking registers.

Finally, it should be noted that in 2019, as in 2018, many intermediaries belatedly complied with decisions after their non-compliance had already been made public.

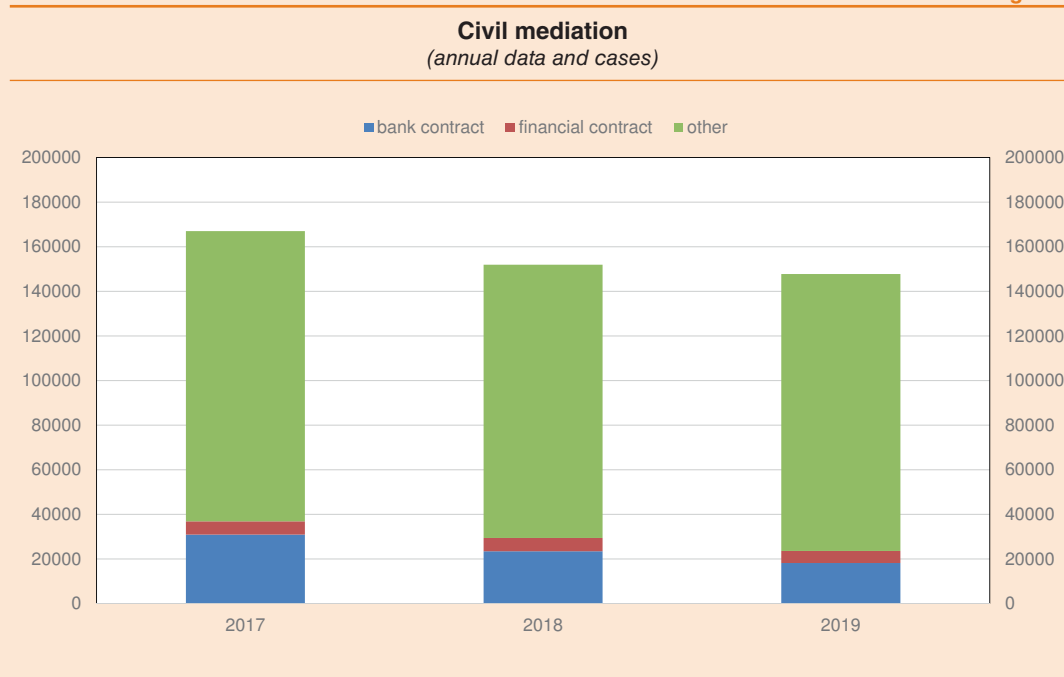
¹ Intermediaries' non-compliance is published on the ABF website, in the section *Non-compliant intermediaries*.

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 on the matter of banking and financial contracts.

In 2019, the number of proceedings brought before mediators decreased by 3 per cent overall. As regards proceedings involving banking or financial matters, the reduction was more marked (-23 per cent and -10 respectively; Figure A).

Figure A



Source: Ministry of Justice.

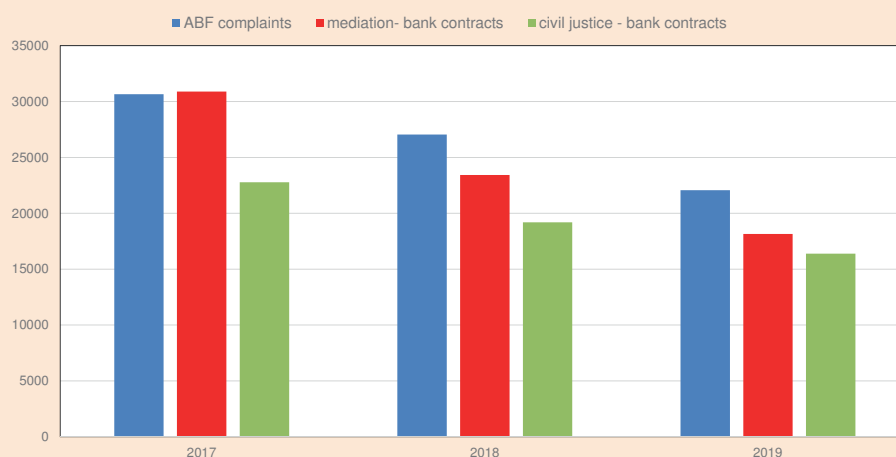
The parties failed to participate in the mediation in 51 per cent of the cases (54 per cent for bank contracts, 61 per cent for those regarding financial contracts). The absence of one of the parties makes it impossible to reach an agreement, resulting in a negative outcome for the mediation. In cases in which both parties participated, the mediation resulted in an agreement in 29 per cent of the cases; the percentage was much lower for bank and financial contracts (6 and 8 per cent respectively).

In 2019, the median economic value of a mediation case was €35,000 for those involving a bank contract and €13,000 for both those involving a financial contract and all proceedings in general.

Last year, as in the previous year, the number of appeals received by the ABF was higher than the number of new proceedings registered on banking contracts in mediation or in the civil law courts (Figure B).

