



BANCA D'ITALIA  
EUROSISTEMA



Arbitro Bancario Finanziario  
Risoluzione Stragiudiziale Controversie

# The Banking and Financial Ombudsman: Annual Report



Abridged Version



BANCA D'ITALIA  
EUROSISTEMA

# The Banking and Financial Ombudsman: Annual Report

Abridged Version

2020

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The Banking and Financial Ombudsman: Annual Report is available on the websites of the Bank of Italy ([www.bancaditalia.it](http://www.bancaditalia.it)) and the Banking and Financial Ombudsman ([www.arbitrobancariofinanziario.it](http://www.arbitrobancariofinanziario.it)).

Printed copies may be requested from the Paolo Baffi Library by writing to: [richieste.pubblicazioni@bancaditalia.it](mailto: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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# Data for 2020

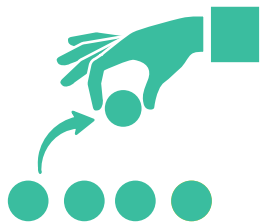
Complaints received

**30,918**

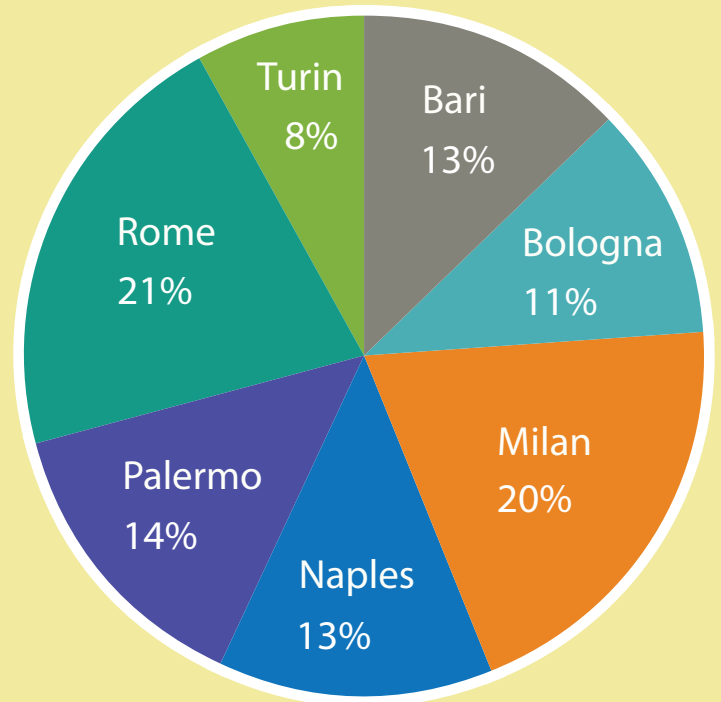
(+40%)



of which **55%**  
regarding loans  
secured by  
pledge of 1/5  
of salary



Complaints received  
by Panel



Panel meetings

**448**



Panel decisions

**27,441**



**74%**

of complaints  
resolved were  
substantially  
in favour of the  
complainant



More than **€22** milion  
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 €200,000, 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?

Yes, until 1 October 2022, the ABF rules on disputes relating to transactions or conduct after 1 January 2009

## Do I need a lawyer or a professional?

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

**The epidemiological emergency** The year 2020 was for the Banking and Financial Ombudsman (ABF) a year full of significant innovations both on the technical and organizational level, as well as on the regulatory level. These innovations have made it possible to effectively handle complaints, despite the consequences of the pandemic. The Ombudsman took advantage of information technology and smart working to undertake its tasks.

**The new ABF provisions** The new ABF provisions have come into force: the changes, which aim to reduce response times for customers and align with international best practices, have extended the protection offered to customers. The amount that may be claimed by filing a complaint with the Ombudsman has been doubled, from €100,000 to €200,000. The granting of new powers to the Chair for early settlement of disputes will make the ABF system more efficient.

**Uniformity of ABF case law** Uniform case law among the Panels is a prerequisite for the exercise of the Chair's new powers: this coherence is crucial for the proper functioning of the Ombudsman. To this end, the new provisions reinforce the functions of the Coordinating Panel and recognize the Panel Conference as a forum for discussion and information sharing.

**The trend of complaints** The number of complaints (almost 31,000) has increased by 40 per cent. There was an increase in litigation regarding early repayment of loans secured by a pledge of one-fifth of salary, linked to the European Court of Justice's judgement in the Lexitor case. These complaints, which account for 55 per cent of all disputes, have increased by 61 per cent; complaints regarding postal savings bonds are also on the rise.

**Decisions** The decisions issued by the Panels (over 27,400) had a substantially favorable outcome for customers in 74 per cent of cases, with the total or partial acceptance of the requests (58 per cent) or the declaration of the termination of the dispute due to the agreement reached between the parties (16 per cent). During the year, around €29 million was awarded to customers (28 in 2019), of which over €22 million was paid.

**The compliance rate by intermediaries** The compliance rate with ABF decisions (83 per cent) fell due to disagreement on the part of intermediaries with decisions concerning the pledge of one-fifth of salary (also following the Lexitor judgement) and postal savings bonds. The complexity of the regulatory framework leads intermediaries to request an assessment by the ordinary judicial authorities. If non-compliance in these matters is not considered, the compliance rate with the decisions of the Panels is close to 98 per cent.



<b>The duration of the procedure</b>	The necessary time to fully process complaints has decreased: the average duration was 130 days, significantly less than in 2019 (208 days).
<b>Collaboration with other ADRs</b>	The year 2020 was a decisive one for the collaboration between the ABF and the Financial Dispute Arbitrator (ACF), established by the National Commission for Companies and the Stock Exchange (Consob). In fact, the memorandum of understanding signed in March 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. The collaboration with the Italian Institute for Insurance Supervision (IVASS) continues in view of the establishment of the Insurance Ombudsman. The ABF activities also continued within Fin-Net, set up within the European Commission, which represents an important forum for interaction with the other European systems for alternative dispute resolution (ADR).
<b>Artificial intelligence in the ABF system</b>	A study is underway to examine the application of artificial intelligence techniques (e.g., machine learning and text mining) to the ABF process to further increase the functionality of the system.

\* \* \*

This Report is structured as follows:

- Chapter 1: provides a description of the ABF's main features and how it operates,
- Chapter 2: 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,
- Chapters 3 and 4: outline the main decisions adopted by the territorial Panels and by the Coordinating Panel in 2020 and in the early months of 2021. 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 rounded out by an Appendix containing statistical data and methodological notes, available online on the ABF website, but only in Italian ([www.arbitrobancariofinanziario.it](http://www.arbitrobancariofinanziario.it)).

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

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

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

## 1. THE BANKING AND FINANCIAL OMBUDSMAN



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### *What is the ABF?*

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The Banking and Financial Ombudsman (ABF) is:

- a **decision-making alternative dispute resolution** (ADR) scheme aimed at resolving, through the submission of a complaint, disputes between customers and banks/financial intermediaries in a way that is faster and less expensive than civil litigation;
- the ABF decides who is right and who is wrong, taking into account only the documents submitted by the parties, based on the law;
- the ABF is autonomous and impartial with respect to the Bank of Italy.

In addition to resolving individual disputes, the decisions of the ABF also provide useful information for the Bank of Italy. The decisions on the complaints add to the information used by the Bank of Italy in carrying out its regulatory, supervisory and financial education functions.



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### *The benefits of the ABF*

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The ABF:

- is almost free of charge: claimants pay €20 euros, which is refunded if the decision is made in their favour (even if only in part)<sup>1</sup>;
- does not require any legal or other professional assistance;
- is easy to access through the online portal;
- is a legal pre-condition for going to court;
- is faster compared to civil litigation;

Further information is available on the [ABF website](#) and in [A simple guide to the ABF](#) (only in Italian).

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<sup>1</sup> Except in cases expressly governed by the ABF provisions where no reimbursement of the fee is provided.



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### Who can file a complaint?

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A complaint may be filed by those who have or have had a contractual relationship or have entered into a relationship with an intermediary for the provision of banking and financial services or payment services.

The person lodging the complaint must indicate whether they are acting as a ‘consumer’ or ‘non-consumer’. A ‘consumer’ is any natural person who acts for purposes unrelated to their trade, business, craft or profession. If this is not the case, the claimant is referred to as a ‘non-consumer’.



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### Who can customers file a complaint against?

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Customers may file a complaint against:

- banks listed on the register referred to in Article 13 of the Consolidated Law on Banking (Legislative Decree 385/1993, ‘TUB’);
- financial intermediaries listed on the register referred to in Article 106 of the TUB;
- collective loan guarantee consortia (*confidi*) as referred to in Article 112 of the TUB;
- payment institutions and electronic money institutions;
- Poste Italiane SpA as regards its BancoPosta activity;<sup>2</sup>
- foreign banks and intermediaries that operate in Italy without offices or branches – under the freedom to provide services – and do not participate in another out-of-court dispute settlement system that is a member of Fin-Net (see the section ‘Fin-Net’, in this report).

In case of doubt, before filing a complaint, it could be useful to verify whether the financial intermediary falls within one of the indicated categories by consulting the **registers and lists** kept by the Bank of Italy.



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### What disputes can the ABF resolve?

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The Ombudsman rules on disputes concerning banking and financial transactions and services (for instance, current accounts, mortgages and consumer credit), including payment services. Disputes concerning investment services or activities fall within the jurisdiction of the Financial Disputes Arbitrator (*Arbitro per le Controversie Finanziarie* – ACF),<sup>3</sup> established by the National Commission for Companies and the Stock Exchange (Consob).

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<sup>2</sup> The ABF retains jurisdiction over disputes relating to postal savings bonds.

<sup>3</sup> The customer may apply to the Financial Disputes Arbitrator if he believes that the intermediary has violated the obligations of diligence, fairness, disclosure and transparency that the law provides for in the provision of investment services. For further information, see the **ACF** website.

The ABF settles disputes relating to transactions or conduct after 1 January 2009. From 1 October 2022 complaints may only concern disputes that have arisen in the six years prior to their submission.



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

You can ask the ABF to:

- award an amount of money not exceeding € 200,000;<sup>4</sup>
- determine rights, obligations and prerogatives (for instance the right to receive disclosure documents or the right to extinguish a mortgage after the repayment of the debt), irrespective of the amount involved.



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

A complaint can be filed with the Ombudsman only after a **written claim** has been submitted to the financial intermediary on the same issue. The financial intermediary must **respond within 60 days** of the date of submission (15 days if the matter concerns payment services). If within this term the intermediary does not respond 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.



### *How to file a complaint*

Filing a complaint is simple: the customer must first access the ABF website, register to enter the **reserved area** of the site, and follow the instructions, attaching all the required documentation. The submission of hard copy complaints is limited to specific cases (see the ABF website, *How to file a complaint*).