Figure B

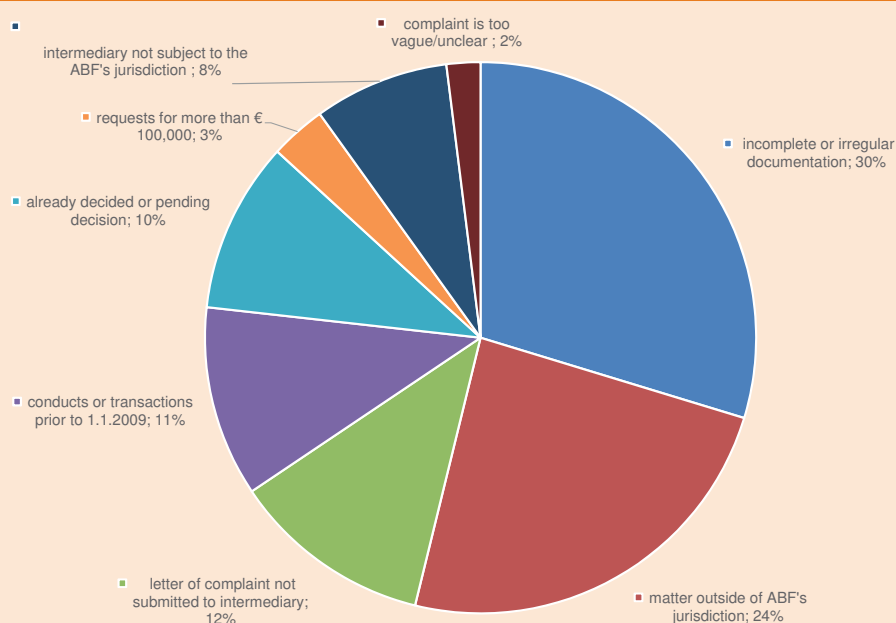
ABF complaints, number of mediations and civil justice proceedings (annual data)



In 2019, almost 500 complaints were rejected as inadmissible by the Chair of the Panel (900 in 2018), equal to 2 per cent of the total number of complaints submitted. Of these, 30 per cent of cases (18 in 2018) were dismissed for incomplete or irregular documentation, 24 per cent because the matter was outside the ABF's jurisdiction (13 in 2018); only in 11 per cent of cases (17 in 2018) did the appeal concern transactions or conduct prior to 1 January 2009, the time limit of the ABF's jurisdiction (Figure 2.17).

Figure 2.17

Grounds for deeming a complaint inadmissible (per cent)



The average time frame 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 equal to 209 days, net of the suspension periods provided for by the ABF Provisions; the number becomes 238 days when the suspensions are taken into account (266 and 304 in 2018, respectively).¹

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.

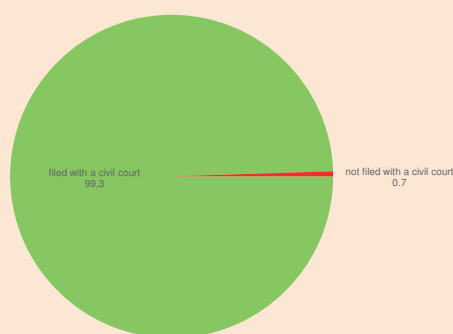
In the first few months of 2020, a survey was carried out on the main intermediaries¹ in order to obtain information on the number of disputes filed (by complainants or intermediaries) with the civil courts following an ABF decision. The information obtained shows that 0.7 per cent of the disputes decided by the ABF were then brought before a civil court judge.

Over 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 87 per cent of cases, the civil court proceedings were initiated by the customer.

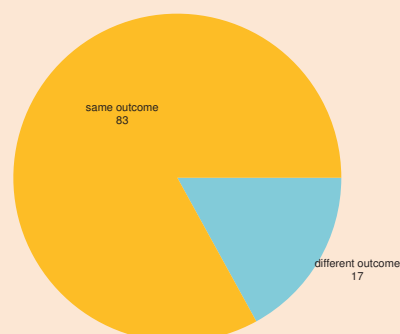
Figure A

Disputes filed with the civil courts (per cent)

(a) Complaints submitted to the civil courts



(b) Outcomes of these complaints
(as of 31.12.2018)



¹ Twenty-seven intermediaries participated in the survey, representing 74 per cent of the complaints decided by the ABF from 2017 to 2019.

¹ The average time frame 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 which case the ABF Panels only notify the parties of the outcome.

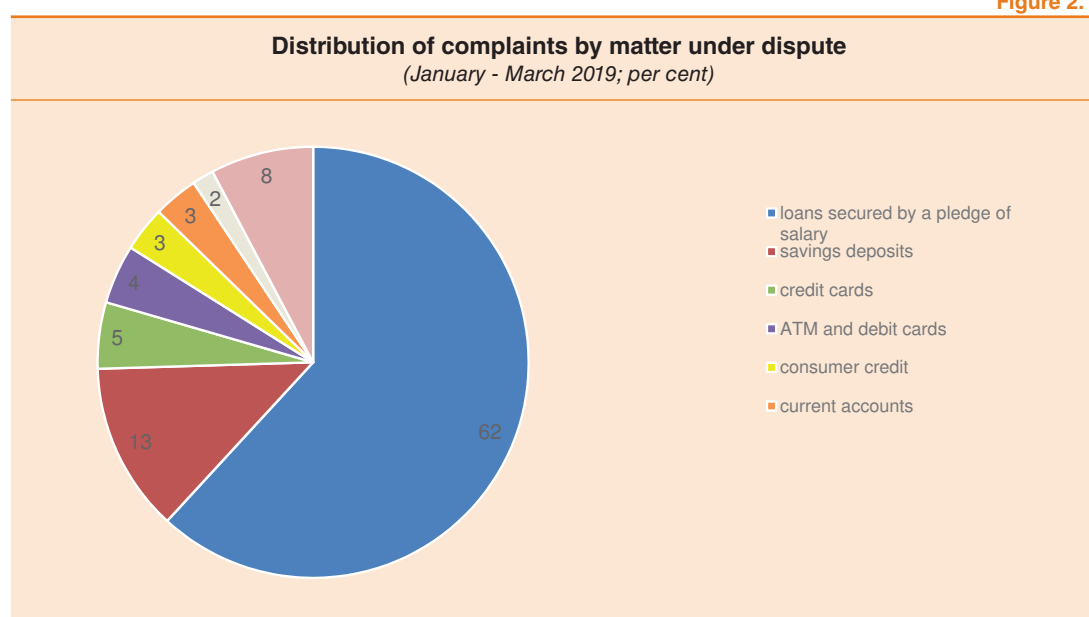
In 83 per cent of the cases, the ABF's decision was upheld (see Figure A). The differences in outcomes are due to a number of factors: sometimes, while confirming the ABF's case law in the interpretation of the applicable laws, there would be marginal misalignments concerning the burden of proof or in the reconstruction of the facts.

Data on the first few months of 2020

In the first quarter of 2020, approximately 10,300 complaints were submitted to the Ombudsman, a substantial increase compared with the same period of the previous year (22 per cent; Figure 2.18). The trend is mainly due to the increase in disputes regarding loans secured by a pledge of one-fifth of salary or pension, whose share increased by 11 percentage points compared with the same period in 2019, standing at 62 per cent (Figure 2.18).

In relation to the compliance rate of intermediaries, first instances of non-compliance are observed with reference to decisions concerning the early repayment of loans secured by a pledge of one-fifth of salary or pension, issued after the CJEU judgement in the Lexitor case, and interest-bearing bonds postal services, areas in which a consolidated position in ordinary jurisprudence has not yet been reached.

Figure 2.18



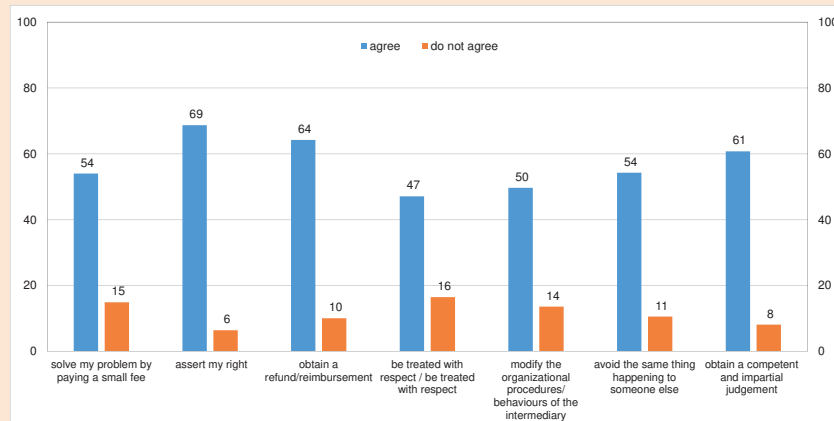
LEVEL OF CUSTOMER SATISFACTION

In the first few months of 2020, 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 7,000 complainants were contacted and

over 1,500 completed the questionnaire.¹ Among the main reasons cited for submitting a complaint to the ABF were: (a) ascertaining of a right; (b) obtaining compensation; and (c) the desire to receive a ruling made by competent subjects (Figure A).

Figure A

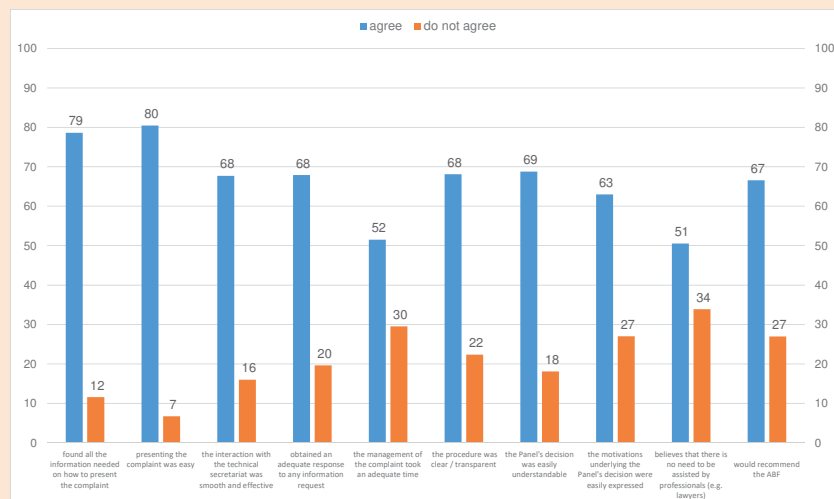
Reasons for submitting a complaint (per cent)



Of the customers surveyed, 80 per cent found that it was easy to file the complaint and to locate the information needed to file the complaint itself, and 68 per cent that the interaction with the Technical Secretariat was timely and effective. Some 52 per cent believed that the length of the procedure was appropriate (32 per cent in 2019; Figure B).

Figure B

Complainants opinion on the ABF (per cent)

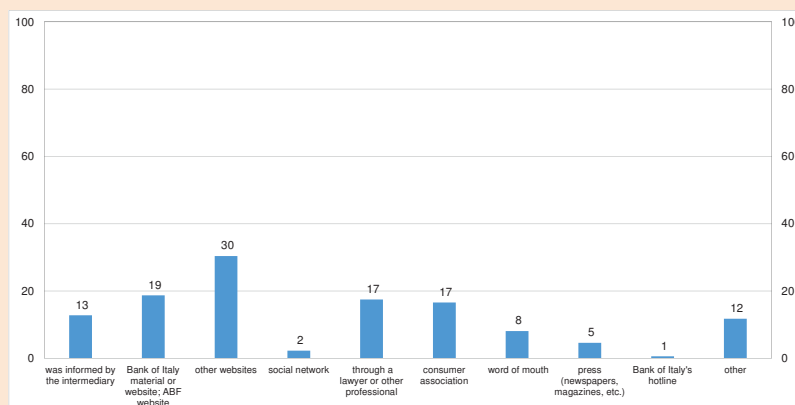


¹ Among those who responded to the survey, 78 per cent submitted a complaint without the help of a legal representative; 36 per cent of their complaints were upheld, 44 per cent were dismissed and 20 per cent were settled.

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 for further increasing awareness.