For further information, see the **Guide on how to use the web portal** (only in Italian).

## SUPPORT IN FILING A COMPLAINT

*The toll-free number.* – The toll-free number 800 19 69 69, handled by the Bank of Italy, provides information on the ABF and on how to file a complaint; users receive assistance within a few hours.

An app is available that allows deaf persons to contact the Bank of Italy's toll-free number.

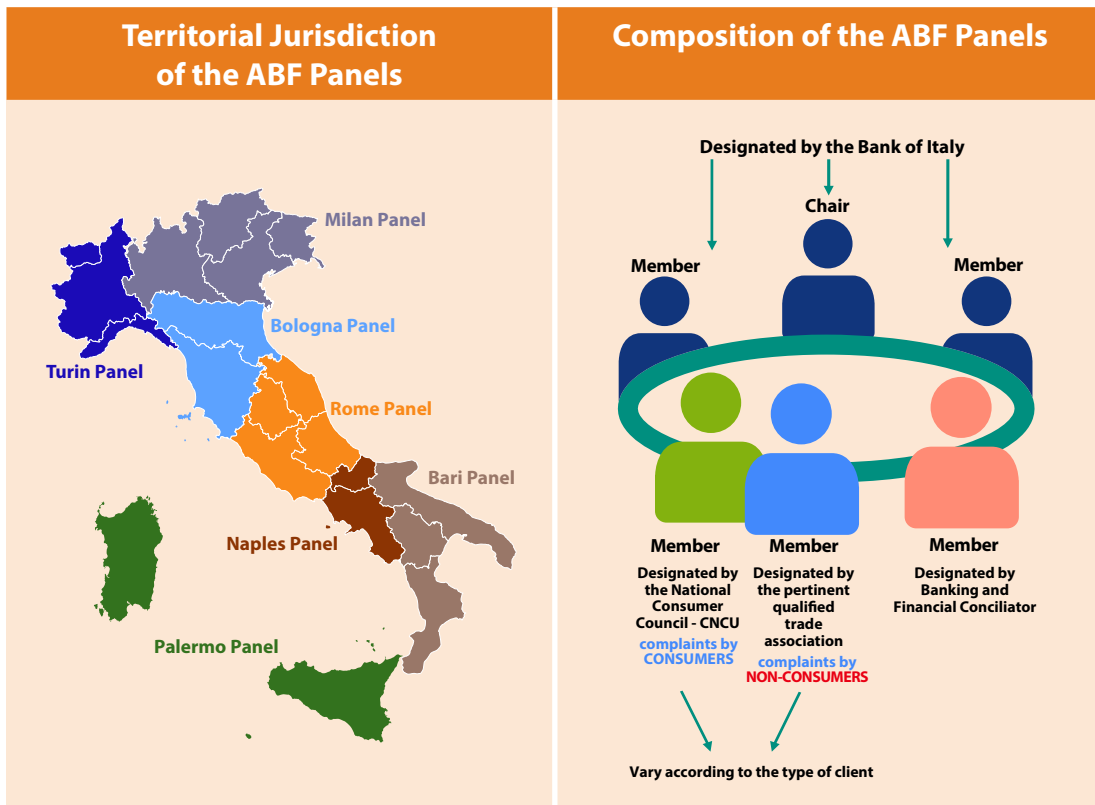
*Assistance in using the web portal.* – Users may submit a query online requesting assistance in using the web portal. In 2020 over 6,700 requests for assistance were submitted.

<sup>4</sup> Prior to 1 October 2020 the Ombudsman could be asked for sums of money up to €100,000.



## 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), automatically assigned based on the claimant's domicile.



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 the association representing financial intermediaries (*Conciliatore Bancario Finanziario*);
- one member is selected by associations representing customers (consumers and non-consumers).<sup>5</sup>

Alternate members are selected and appointed in the same manner. All components are required to abide by a code of conduct.

<sup>5</sup> For consumer customers, the members are chosen by the National Council of Consumers and Users (CNCU); for non-consumer customers, the selection is made by Confindustria in agreement with Confcommercio, Confagricoltura and Confartigianato.

To be appointed, specific requirements must be met, relating to experience, professionalism, integrity, independence and the possession of significant and proven expertise in banking, finance or consumer protection.

## EARLY SETTLEMENT OF DISPUTES

Disputes may be settled more rapidly than in ordinary cases, without having to wait for the panel's decision and with the participation of just the Chair, when the matter falls within the consolidated case law of the panels and the claimant's request is upheld (even if only in part).



### *Coordination between panels*

The following bodies facilitate coordination between the seven territorial panels:

- the **Coordinating Panel**: decides in cases where a territorial panel deems the issue at stake to be of particular significance or finds that there are (or could be) inconsistent decisions. The Panel defines the principle of law that the territorial panels are required to follow in deciding future complaints on the same issue;
- the **Panel Conference**: is an opportunity to explore the issues, both substantive and procedural, of particular relevance for the ABF and of interest for the system. The matters discussed during the Panel Conference are shared by the Chairs with the members of their respective territorial panels, during non-decision making meetings. A brief description of the issues addressed is published on the ABF website.

The Coordinating Panel and the Panel Conference may not be addressed directly by claimants.



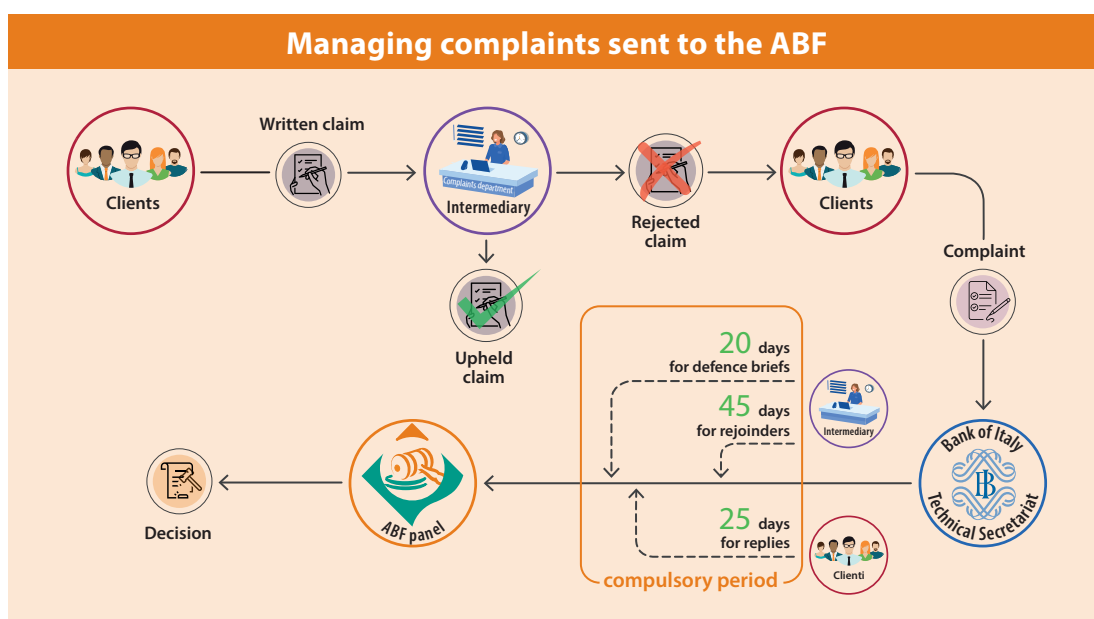
### *Response times*

The procedure may last up to 180 days, extendable for a further 90 days if the case is complex (270 days in total).

## SUSPENSION OF THE TERMS OF THE PROCEDURE

The terms of the procedure are suspended each year from 1 to 31 August and from 23 December to 6 January. In 2020, all deadlines under the ABF provisions were suspended from 9 March through 11 May due to the COVID-19 emergency.

In 2020, the overall average duration of an ABF case was 130 days (calculated from the date of filing of the complaint to the notification of the decision, excluding suspension periods).



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

The parties may only ask the panels for an amendment of the decision when omissions, clerical errors or miscalculations occur.

**The customer and the intermediary, if they are not satisfied with the decision issued by the Ombudsman, may submit their dispute to an ordinary court, since ABF decisions are not binding on the parties.**

The submission of the dispute to the ABF 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.

Intermediaries are not obliged to comply with the ABF's decision, but if they do not comply, a notice of their non-compliance is published.

### **NON-COMPLIANCE**

Notice of non-compliance by an intermediary is published on the ABF website for five years and, for complaints filed after 1 October 2020, on the homepage of the intermediary's website for six months.



### *The ABF and other ADR entities in the financial and insurance sector*

On 19 March 2020 the Bank of Italy and Consob signed a **memorandum of understanding** to promote the coordination and exchange of information between the

ABF and the ACF, while respecting the autonomy of the respective panels, on matters of common interest, as well as on initiatives aimed at providing information to the public and at financial education.

The Bank of Italy is collaborating with the Italian Institute for Insurance Supervision (IVASS) on the forthcoming establishment of the Insurance Ombudsman.

### THE ABF AND THE WEB

Panels' decisions are generally made public on the ABF website (over 90,000 decisions have been published), as is the *The Banking and Financial Ombudsman: Annual Report*.

During 2020, tweets, video tutorials and advertisements on the ABF's activity were published on Twitter and YouTube, followed by numerous interactions.

Several conferences were organized online and open to the public to provide information about the ABF.

### SUPPORT PROVIDED BY THE BANK OF ITALY

*Technical Secretariat.* – Each panel is assisted by a Technical Secretariat that operates out of the relevant Bank of Italy branch, while maintaining the distinction of roles. The seven Technical Secretariats are coordinated by the Consumer Protection Directorate, which also monitors the activities of the system as a whole. Other Bank of Italy branches and its Directorate General for Information Technology, which provides IT support, collaborate with the ABF.

Despite the COVID-19 emergency, the ABF continued to offer six-month training internships for law graduates to supplement their university studies with practical experience within its system (34 internships organized in 2020; five activated in the first months of 2021 and more are in the start-up phase).



### Fin-Net

Fin-Net is a **European cooperation network of national alternative dispute resolution schemes** in the banking, financial and insurance services sector. It ensures access to ADRs for consumers even in connection with cross-border financial services.

Fin-Net includes 59 ADR schemes operating in the European Union, Iceland, the United Kingdom, Liechtenstein and Norway. The ABF has been a member of the network since 2011.





sell	4901.701	1.01439	4972.23647
sell	4901.62186233	0.001	4.90162186
sell	4901.62186233	0.00306021	14.9999922
sell	4901.62186233	0.04599855	225.467498
sell	4901.6817	0.99459	4875.16360
sell	4901.62186233	0.00361509	17.7198041
sell	4901.62186233	0.00276554	13.5557293
sell	4901.62186233	0.0027471	13.4644454
sell	4901.62186233	0.0150094	78.4200317
sell	4901.62186233	0.0384543	188.491986

## 2. DATA ON COMPLAINTS AND OPERATIONS

### Overview

In 2020, the Banking and Financial Ombudsman received 30,918 complaints, up sharply over 2019 (40 per cent). Most of the increase was attributable to complaints related to loans secured by a pledge of one-fifth of salary or pension.

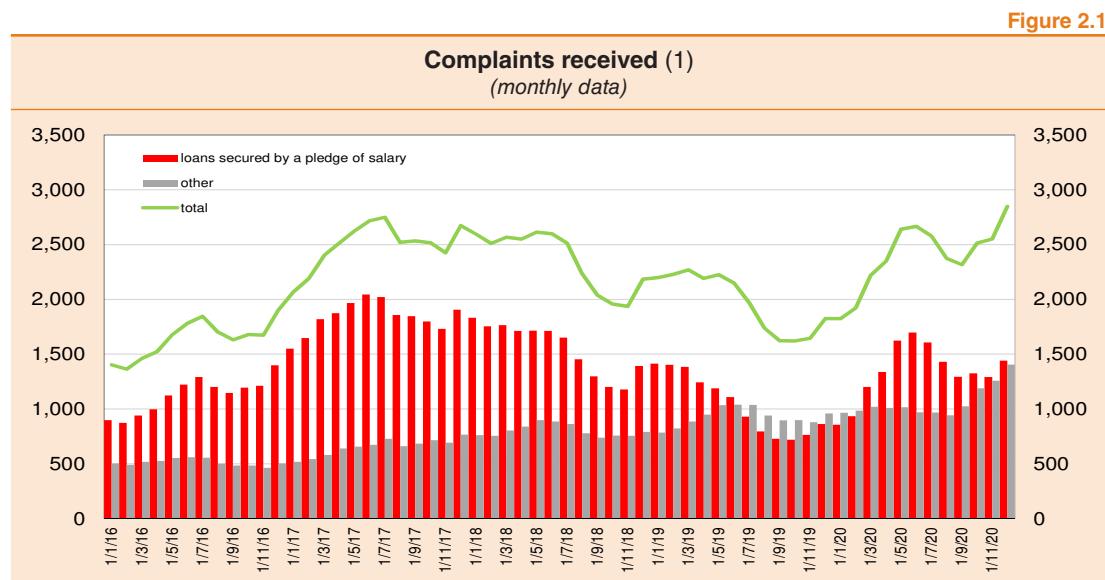
Despite the epidemiological emergency, the Panels continued to work at a sustained pace: more than 27,400 complaints were decided in 2020, in line with the previous year. Some 448 meetings were held, with an average of 61 complaints decided per meeting. In 74 per cent of the cases, the decision was substantially in favor of the complainant.

More than €22 million were awarded to complainants.

### Demand

#### Complaints received

Complaints related to loans secured by a pledge of one-fifth of salary increased by 61 per cent, while other matters under dispute rose by 21 per cent; there was also a significant increase in disputes regarding savings accounts and postal savings certificates, current accounts and wire transfers (Figure 2.1 and Table 2.1).<sup>1</sup>



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

<sup>1</sup> Around two-thirds of the complaints relating to current accounts and wire transfers are associated with cases in which the account holder contested having performed the transaction.

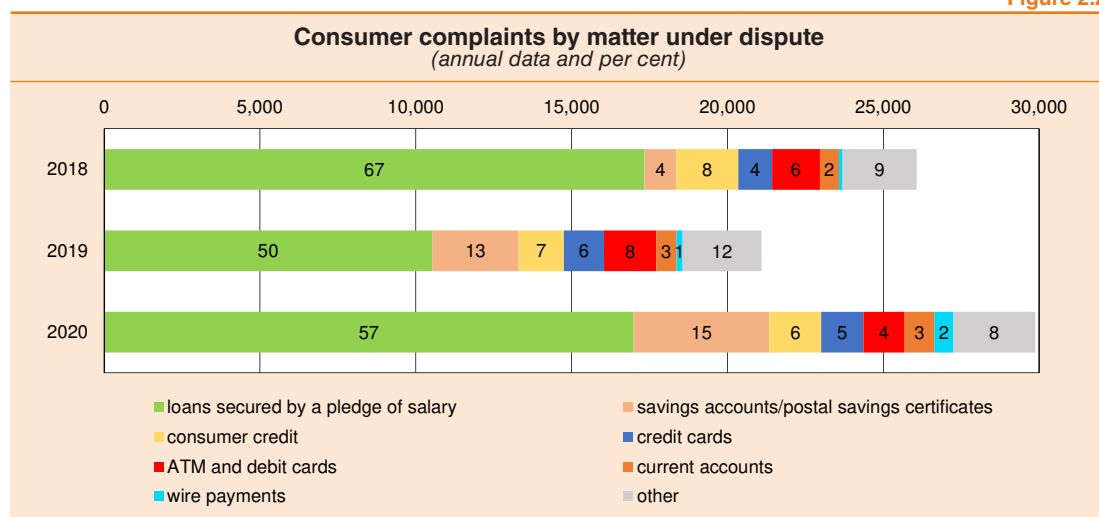
Table 2.1

Complaints received by matter under dispute: comparison with 2019					
MATTER UNDER DISPUTE	2019		2020		% change 2020-19
	No.	% of total	No.	% of total	%
Loans secured by a pledge of salary (1)	10,546	48	16,999	55	61
Savings accounts and postal savings certificates	2,761	13	4,364	14	58
Consumer credit	1,485	7	1,680	5	13
Credit cards	1,403	6	1,444	5	3
ATM and debit cards	1,699	8	1,351	4	-20
Current accounts	876	4	1,161	4	33
Wire payments	307	1	732	2	138
Mortgages	557	3	648	2	16
Credit reporting agencies	429	2	535	2	25
Central credit register	467	2	516	2	10
Other	1,529	7	1,488	5	-3
<b>Total complaints</b>	<b>22,059</b>	<b>100</b>	<b>30,918</b>	<b>100</b>	<b>40</b>
Total complaints excluding loans secured by a pledge of salary	11,513	52	13,919	45	21

(1) Although loans secured by a pledge of salary are part of consumer credit, in this report they are considered separately due to both their significant inflows and the peculiarity of the disputes; the data referring to consumer credit reported in the chapter are therefore to be considered net of the disputes over loans secured by a pledge of salary.

Most of the disputes have arisen due to the sharp increase in litigation regarding loans secured by a pledge of one-fifth of salary or pension (55 per cent of the total, while the number of complaints involving other matters decreased by 7 percentage points; Table 2.1). These trends reflect those in complaints submitted by consumers, which represent 97 per cent of all complaints received (Figure 2.2).

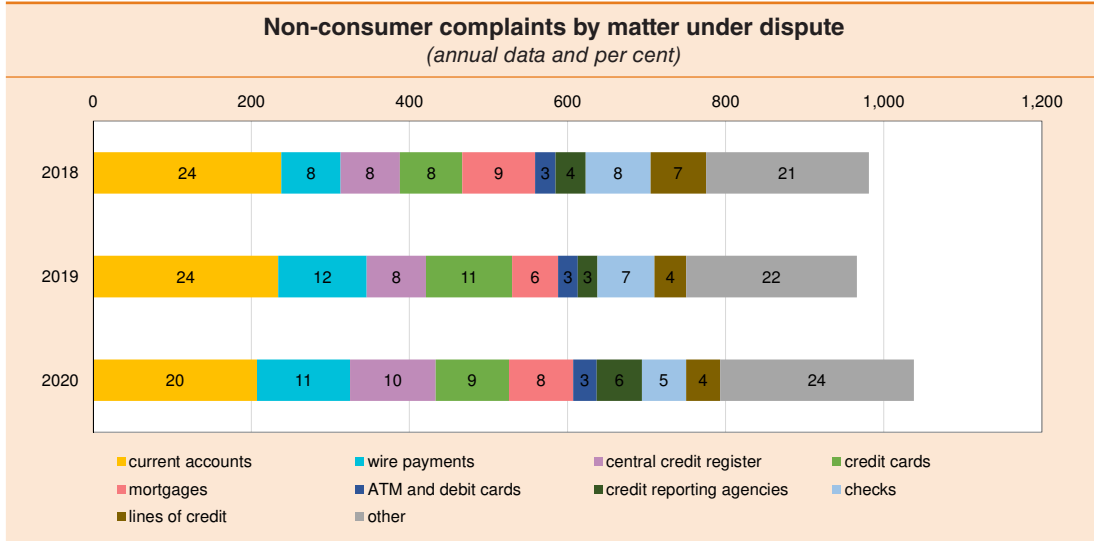
Figure 2.2



The importance of complaints involving loans secured by a pledge of one-fifth of salary as compared to the other matters is also confirmed by a survey of the major intermediaries conducted by the Bank of Italy: given the contracts outstanding in 2020, for every 1,000 contracts for loans secured by a pledge of salary, 10 complaints were submitted to the ABF (4.4 in 2019), while only 0.1 complaints were submitted for other forms of consumer credit (0.1 as in 2019).

Complaints submitted by non-consumers (only 3 per cent) were more diverse in terms of matter under dispute than those submitted by consumers; the most often recurring matter was still current accounts (20 per cent; Figure 2.3), complaints regarding reports to the Central Credit Register and to Credit Reporting Agencies, as well as those regarding mortgages, were on the rise.

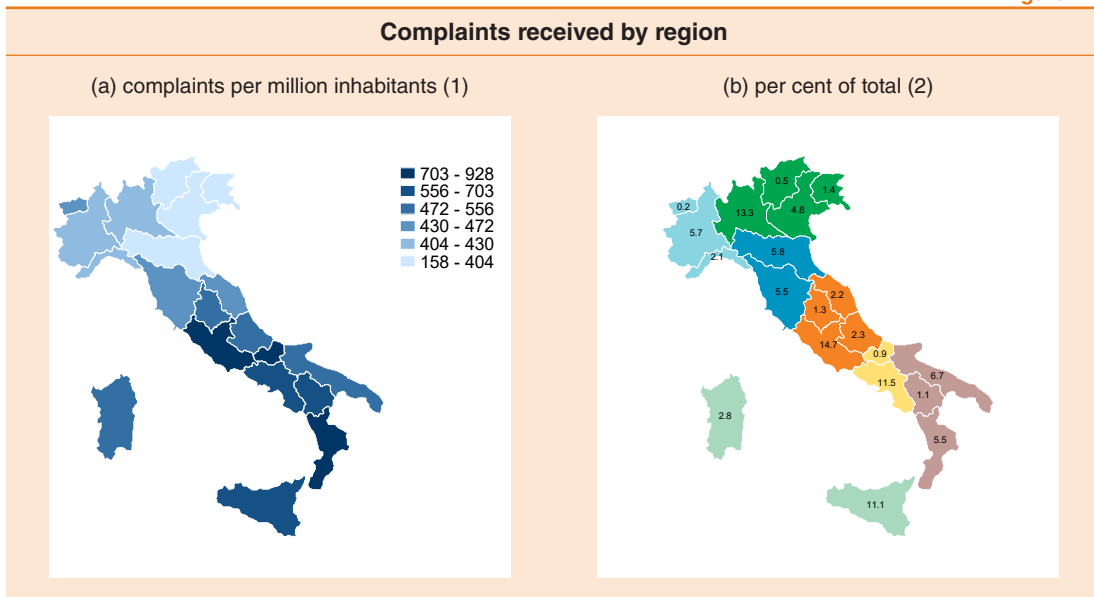
Figure 2.3



### Geographical distribution of complaints

The central and southern regions submitted, on average, more complaints per capita than the northern regions (Figure 2.4.a).