Figure C

Sources that contributed to awareness of the ABF
(per cent)

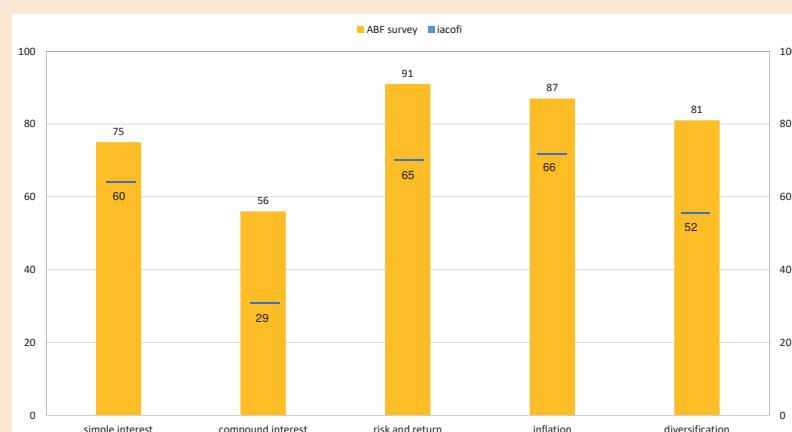


One section of the survey focused on the modalities of dialogue with the intermediaries. The results show that around 90 per cent of respondents regularly access their account in home banking mode, while only 20 per cent usually go to the branches of their intermediary.

The last section focused on economic and financial skills.² The complainants surveyed obtained better results than the average Italian citizen, with the question concerning simple interest being answered correctly by 75 per cent and that relating to compound interest by 56 per cent (60 and 29 per cent in the Iacofi survey; Figure D).

Figure D

Economic and financial literacy
(per cent)



² The questions were chosen from among 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

In 2019, the ABF continued to address the key issues in the relationship between intermediaries and clients. This chapter presents some of the decisions taken by the Panels that express consolidated case law or that may arouse interest due to the particularity of the issues examined.¹



Current accounts

Opening an account. – The ABF ruled on disputes concerning the claimant's right to obtain the opening of a current account. In one case, the client objected that the bank had refused to open a current account for them as a condominium administrator and to transfer two other current accounts to different branches of the same bank without giving reasons for not doing so.

First of all, the Panel pointed out that there is no obligation for intermediaries to contract, recalling the general principles of the legal system and in particular the constitutional principle of freedom of economic initiative. It is therefore excluded that the ABF, taking the place of the intermediary's decision-making autonomy, can issue a decision that in itself creates a relationship with the customer or forces the intermediary to explain the reasons for not opening the account. With regard to the request concerning the transfer of a current account between branches of the same bank, the ABF clarified that the client has no right to this procedure: such a transfer must be agreed between the parties, without prejudice to the bank's right not to grant the request if it is detrimental to its own interests.²

Portability of the account. – The protection of the portability (or transfer) of payment services and of the payment account itself is safeguarded by Article 126-septiesdecies of the Consolidated Law on Banking (TUB), which, in the second paragraph, states that 'without prejudice to the right to compensation for further damages, including non-pecuniary damages, in the event of failure to comply with the obligations and deadlines for the transfer of payment services, the defaulting payment service provider is required to pay the consumer, without delay and without the need for a formal notice, a sum of money, as a penalty, equal to forty euros'. The Coordinating Panel has clarified the

¹ The ABF decisions mentioned in the footnotes are available on the ABF website only in Italian.

² Decision **2540/2020**.

scope of application of such a penalty in the event of a delay in the transfer of payment services, focusing on the structural and regulatory differences between bank accounts and payment accounts.³

Closing an account. – A company complained about the unilateral and unjustified closure of a current account by the intermediary, with only five days' notice, and claimed damages. The ABF, noting that the current account relationship was for an indefinite period, ascertained the legitimacy of the withdrawal exercised by the intermediary, given that, under the contract and pursuant to the Civil Code, the intermediary had the right to withdraw from the relationship without having to provide reasons and with only one day's notice. On the other hand, with the letter of termination, it had granted the client a longer period of two months and proceeded to effectively close the relationship well beyond that term.⁴



The right to receive a copy of banking documentation

The subject matter of the request. – Article 119 of the Consolidated Law on Banking, which expresses the principle of good faith in contractual relations, recognizes the client's right to obtain a copy of the documentation referring to operations carried out in the previous ten years. According to the ABF's case law, it is sufficient for the interested party to provide the bank with the minimum elements necessary to enable it to identify the documents requested.⁵

The ten-year term required for the storage of documents by Article 119, paragraph 4, of the Consolidated Law on Banking must be counted backwards from the day on which the documents are formally requested by the client. In the case under examination, the ABF rejected the complaint because the client's request concerned banking documentation (account statements referring to the period June 1999-December 2000) that did not qualify for that timeframe.⁶

Costs. – The Ombudsman also ruled on the appropriateness of the costs requested by the intermediary to release copies of the documentation, recalling that, according to the ABF's case law, Article 119, paragraph 4, of the Consolidated Law on Banking is aimed at guaranteeing the client's timely and affordable access to documentation, tying the costs chargeable to the client to an indemnity criterion rather than a remunerative one. The intermediary is only allowed to recover the costs actually incurred in producing the requested documents and not to obtain recompense for the time and energy used in this activity. Even if the cost complies with the information sheets, it must be subject to an

³ Coordinating Panel, decision **26297/2019**.

⁴ Decision **14893/2019**.

⁵ Decision **17110/2019**.

⁶ Decision **15827/2019**.

adequacy check, in order to rule out the possibility that a fee is charged for the requested service in a non-transparent manner.