Figure 2.4



Sources: Based on ABF and Istat data.  
(1) Resident population as of 1 January 2020. – (2) The colours identify the competent Panels, while the numbers refer to the percentage of the total number of complaints.

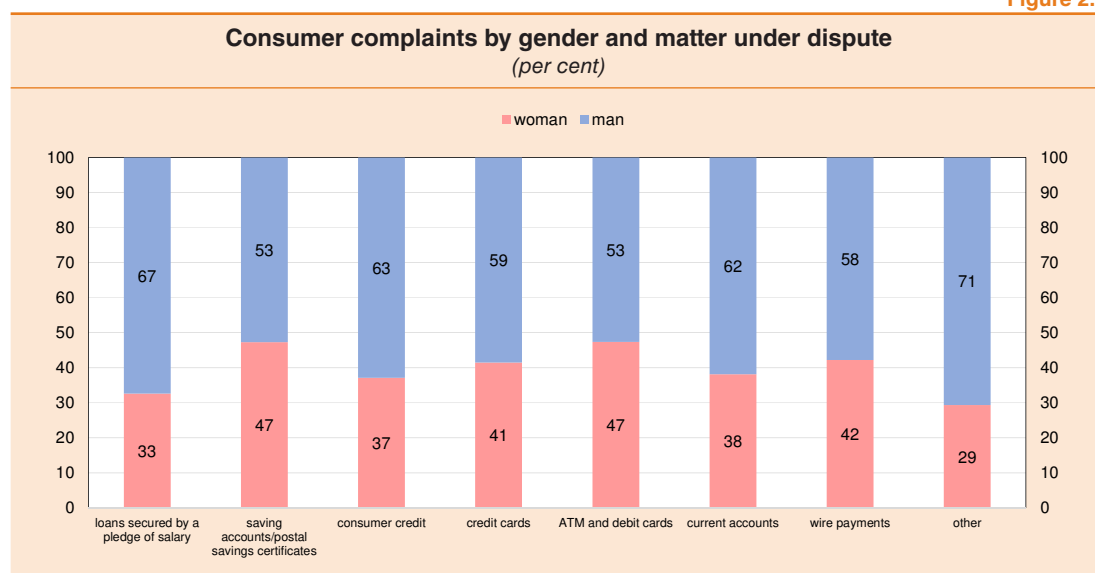
All Panels saw an increase in complaints in 2020, with those of Rome and Milan receiving the highest number (Figure 2.4.b).

### Characteristics of complainants

Complaints were submitted predominantly by men (64 per cent),<sup>2</sup> with a different gender distribution among regions: men represented less than 60 per cent of complainants in Liguria, Piedmont and Emilia-Romagna, and almost 70 per cent in Sicily, Campania and Puglia.

Complaints related to loans secured by a pledge of one-fifth were submitted by men two-thirds of the time, while complaints about ATM cards, savings accounts and postal savings certificates were submitted by women in around 50 per cent of cases (Figure 2.5).

Figure 2.5

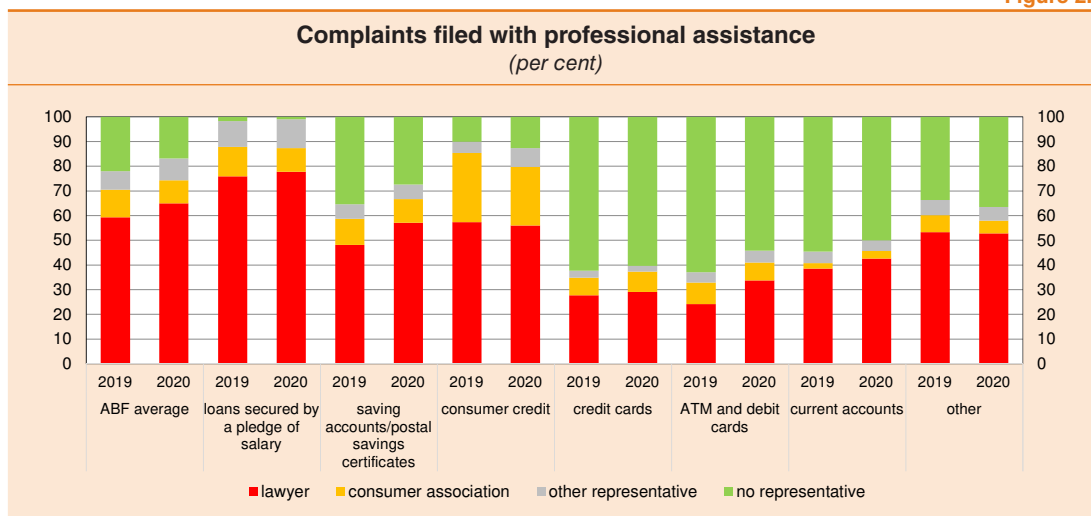


The average age of claimants (55 years old) also reflects the different age distribution of customers of banking and financial products (see [Survey on Household Income and Wealth](#), Banca d'Italia, Statistics Series, 12 March 2018). The average age was higher for complainants on matters such as loans secured by a pledge of salary, deposit accounts and postal savings certificates, while it was lower for those involving credit cards, ATM and debit cards, and consumer credit.

Most complaints continue to be filed with the assistance of an attorney or other professional (65 per cent in 2020, a 6 percentage point increase from the previous year; Figure 2.6) this is also due to the high incidence of complaints involving loans secured by a pledge of salary, where professional assistance is very common.

<sup>2</sup> Data in this paragraph only refer to consumer complainants.

Figure 2.6

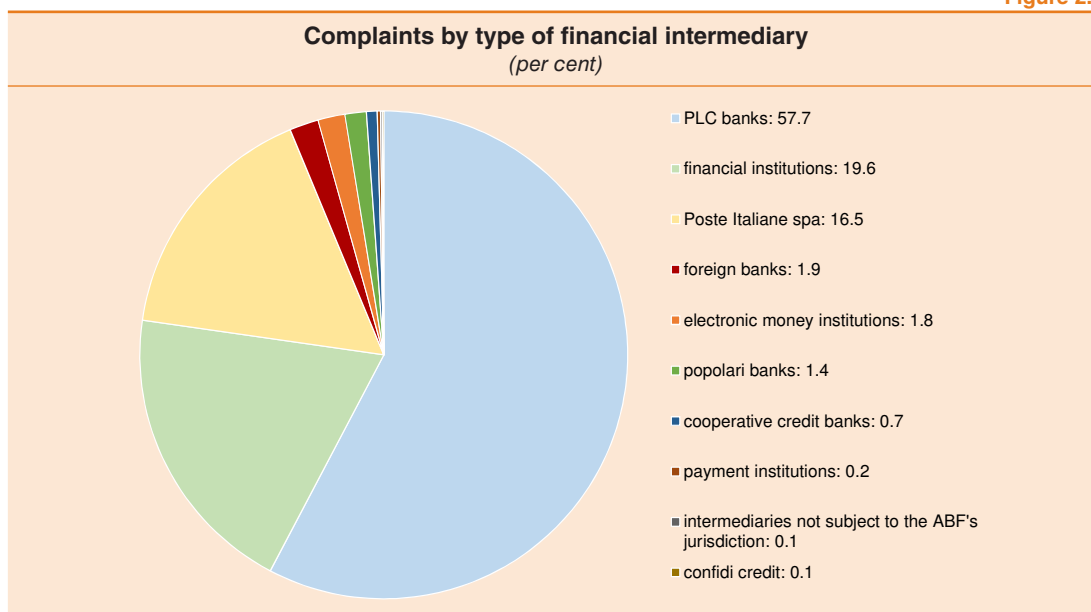


Complaints filed with the help of professionals who assist a substantial number of claimants represent more than half of the complaints received by the Ombudsman; approximately 90 per cent of these complaints were filed regarding loans secured by a pledge of salary or pension. The outcomes for these complaints are not significantly different from those filed without assistance (Figure 2.9; see the section: *Supply*).

### Types of financial intermediaries

The largest share of complaints involved banks incorporated as limited companies (57.7 per cent), more than 4 percentage points higher than 2019. The share of complaints against financial institutions decreased slightly (19.6 per cent); while complaints submitted against Poste Italiane SpA remained stable (16.5 per cent; Figure 2.7).

Figure 2.7



The percentage breakdown of matters under dispute varied according to the type of financial intermediary and the financial products they offered: in particular, for financial corporations, complaints involving loans secured by a pledge of salary, which represent a significant share of all the financing they offer, represented the main matter under dispute (81 per cent of the total; Table 2.2). Complaints against Poste Italiane increased, especially regarding savings accounts and postal savings certificates (85 per cent of the total).

Table 2.2

Percentage breakdown of matters under dispute by type of financial intermediary (1)								
MATTER UNDER DISPUTE	ABF	PLC banks	Financial institutions	Poste Italiane	Foreign banks	Payments institutions	Popolari banks	Cooperative credit banks
Loans secured by a pledge of salary	55	65	81	0	39	0	62	0
Savings deposits/postal savings certificates	14	0	0	85	0	0	0	1
Consumer credit	5	5	11	0	7	0	1	1
Credit cards	5	5	1	3	8	63	0	7
ATM and debit cards	4	5	0	6	5	32	4	11
Current accounts	4	5	0	2	8	1	5	21
Wire payments	2	3	0	1	3	3	2	3
Mortgages	2	2	0	0	15	0	4	11
Credit reporting agencies	2	2	2	0	4	0	3	6
Central credit register	2	2	2	0	2	0	2	7
Other	5	6	3	3	9	1	16	32
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

(1) Owing to rounding, the total may not correspond to the sum of all figures shown.