In the case under examination, applying the costs indicated in the information sheet, the intermediary had requested €312 for the production of banking documentation relating to a mortgage (in particular, €7 for each receipt for payment of instalments and €3 for account statements). The Ombudsman considered that the intermediary had not demonstrated the close connection between the costs and fees charged to the client and upheld the complaint, recognizing the customer's right to obtain a copy of the documentation and to be charged only with production costs.⁷



Mortgages and other loans

The granting of credit. – The Ombudsman examined the complaint's request to obtain compensation for the dilatory conduct of the intermediary, which violated the principles of good faith and fairness in the pre-contractual phase of a loan and gave the client faith in the successful outcome of the application. The ABF first recalled its case law, according to which there is no obligation in the Italian legal system for intermediaries to grant credit; the ABF cannot replace the intermediary in the assessment of the convenience of a transaction, nor can it impose the granting of a loan.

The ABF also applied the position recently taken by the Court of Cassation⁸ according to which, in order to recognize the intermediary's pre-contractual liability, it is first necessary for negotiations to have reached a point where the customer can reasonably rely on the conclusion of the contract and the intermediary then interrupts this process without good reason; secondly, there must be no facts that would exclude the customer's reasonable trust in the conclusion of the contract.

The complaint was dismissed based on the circumstance, considered essential by the ABF, that the negotiations had been interrupted by the client, meaning that the client could not possibly have relied on a successful outcome of the negotiations. The Ombudsman also pointed out that the unsuitability of the client's income situation made it necessary to request additional guarantees, with a consequent extension of the preliminary phase.⁹

The pre-contractual stage. – The Coordinating Panel decided a case concerning the agreement of a mortgage under more onerous conditions than those previously agreed by the parties.

⁷ Decision **1298/2019**.

⁸ Court of Cassation, 29 March 2007, No. 7768.

⁹ Decision **5484/2019**.

In particular, the intermediary had sent the client a copy of the draft of contract in which, without any previous communication or transmission of a new Information Sheet (*European Standardised Information Sheet - ESIS*), a new interest rate was indicated.

The ABF noted that, in the event of a unilateral change in the interest rate communicated to the client a few days before the date set for the stipulation of the contract, failure to send the ESIS in advance does not affect the validity of the relative contractual clause, but constitutes an assumption of pre-contractual liability and entitles the client to compensation (as long as the relevant proof is provided).¹⁰



Consumer loans

Cost indicators. – With regard to the effects of not including the costs of ancillary insurance policies in the calculation of the annual percentage rate (APR), according to the ABF's case law in this matter,¹¹ even when the insurance policy is defined as optional in the contract, it shall be assumed to be compulsory when the following circumstances occur jointly: (a) it is a credit insurance policy; (b) the policy and the loan 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, on the contrary, that the insurance policy was optional.

A client submitted a complaint to the ABF concerning two insurance policies covering employment and death risk, stipulated at the same time as a personal loan; according to the client, such insurance coverage, although qualified by the contract as optional and therefore not included in the APR, should have been classified as mandatory. The Ombudsman, after having considered that the policies were mandatory based on various indices (credit protection function, simultaneous underwriting with the loan and insurance indemnity linked to the residual debt), focused on the possibility of the intermediary providing proof to the contrary. In particular, the ABF recalled the position taken by the Coordinating Panel,¹² according to which the optional nature of the policies may be proved by the intermediary 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 insurance policy was signed; (b) it had granted loans with similar terms, without insurance policies, to other clients with the same creditworthiness; and (c) it recognized the claimant's right of withdrawal from the insurance policy, for the entire duration of the policy, free of charge and with no negative consequences for the loan.

In the present case, a comparison between the contract brought to the ABF's attention and those produced by the intermediary showed that the amount indicated in the latter,

¹⁰ Coordinating Panel, decision [8049/2019](#).

¹¹ Coordinating Panel, decisions [10617/2017](#), [10620/2017](#), [10621/2017](#), [2397/2018](#).

¹² Coordinating Panel, decision [16291/2018](#).

net of the policy, was considerably higher than the amount of the complainant's contract, and therefore these contracts were not comparable and not useful for providing evidence of the insurance's optional nature. The Ombudsman specified that the amount financed should be considered net of the contested insurance policy, as the deduction of its value is necessary to ensure the uniformity of the factors being compared. The complaint was upheld and the ABF ordered the inclusion of the policy, ascertained as mandatory, in the APR calculation¹³ (which differed from the one indicated in the contract), and the recalculation by the intermediary of the amortization schedule, with the client then reimbursed for the amounts unduly received.¹⁴



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

The Coordinating Panel was called upon to rule on the applicability of the principles set out in the judgement made by the Court of Justice of the European Union (CJEU) on the 'Lexitor' case¹⁵ concerning the client's right to reimbursement of costs incurred in relation to loans, in the event of the early termination of consumer credit agreements, as governed by Article 16 of Directive 2008/48/EC (Consumer Credit Directive, CCD).

The Court established that this principle must be interpreted in the most favourable way for consumers: all costs borne by the client, whether or not related to the duration of the contract (with the exception of the notary's costs, the choice of whom lies with the consumer), must be reimbursed in proportion to the remaining duration of the contract.

This interpretation, in the Court's opinion, is fully in line with the aim of the directive, which is intended to ensure effective consumer protection and a balance between contractual parties. The Coordinating Panel observed that the principles of the CJEU are immediately applicable in the Italian legal system, also with reference to situations that had arisen previously, with the exception of those covered by a judgement or that have already been settled (e.g. due to the lapsing of the statute of limitations). According to the ABF, Article 125-sexies of the Consolidated Law on Banking, which implements Article 16 of the CCD by replicating its content, must therefore be interpreted according to the meaning indicated by the Court of Justice, including among the reimbursable costs, in addition to recurring costs (which accrue during the course of the relationship), upfront costs as well (which remunerate activities that relate to the signing of the contract).