## LETTERS OF COMPLAINT TO INTERMEDIARIES IN 2020

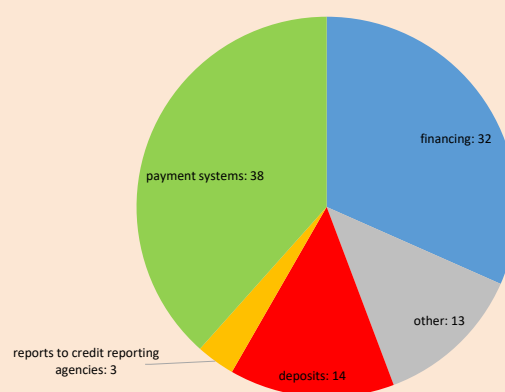
The number of letters of complaint received by intermediaries rose by around 22 per cent, numbering more than 460,000, due especially to the increase in complaints regarding payment systems and financing (figure; see box: *Complaints received and the role of the Bank of Italy*).

44 per cent of the letters of complaint led to a favourable outcome for the complainant, mostly concerning payment systems. 10 per cent had a partially favourable outcome, while the other 46 per cent were dismissed (39, 12 and 49 per cent respectively in 2019).

Even when accounting for the fact that the letters of complaint may concern matters

Figure

### Letters of complaints received by the banking system (per cent)



Source: Based on data from supervisory reports. Data may be affected by missing reports

other than those that can be submitted to the ABF, those received by the ABF only represented around 7 per cent of the letters of complaint received by the intermediaries, and 15 per cent of those rejected by them (6 and 13 per cent in 2019, respectively).

Appeals to the ABF, together with claims and complaints to the Bank of Italy, are a useful source of information for supervisory activity. Analyses carried out on data for 2019 and 2020 revealed a positive correlation between ABF litigation<sup>3</sup> and both letters of complaint to intermediaries and complaints sent to the Bank of Italy.

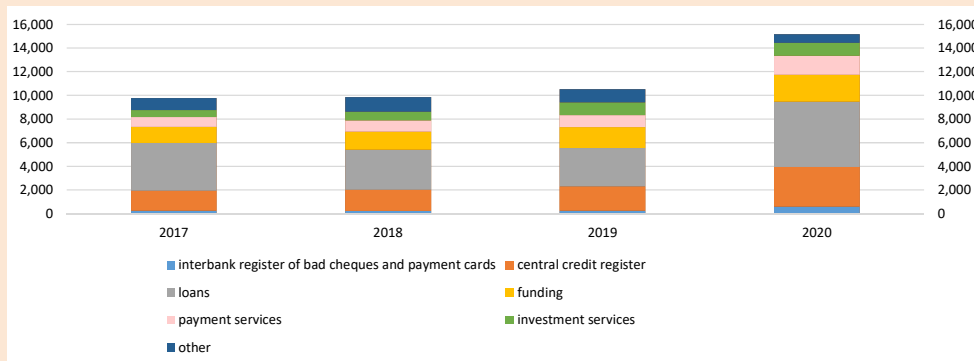
## COMPLAINTS RECEIVED AND THE ROLE OF THE BANK OF ITALY

If a problem were to arise, the customer of a bank or a financial intermediary can also turn to the Bank of Italy by filing a complaint for free and without the assistance of a lawyer. The complaint allows the customer to report: (a) behaviors that he considers irregular or unfair by banks and financial intermediaries; (b) irregularities in the information recorded in the Central Credit Register or in the Interbank Register of Bad Cheques and Payment Cards (IAC).

The Bank of Italy, after analysing the report, sends a copy to the intermediary involved, urging it to respond in a clear, timely and exhaustive manner to the customer. The Bank of Italy does not intervene with its own decisions concerning the contractual relationship between intermediary and customer, nor does it make evaluations that pertain to the business autonomy of the individual intermediaries: this is instead the role of the ABF.

Figure

Complaints received by the Bank of Italy by matter  
(annual data)



Over 15,000 complaints were received in 2020. Complaints about debtor positions reported in the Central Credit Register rose to about 3,300, a sharp increase over the previous period (63 per cent), while reports relating to IAC more than doubled (almost 600 in absolute terms; figure).

There were more than 11,200 complaints received about banking and financial products and services, a significant increase over 2019 (36 per cent). The greatest growth involved

<sup>3</sup> The correlation analysis was carried out by taking into consideration the number of ABF complaints, complaints to the Bank of Italy, and letters of complaint received at the level of the individual intermediary.



financing and payment instruments. The former accounted for around 49 per cent of the complaints: the sharp rise in complaints about financing (70 per cent) is mainly linked to moratoriums on mortgages and guaranteed loans up to €30,000, provided for by the liquidity support measures introduced by Decree Law 18/2020 ('Cure Italy' Decree) and Decree Law 23/2020 ('Liquidity' Decree). Reports regarding deposits accounted for around 20 per cent of complaints concerning financial products and services, almost all regarding current accounts; 14 per cent instead regarded payment instruments and services, up 59 per cent mainly due to the increase in problems encountered by customers with credit cards and wire transfers, in particular for fraudulent use. Complaints regarding investment instruments and services remained stable.

Some 45 per cent of all complaints sent by customers, whose processing had been concluded, had a totally or partially favorable outcome; this was also thanks to the intervention of the Bank of Italy, which facilitated dialogue between customers and intermediaries. Customers are always reminded that they can submit an appeal to the ABF to protect their rights.

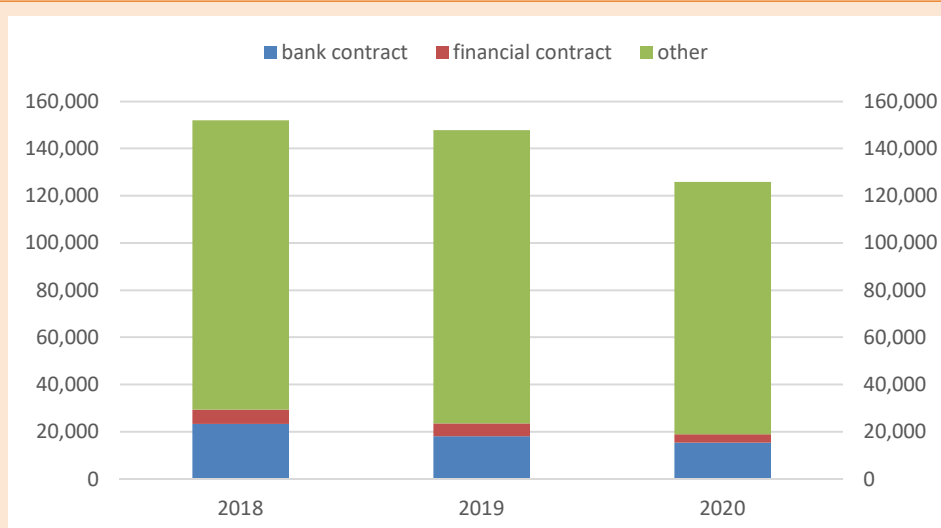
Legislative Decree 28/2010 provides for mandatory recourse to the ABF or civil mediation regarding banking and financial contracts before the customer can turn to the ordinary justice system. A comparison was carried out between recourse to the ABF and to civil mediation on the same matters in 2020.

## CIVIL MEDIATION

In 2020, the number of proceedings brought before mediators decreased overall by 15 per cent; those related to bank contracts fell by 16 per cent, while the decline was more pronounced for financial contracts (31 per cent; Figure A).

Figure A

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



Source: Ministry of Justice

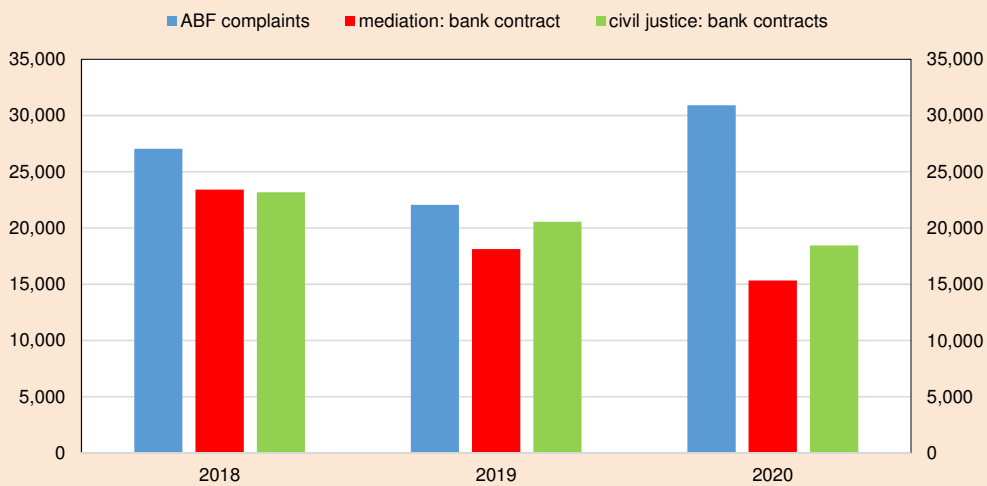
For proceedings relating to bank contracts, the parties appeared in 52 per cent of cases, in line with the data on all mediations; the share rises to 61 per cent for financial contracts. Mediation was successfully concluded in only 20 and 27 per cent of cases, respectively, for proceedings involving bank and financial contracts.

Last year the median economic value of litigation in mediation regarding bank contracts was €30,000, while that for financial contracts was €10,500 (compared with a median economic value for all mediation proceedings of €11,600).

In 2020, the number of complaints received by the ABF was significantly higher than the number of new proceedings regarding bank contracts filed in mediation or before civil courts (Figure B).<sup>1</sup>

Figure B

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



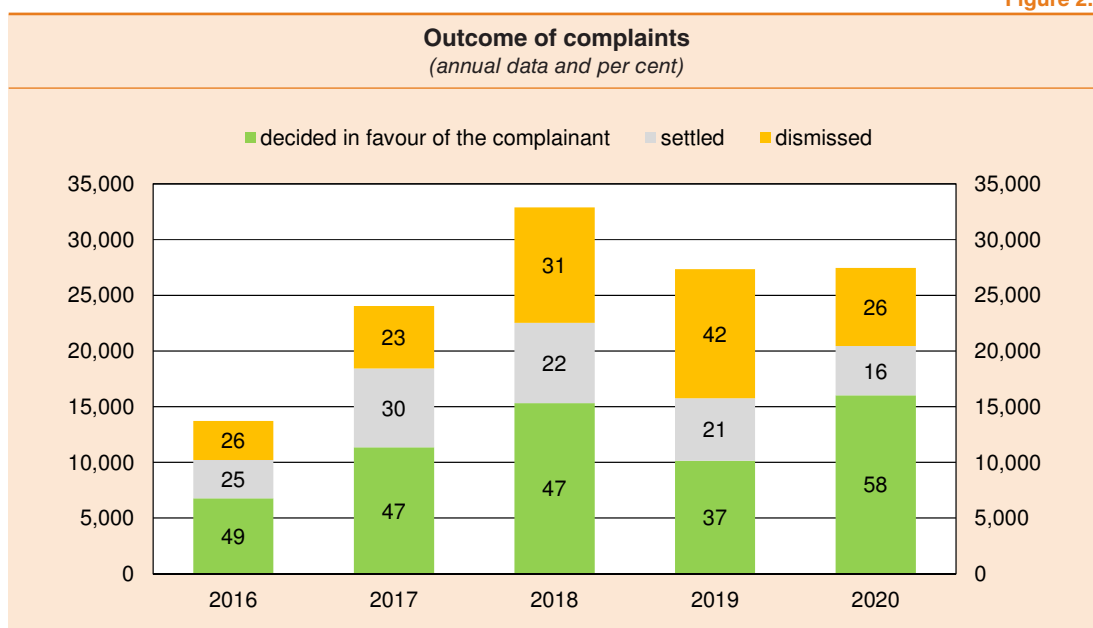
<sup>1</sup> First instance proceedings in the courts.