The Coordinating Panel then provided an opinion on the criteria according to which costs must be reimbursed. It observed that the Court of Justice, despite recognizing the differences between upfront and recurring costs, did not comment on the criterion to be concretely adopted to quantify the reimbursement, merely observing that all costs incurred

¹³ Article 125-bis, paragraph 6, of the Consolidated Law on Banking.

¹⁴ Decision **19831/2019**.

¹⁵ Judgement of the Court of Justice of the European Union issued on 11 September 2019, Lexitor Sp.z o.o against Spółdzielcza Kasa Oszczędnościowo - Kredytowa im. Franciszka Stefczyka and others (**C-383/18**).

by the consumer, whatever their nature, must be refunded in proportion to the residual duration of the contract. The Ombudsman also added that in any case the autonomy of the parties allowed the latter to contractually regulate the criterion differently, provided that it can easily be understood and quantified by the consumer and in any case complies with a principle of proportionality.

Therefore, in the absence of a criterion for reimbursement in the contract, the Coordinating Panel considered that the *pro rata temporis* criterion is still to be considered the most logical for the reimbursement of recurring costs, but not for upfront costs due to their different nature. To decide the share of upfront costs that can be refunded, the ABF Panels must refer to the criterion of legal integration, according to which the judge integrates the contractual regulations according to fairness (pursuant to Article 1374 of the Civil Code).

In the case examined, the Coordinating Panel ordered the intermediary to reimburse the upfront costs (preliminary costs and intermediation costs), calculated according to the criterion of the interest curve, similar to that provided for the calculation of interest, ‘which constitutes the main item of the total cost of the credit expressly regulated by negotiation’.

Although it introduces an element of diversification as to how commissions are calculated, this solution was deemed by the Panel as ‘the most suitable to fairly balance the different interests’ of the parties. With reference to insurance and recurring charges, the Board noted that the ABF’s consolidated case law continues to apply.¹⁶

The reimbursement of upfront costs. – In line with the principles set out by the Coordinating Panel, in the disputes submitted to them, the ABF Panels confirmed that all costs, including upfront costs, must be reimbursed in the event of the early repayment of a loan.

In one case, the Ombudsman also highlighted the ontological difference between recurring charges, which are dependent on the duration of the contract (for which it is therefore logical to reimburse the amount depending on the time remaining on the loan), and upfront charges (that remunerate tasks carried out as soon as the contract has been signed, so that reimbursement linked to the time factor is meaningless). In light of the principle of legal integration according to the fairness of the contract (which, in the case examined, did not provide for the repayment of upfront expenses), the Territorial Panel deemed it correct to apply the criterion of the interest curve for the repayment of upfront costs (in this case, the agent’s fees).¹⁷

Similarly, since intermediation commissions and preliminary costs are intended to remunerate activities for providing the loan, they must be qualified as upfront and repaid using the same criterion as the interest curve.¹⁸

¹⁶ Coordinating Panel, decision [26525/2019](#).

¹⁷ Decision [812/2020](#).

¹⁸ Decision [4305/2020](#) and [2085/2020](#).

Fair compensation for the intermediary. – The Coordinating Panel has clarified the conditions under which the intermediary may apply the termination fee in the event of early termination of a loan. Article 125-sexies(2) of the Consolidated Law on Banking¹⁹ establishes that the intermediary is entitled to fair and objectively justified compensation for any costs directly linked to early repayment of credit, up to a maximum of 1 per cent of the latter. The Ombudsman noted firstly that this rule, originating in European law,²⁰ allows a balance to be struck between the savings enjoyed by the consumer as a result of the early repayment of his debt and any loss incurred by the lender who relied on the cash flows provided by the repayment plan. It then established that, although the rule contains a reference to the objective justification of costs, the intermediary is not required to prove that it has actually incurred costs directly relating to the early repayment, nor to quantify their precise amount, since the lump sum compensation is considered to be legitimate within the maximum percentage established by law. In the event of early termination, the intermediary's costs can be assumed and quantified as a lump sum. According to the ABF, the complainant may in any case prove that the intermediary did not bear any termination costs and overcome this assumption, evaluating circumstances such as, for example, a significant increase in the interest charged on the market or having entered into a new loan with the same intermediary following the early repayment of a previous contract.²¹



The ius variandi

The ius variandi or 'justified reason'. – One dispute submitted to the Ombudsman by an account holder concerned a proposal to make unilateral changes to the contractual conditions, suggested by the intermediary and unfavourable to the customer. The Panel previously recalled the conditions laid down in Article 118 of the Consolidated Law on Banking that are necessary to legitimize a proposal for unilateral changes to the contractual terms of a permanent contract, such as that under examination. The right to unilateral changes must be expressly provided for in a contractual clause specifically approved by the customer; changes must be introduced with the expression 'proposal of unilateral changes to the contractual conditions' and notified at least two months in advance, in written form or in another durable medium previously accepted by the customer; and there must be a justified reason.

In this particular case, the ABF verified the presence of all those conditions and therefore the formal correctness of the changes.

With regard to the presence of a justified reason, the intermediary presumed that changes were due to the compulsory annual payment to the Interbank Deposit Protection

¹⁹ Article 125-sexies(2) of the Consolidated Law on Banking states that 'compensation may not exceed 1 per cent of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. In any case, compensation may not exceed the amount of interest that the consumer would have paid for the residual duration of the contract'.

²⁰ Article 16, CCD.

²¹ Coordinating Panel, decision [5909/2020](#).

Fund (FITD), as required by Legislative Decree 30/2016.²² The aforementioned Decree, which entered into force after the bank account was opened, provides that banks within the FITD must contribute to the Fund, at least once a year, proportionally to the total of their protected deposits (guaranteed up to the limit of €100,000 per deposit) and to their risk profile.