## Supply

### Outcomes

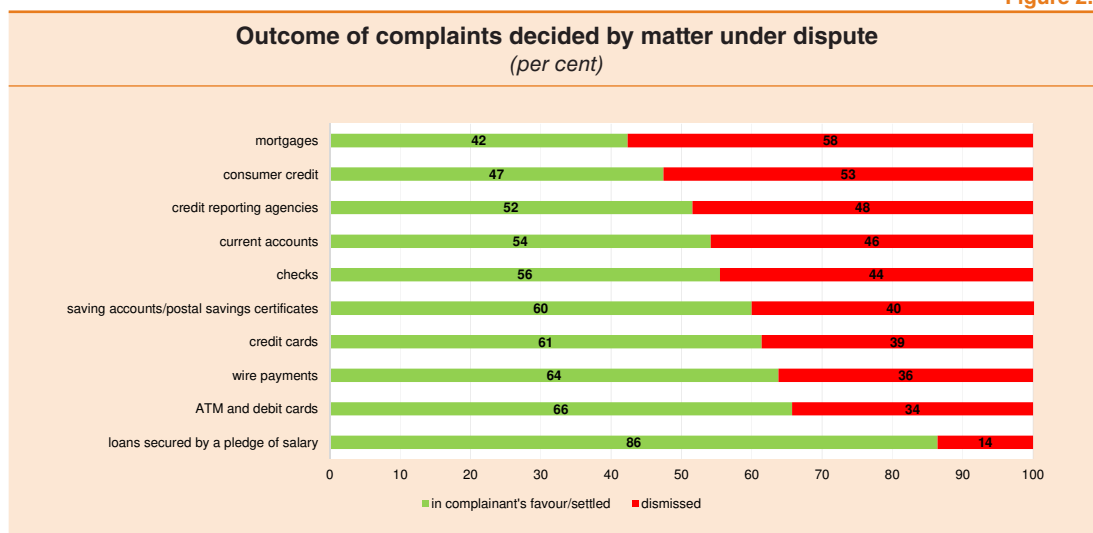
In 2020, the Panels decided 27,441 appeals. In 74 per cent of cases, the finding was substantially in favor of the customer; of these, 58 per cent were upheld and 16 per cent were settled before a decision was issued. The increase in successful appeals, up 21 percentage points, was attributable in large part to disputes regarding loans involving the pledge of one-fifth of salary. The remaining 26 per cent were rejected either because the customer's case was unfounded or not adequately proven, or on procedural grounds (Figure 2.8).

Figure 2.8



The percentage of outcomes substantially in favour of the complainant was lower for complaints regarding consumer credit<sup>4</sup> and mortgages, while it was considerably higher for those concerning the pledge of one-fifth of salary or pension (86 per cent, 71 per cent in 2019; Figure 2.9).

Figure 2.9

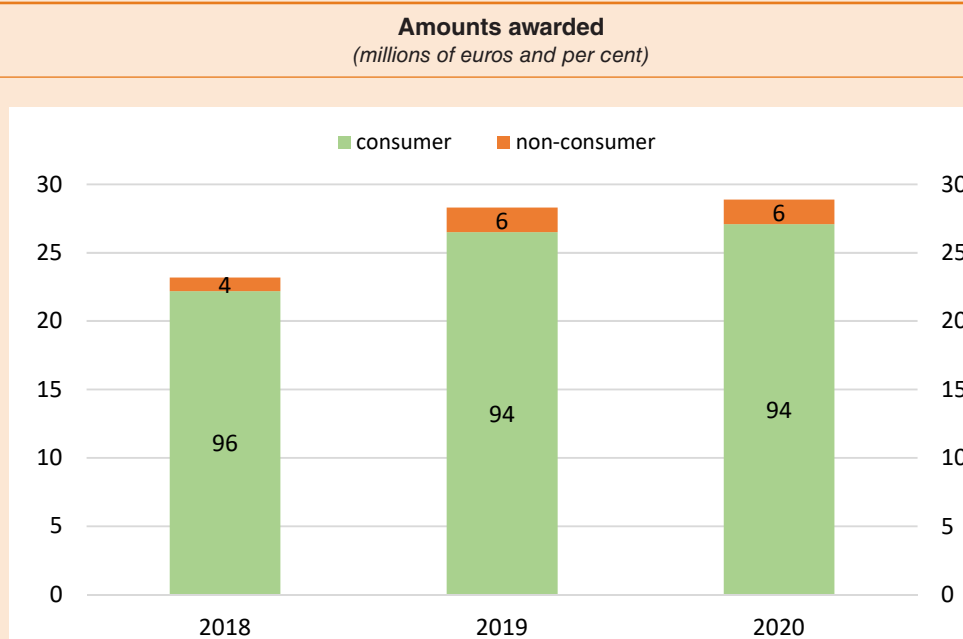


<sup>4</sup> This type of dispute is affected by the modest rate of success of complaints on whether policies associated with financing were mandatory or not for the purposes of calculating the annual percentage rate of charge (APR), an issue that absorbs more than half of all consumer credit disputes (see Chapter 3: *The decisions of the panels: main issues covered*).

## THE AMOUNTS AWARDED TO COMPLAINANTS IN 2020

The Panels awarded complainants a total of €29 million (€28 million in 2019). Consumers were awarded almost €27 million (94 per cent; figure). More than €22 million were effectively repaid to customers in connection with intermediaries not complying with decisions, mostly on loans secured by a pledge of salary and postal savings certificates (see box: *Non-compliance with decisions on loans secured by a pledge of salary and postal savings certificates*). The data does not take account of cases in which repayment took place as part of a settlement prior to the decision.

Figure



Between 2019 and 2020, the average amount decreased from €2,400 to about €2,000 (€1,900 for consumers and €6,600 for non-consumers).

An analysis of disputes by type of intermediary shows that cooperative credit banks have the lowest rate of adverse outcomes, while financial companies have the highest (Figure 2.10).

The share of substantially positive decisions (upholding of appeals and termination of the dispute) was higher for consumers than for non-consumers (Figures 2.11.a and 2.11.b), owing in part to the percentage of disputes surrounding the pledge of one-fifth of salary.

In 2020, many intermediaries, who subsequently wished to bring the question before the courts, were found to be in non-compliance with the Panels' decisions regarding the pledge of one-fifth of salary and postal savings certificates. These instances of non-compliance (accounting for 19 per cent of upheld decisions on these matters) bring the overall non-compliances rate to 17 per cent.

Figure 2.10

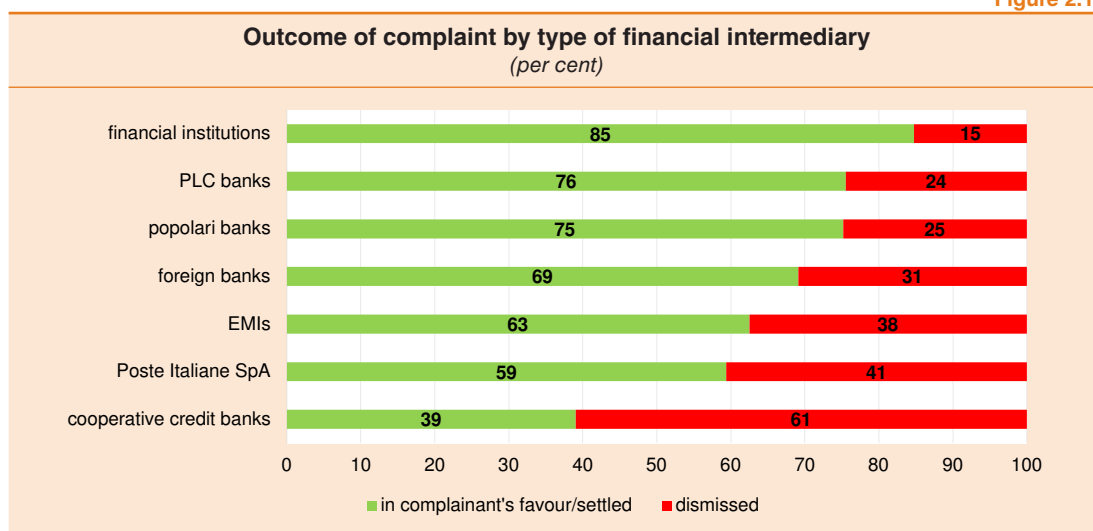
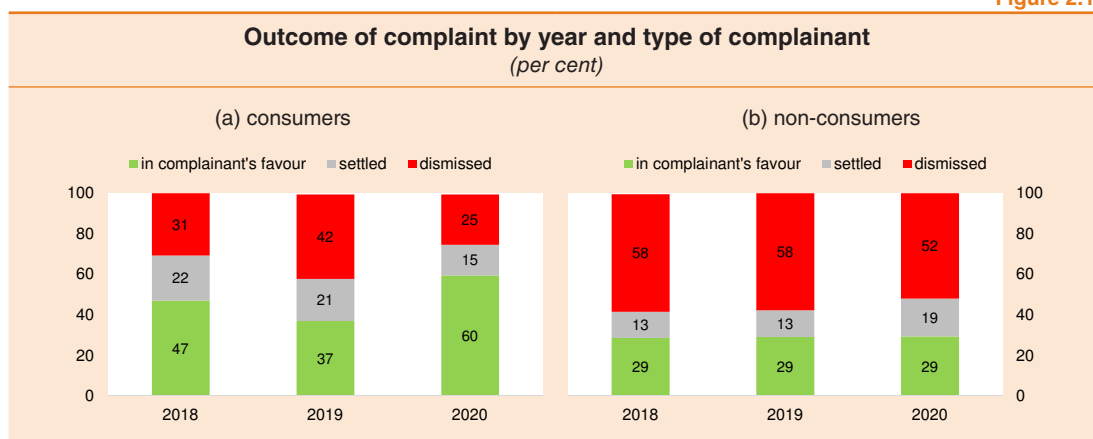


Figure 2.11



## NON-COMPLIANCE WITH DECISIONS ON LOANS SECURED BY A PLEDGE OF SALARY OR POSTAL SAVINGS CERTIFICATES

Disputes regarding the pledge of one-fifth of salary or pension have been affected by the judgement of the European Court of Justice of 11 September 2019, in the Lexitor case: the ruling established that, in the event of early discharge under consumer credit agreements, intermediaries must return to customers, in proportion to the remaining duration of the contract, even costs that were not previously subject to reimbursement.