The intermediary claimed that these additional costs altered the original economic balance of the bank account contracts, with an average annual increase per account, and that unilateral changes only concerned contracts signed before Legislative Decree 30/2016, such as the one under examination. In fact, only in these cases would there have been ‘further costs’ for the bank with respect to the signing of the contracts, as required by Article 118 of the Consolidated Law on Banking.²³

The Panel rejected the complaint, referring to the Panels’ consolidated case law, in which it is crucial to identify exactly and precisely the justified reason behind unilateral changes to ongoing contracts. The justified reason cannot be vague, but shall refer to events that have demonstrable effects on the banking relationship, and that are then referable to the class of contracts that have been modified.

The Panel therefore pointed out that, in the case examined, the connection existing between the motive behind unilateral changes (payment of levies to the FITD) and the modified cost item (current account annual fee) constituted the justified reason required by Article 118 of the Consolidated Law on Banking²⁴ for the effectiveness of the proposal of changes to the bank account conditions.²⁵



The floor clause

The ABF focused on the nature of the floor clause: according to the complainant, the holder of a mortgage loan, the presence of a floor clause would require the qualification of the contract as an implicit derivative, which is subject to the rules of the Consolidated Law on Finance and to the obligations of adequate pre-contractual information for the customer. The Ombudsman considered the complaint to be unfounded and clarified that the presence of a floor clause in a loan agreement does not allow it to be reclassified as an implicit derivative, since the contract is in any case characterized by the client’s need to obtain a loan, which was the practical reason that led the parties to conclude the agreement.²⁶

²² Decree issued to implement Directive 2014/49/EU on deposit guarantee schemes.

²³ Based on the Bank of Italy Communication of March 28, 2017, unilateral changes ‘not justified by further costs regarding the signing of the modified contracts’ are not compliant with Article 118 of the Consolidated Law on Banking.

²⁴ Coordinating Panel, decision **1889/2016**.

²⁵ Decision **945/2020**.

²⁶ Decision **9473/2019**.

Similarly, in another dispute, the Ombudsman confirmed that the floor clause is not an implicit derivative, but is merely an element that determines the interest rate applied to the loan.²⁷



Usury in the banking sector

Default interest. – The Coordinating Panel ruled again regarding the relevance of default interest to the application of anti-usury law, in connection with recent decisions of the Court of Cassation on the same matter.²⁸

After having recalled the difference between default interest and the interest payment,²⁹ the ABF noted that default interest is excluded from the verification of usury and, in particular, reaffirmed that adding default interest and interest payment together is not allowed in assessing the exceedance of the anti-usury threshold rate, in accordance with the position recently also taken by the Court of Cassation.³⁰

At the same time, the Panel clarified that, in any case, it is possible to evaluate whether default interest is clearly excessive compared with the interest payment: the assessment of ‘clear excessiveness’ shall be made taking into account the global interests of the parties in accordance with good faith and fair dealing, as well as the information available from statistical data and from the actual circumstances.

The Ombudsman therefore confirmed its approach, according to which in consumer contracts, if default interest is deemed as ‘plainly excessive’, the related clause shall be considered invalid according to the provisions of the Consumer Code concerning unfair terms.³¹ As a consequence of the nullity of the clause, Article 1224 of the Civil Code provides that default interest shall be calculated at the same rate provided in the contract for the interest payment.

In the case examined, the ABF ruled that the default interest provided for in the contract was not ‘plainly excessive’, considering its amount, the fact that there was no evidence of possible unfair dealing or bad faith on the part of the lender, and that the customer had failed to prove the actual application of such interests.³²

²⁷ Decision **8269/2019**.

²⁸ Court of Cassation, order 30 October 2018, no. 27442 and ruling 28 June 2019, no. 17447.

²⁹ Interest payment is what a borrower who receives a loan pays for the use of the amount granted by the intermediary; default interest shall be paid if the payments required by the terms of the loan contract are missed or made late.

³⁰ Court of Cassation, ruling 28 June 2019, no. 17447.

³¹ Consumer Code, Article 36. Unfair terms are provisions that, in contracts between businesses (such as banks) and consumers, cause a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

³² Coordinating Panel, decision **22746/2019**.



The theft or loss of a debit card. – The Coordinating Panel ruled on the liability of customers and payment institutions regarding the use of a lost or stolen payment instrument. In the case examined, the claimant denied having authorized eight withdrawals, which were made with his debit card within a short space of time in the absence of the SMS alert service. The payment service provider demonstrated that the payment transactions under dispute had been authenticated, recorded and entered in the client's account; it also declared that the payment transactions were made with the original chip card, with no unsuccessful attempts at entering the PIN code. According to the financial intermediary, these circumstances made it reasonable to presume that the PIN code was kept with the payment instrument or in any case was easily accessible and attributable to the card.

The ABF clarified that the new legislative framework established by the PSD2, applicable to the case examined, was designed to enhance the promptness with which the payment service user shall notify the financial intermediary of the unauthorized use of his card. The PSD2 only confirms the customer's liability when the losses relating to the unauthorized payment transactions were incurred by his acting fraudulently or failing to fulfil one or more of his obligations in relation to payment instruments and personalized security credentials. However, the user shall bear the losses relating to any unauthorized payment transactions, up to a maximum of €50, when he does not promptly notify the financial intermediary of the loss of the payment instrument and when the loss was not caused by the action or lack of action on the part of an employee, agent or branch of the payment service provider.

The ABF then pointed out that the lack of promptness in the customer's notification could be due to the financial intermediary's failure to report the use of the payment instrument, which would allow the cardholder to know, in real time, about the execution of a payment transaction. Hence, according to the Coordinating Panel, the payment institution's obligations to protect the customer includes the offer of the SMS alert service (or a similar service): the financial intermediary can only be exempted by demonstrating the customer's explicit refusal to use it. Thus, it is guilty of an organizational shortfall when it does not activate the SMS alert service, which should not simply be offered to the customer but adopted generally because it is a security measure. In addition, the effects of not activating the service must be assessed on the basis of the circumstances of the case in question.

In the light of the above principles, the ABF ascertained the customer's negligence in the case brought to its attention, given that the time lag between the theft of his payment instrument and the execution of the unauthorized payment transactions makes it completely unlikely that the PIN was obtained from the stolen card (being equipped with a microchip), while it can be assumed that the cardholder had not complied with the obligation to protect his personalized security credentials. At the same time, the Coordinating Panel ascertained the financial intermediary's liability on two counts. The first concerns the failure to activate the SMS alert service, although in the case examined, the SMS alert service would not have prevented the disputed withdrawals, given the short space of time (nine minutes) in which they were executed. The second relates to

the failure to adopt fraud risk prevention measures: according to the law,³³ the execution of seven or more payment transactions with the same payment card within 24 hours is indicative of a possible unauthorized use.

The ABF therefore held the financial intermediary responsible, in association with the customer, for the amount of the loss of the seventh and eighth transactions, divided equally between the parties at 50 per cent.³⁴

Unauthorized online transactions. – The Coordinating Panel dealt with the evidence that the payment institution had to provide in a dispute in which the customer denied having authorized an online transaction executed with his prepaid card and declared that he had never lost possession of the payment instrument or disclosed its credentials to other people. The financial intermediary claimed, on the other hand, that the transaction had been carried out using a dynamic authentication system (OTP) and the password had been sent by SMS to the customer's mobile phone number. It also provided evidence of the authentication of the transaction, and no anomalies were found.

According to the ABF, in order not to be liable for the losses suffered by the card user, the financial intermediary shall not only demonstrate – according to the provisions of the law – the authentication and the regular execution of the payment transaction under dispute; it shall also provide supporting evidence to prove fraud or gross negligence on part of the client. To this end, the payment service provider may indicate the factual elements concerning the execution of the disputed payment transaction from which the customer's gross negligence can be considered proven, or be presumed to be proven. Additional useful information could relate, for example, to the absence of failed attempts to enter the PIN number, the circumstance that the dynamic password was sent to the customer's mobile phone or other device, with no deviations or hacking into the computer, and the proven absence of malware. Since it held that the financial intermediary had not provided the evidence established by the law, the Coordinating Panel upheld the claim and ordered the reimbursement of the amount of the unauthorized transaction.³⁵

The internet banking security system. – The ABF dealt with disputes concerning the denial of having authorized payment transactions carried out by home banking systems. In one case, a customer disputed 23 online payment transactions carried out in favour of foreign third parties, claiming he had always complied with the security obligations for the payment card, and that he had been the victim of card cloning. The intermediary, on the other hand, justified the legitimacy of the disputed transactions, claiming that they were authorized by the cardholder – or on their behalf – and that there was no evidence of a breach in the IT system.

As previously stated, the Panel remarked that in order to be exempted from liability, the intermediary must satisfy the requirement of 'due professional and qualified diligence

³³ Ministerial Decree 112/2007, Article 8, letter b), No. 1 (decree to implement Law 166/2005 that set up a payment card fraud prevention system).

³⁴ Coordinating Panel, decision [24366/2019](#).

³⁵ Coordinating Panel, decision [22745/2019](#).

for the judicious banker’, according to Article 1176, paragraph 2, of the Italian Civil Code, which involves the adoption of IT security measures suitable for preventing the fraudulent use of payment instruments and for raising the degree of customer protection to the highest level, in addition to providing proof of the intentional or grossly negligent behaviour of the user of the payment instrument. In the examined case, the Panel ascertained the failure of the intermediary to adopt a double or multi-factor security system and therefore the inability of the static password alone to protect the customer during online operations. The intermediary was also unable to provide conclusive evidence, even presumptively, of the customer’s negligent behaviour (who allegedly provided the merchant with his own confidential data as well as a photocopy of his credit card). The Panel therefore accepted the complaint, ordering the restitution of the unauthorized transaction.³⁶

Computer fraud and transactions carried out online. – The ABF confirmed its previous rulings regarding unauthorized transactions carried out via payment cards and by the use of computer fraud. In the present case, a customer holding a credit card had disputed an online payment, maintaining that they had been the victim of an online fraud.

The Panel observed that fraud attempts carried out using IT methods are based on a typical and widely known scheme, consisting in inducing the cardholder – either through voice calls, emails, or SMS – to communicate or to enter their personalized credentials on devices or IT platforms, usually citing the existence of abusive access attempts or more generally the opportunity to verify or strengthen the security measures. Therefore, given the pervasiveness of the phenomenon, if users behave with an average level of diligence, this is sufficient to avoid the fraud.

The ABF then distinguished the traditional phishing hypotheses (which include the present case), from the more insidious ones consisting in a sophisticated method for intrusion into the original IT environment used by the client. In the case of traditional phishing, the user’s lack of caution, who in the present case had recklessly replied to an SMS apparently received from the intermediary (or smishing), is difficult to excuse, since it is a well-known phenomenon that any customer with normal common sense and prudence should be able to identify, to avoid being deceived. The Panel therefore rejected the complaint, recognizing the gross negligence of the customer.³⁷

Similarly, in another case in which a customer had been the victim of telephone phishing (or vishing), the ABF found that, the customer having communicated his data (in particular the PIN and card number) by telephone to the scammer to authorize the transaction, he had failed to fulfil his legally imposed custody obligations, thus making it possible to commit computer fraud to his detriment. Taking into account the circumstance that the intermediary had proved its adoption of a strong authentication system, the Panel therefore rejected the complaint.³⁸

³⁶ Decision [14447/2019](#).

³⁷ Decision [21568/2019](#).

³⁸ Decision [11820/2019](#).