In December 2019, the Bank of Italy addressed a communication to the banking system to encourage the alignment of future and outstanding contracts with the principles established in the Lexitor decision.

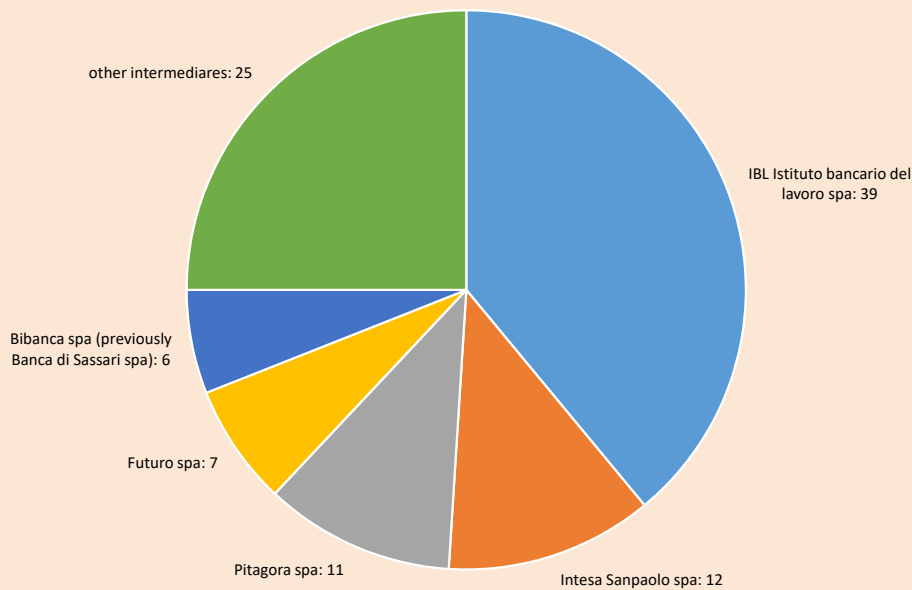
In response to the ABF's position regarding the immediate and retroactive applicability of the judgement, several banking and financial operators stated that they did not wish to comply with their decisions, since they did not agree with the Panels' stances; in

some cases, the matter was submitted to the civil courts, which have not yet taken a uniform position on this issue.<sup>1</sup>

In 2020, the intermediaries with the highest number of decisions with which they had non-complied were Istituto Bancario del Lavoro (IBL), Intesa Sanpaolo, Pitagora, Futuro<sup>2</sup> and Bibanca, which together accounted for 75 per cent of such cases (figure).

Figure

**Non-compliance with the Lexitor judgement**  
(per cent)



There are also a large number of decisions on postal savings certificates with which intermediaries have not complied. These are not subject to the supervisory provisions on the transparency of banking and financial transactions and services issued by the Bank of Italy, but rather to the rules established by the Ministry of Economy and Finance (MEF) on transparency, advertising, contracts and periodic communications.

The non-compliance by Poste Italiane SpA relates to a particular series of postal savings certificates, the so-called Q/P series. These are bonds belonging to the Q series, which are based on the template of the previous P series. These bonds were stamped with the new coupon rate but only for the period for years one through twenty, and left unchanged the wording from the previous issue regarding the rates for the remaining ten years (which were higher than those provided for by the ministerial decree establishing the Q series).

<sup>1</sup> For further information, see the section: *The pledge of one-fifth of salary or pension* in Chapter 3.

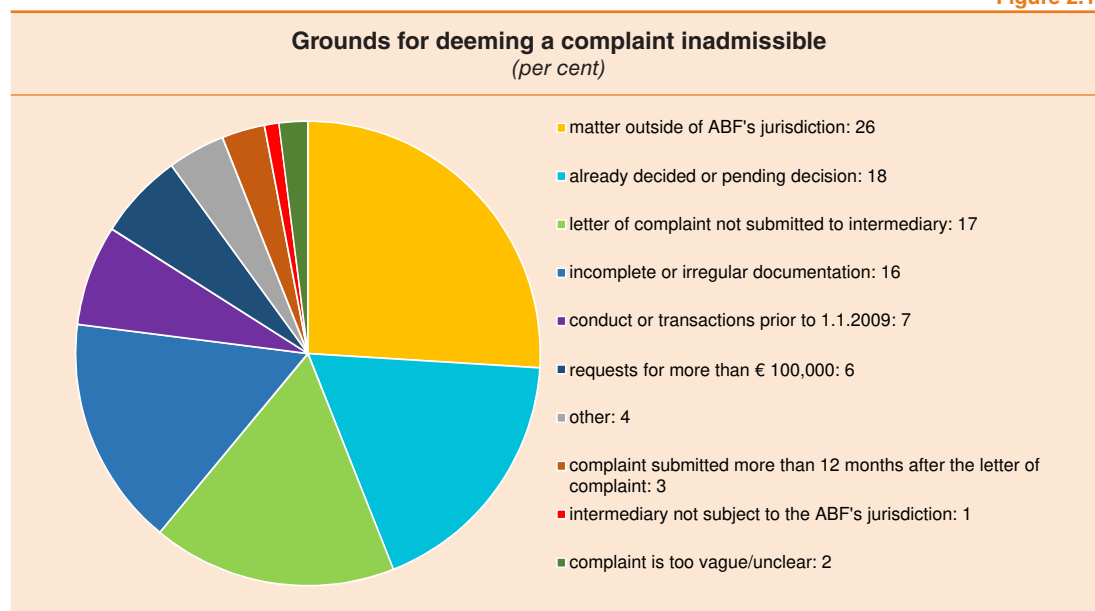
<sup>2</sup> The intermediary was merged into Compass Bank on 1 November 2020.

Based on the data published as of 30 April 2021, net of non-compliance for loans secured by a pledge of one-fifth of salary or pension and postal savings certificates, the compliance rate of intermediaries with the decisions of the Panels is close to 98 per cent.<sup>5</sup>

Also, in 2020, Barclays continued to not comply with its mortgage contracts indexed to the Swiss franc, which are the subject of similar proceedings pending before the civil courts, as did a number of banks regarding the impossibility of locating bank documentation (see Chapter 3: *The decisions of the Panels: main issues covered*).

Last year 441 complaints were declared inadmissible by the Chair of the Panel, about 1 per cent of the total number of complaints submitted. In particular, 26 per cent of the cases concerned matters outside the ABF's jurisdiction, 18 per cent concerned matters already decided or that had been brought to the attention of the civil courts; 17 per cent regarded complaints submitted without a letter of complaint having first been sent (Figure 2.12).

Figure 2.12



In 2020, despite the epidemiological emergency, the Technical Secretariats and the Panels continued to fully carry out their work, which had a positive effect on the length of proceedings.

<sup>5</sup> Figure updated as of 30 April 2021. Non-compliance by intermediaries is posted on the ABF website, in the section: [Non-compliant intermediaries](#).

The average duration<sup>6</sup> in 2020 was 130 days, excluding any suspension period,<sup>7</sup> and 181 days when suspensions are taken into account (208 and 239 days in 2019, respectively).<sup>8</sup>

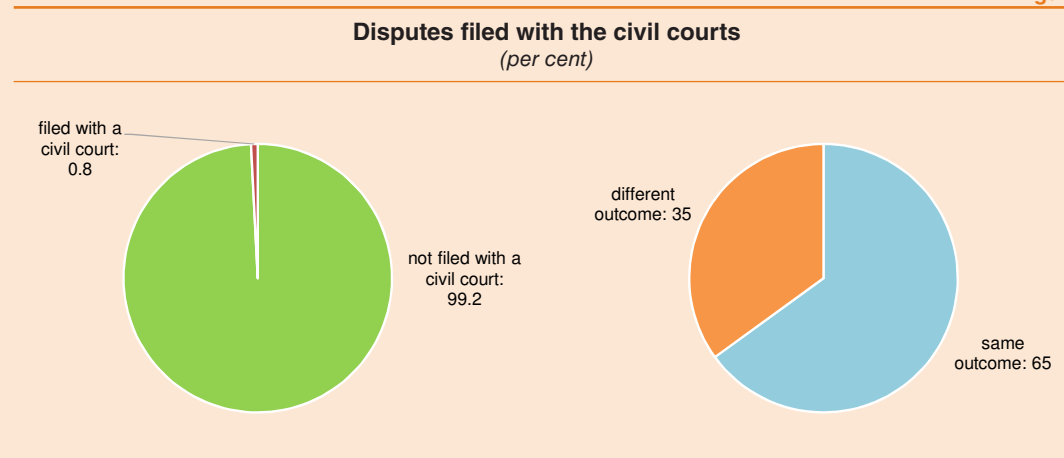
## THE ABF AND THE CIVIL COURTS

In the first few months of 2021, a survey was carried out of the main intermediaries<sup>1</sup> in order to gather information on the number of disputes filed (by complainants or intermediaries) with the civil courts following an ABF decision. Only 0.8 per cent of the disputes decided by the ABF were subsequently brought before a civil court judge;<sup>2</sup> in 75 per cent of cases, the civil court proceedings were initiated by the customer (87 per cent in the previous survey).

Two-thirds of the cases brought before the civil courts concerned loans secured by a pledge of one-fifth of salary, while 11 per cent regarded postal savings certificates. Among the disputes submitted to the courts, only 10 per cent have already been decided; 65 per cent of those have upheld the ABF's decision (figure).

Non-confirmations of the ABF's decisions can be traced to a number of factors: apart from the complexity of the regulatory framework and uncertainties of interpretation (e.g., with regard to loans secured by a pledge of one-fifth of salary or pension and postal savings certificates), non-confirmation is often attributable to differences in assessing the burden of proof or to different reconstructions of the facts or formulations of the claims by the parties, without however there being a change in the underlying legal principles.

Figure



<sup>1</sup> These are 25 intermediaries selected from among those who received the largest number of complaints; these intermediaries accounted for 80 per cent of the complaints decided by the ABF in the three-year period 2018-2020. The survey covered written claims, ABF complaints, mediation and ordinary justice.

<sup>2</sup> The analysis was conducted on the three-year period 2018-2020.

<sup>6</sup> Calculated from the date the complaint is filed to the date the decision is communicated to the parties.

<sup>7</sup> In 2020 the terms of the ABF procedure were suspended from 9 March to 11 May, ordered due to the epidemiological emergency (see Chapter 1: *The Banking and Financial Ombudsman*).

<sup>8</sup> The average time frame is calculated from when the complaint is received to when the decision is communicated to the parties. 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.

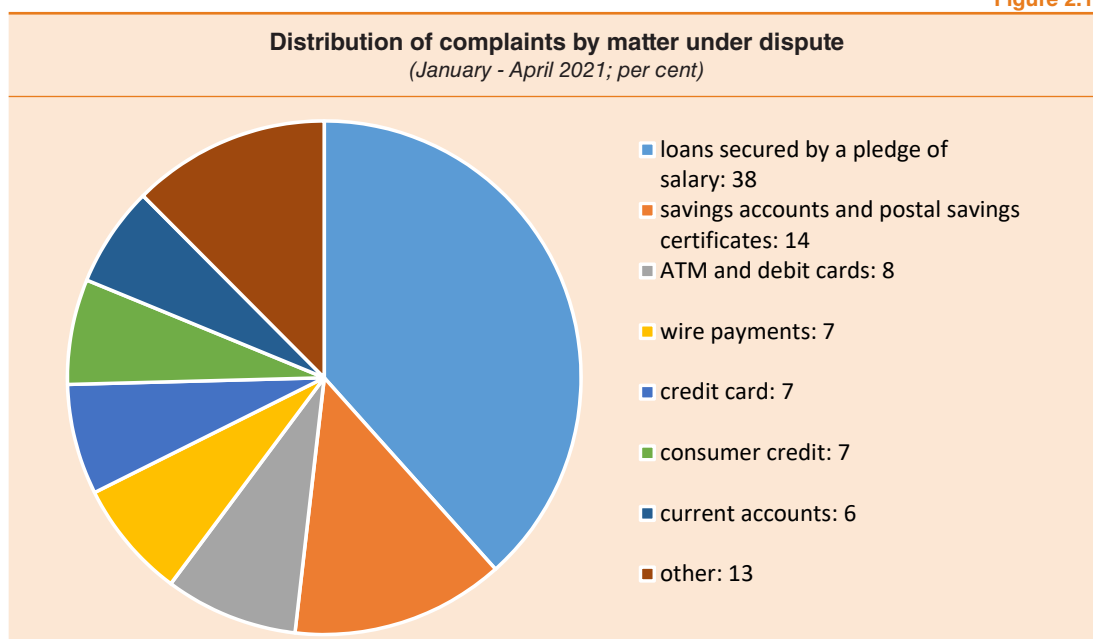


## Data on the first four months of 2021

In the first quarter of 2021, more than 9,600 complaints were submitted to the Ombudsman, a slight decrease compared with the same period of the previous year (-7 per cent).

The dynamics were affected by the substantial decrease in disputes regarding the pledge of one-fifth of salary or pension<sup>9</sup> and the simultaneous increase in complaints on other matters (Figure 2.13), relating to the fraudulent use of payment instruments and cases in which the holder denied making the bank transactions.

Figure 2.13



## THE IMPROVEMENT IN THE LEVEL OF CUSTOMER SATISFACTION COMPARED WITH THE PREVIOUS TWO YEARS

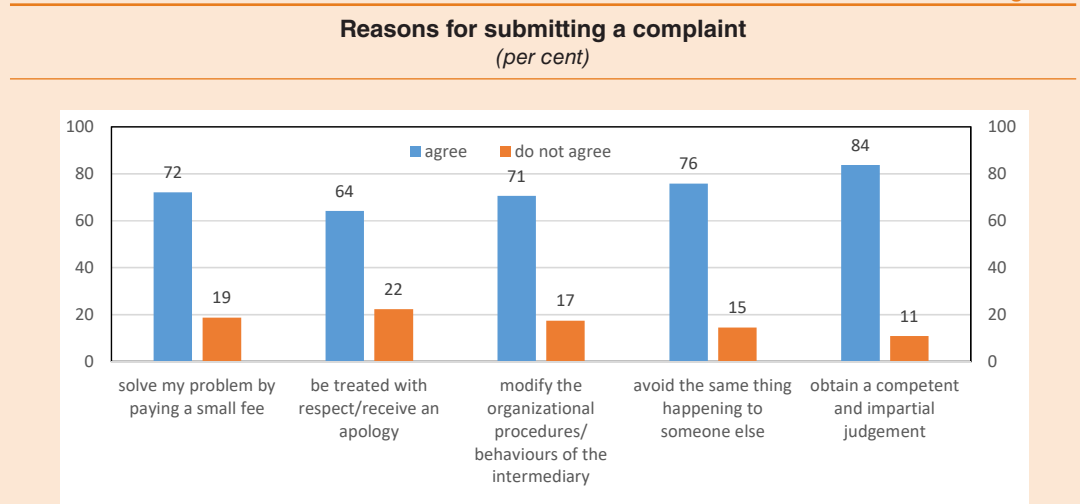
In the first few months of 2021, customers who submitted a complaint to the ABF were asked to participate in a customer satisfaction survey in order to identify any areas of weakness and to improve the system. Around 5,700 complainants were contacted and over 1,300 completed the questionnaire.<sup>1</sup>

<sup>1</sup> Among those who responded to the survey, 77 per cent submitted a complaint without professional assistance; 52 per cent of their complaints were upheld, 34 per cent were dismissed and 14 per cent were settled.

<sup>9</sup> The decrease may also reflect the rise in non-compliance by intermediaries in this area.

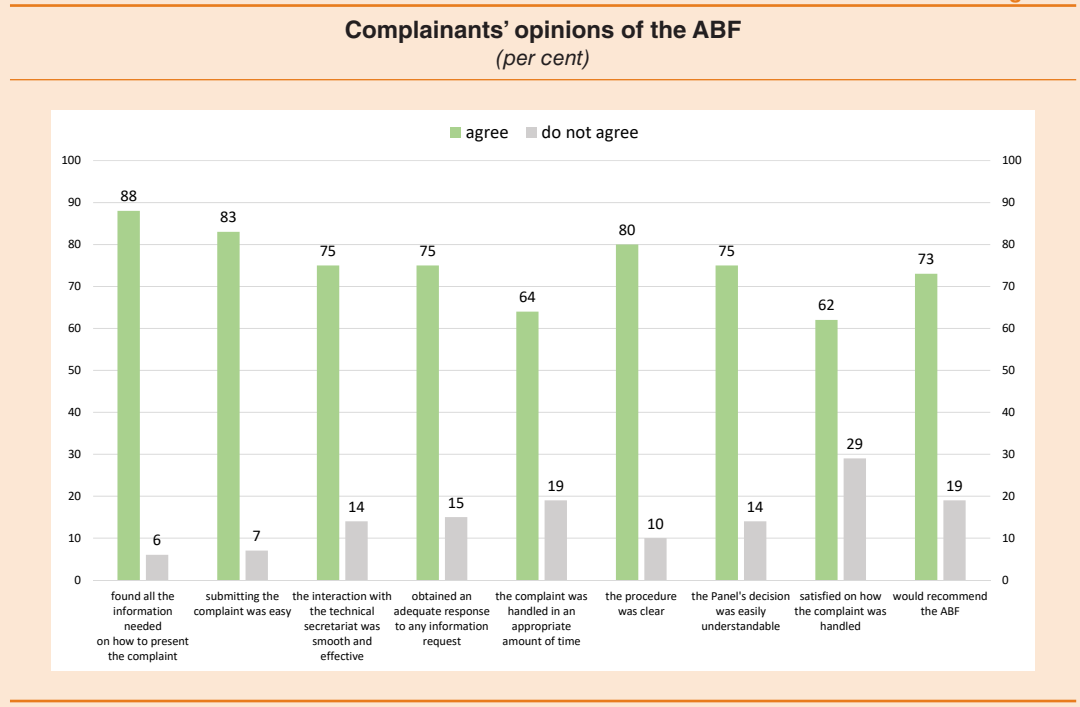
Among the main reasons cited for submitting a complaint to the Ombudsman were: (a) the desire to receive a ruling made by a competent and impartial body; and (b) the desire to avoid that the same thing could happen to someone else (Figure A).

Figure A



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 that the procedure was clear; 73 per cent would recommend submitting a complaint to the ABF if needed; 64 per cent believed that the length of the procedure was appropriate (it was 52 per cent in 2020; Figure B). Compared to the previous two-year period, the degree of customer satisfaction improved overall.

Figure B



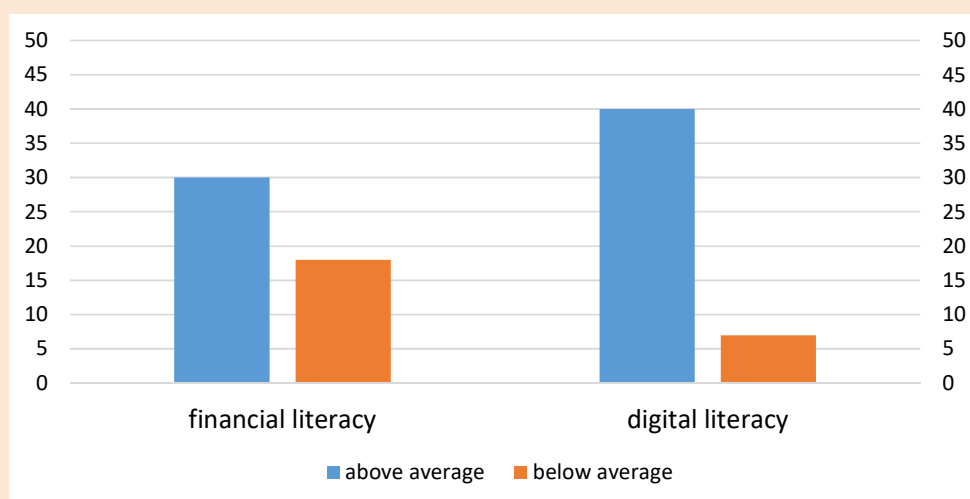
62 per cent do not believe professional assistance is necessary to file a complaint.

One section of the survey focused on how customers use banking services. The results show that around 90 per cent of respondents regularly access their accounts online at least once a month, while 76 per cent made online transfers; 86 per cent used payment cards or ATMs at least once a week.

Another section focused on the economic-financial and digital skills of complainants.<sup>2</sup> The responses show that the balance of respondents who rated their skills above and those below average is positive in both areas. The balance is particularly positive for those who rate their digital skills in terms of making online payments (Figure C).

Figure C

**Self-assessment of economic-financial and digital skills**  
(per cent)



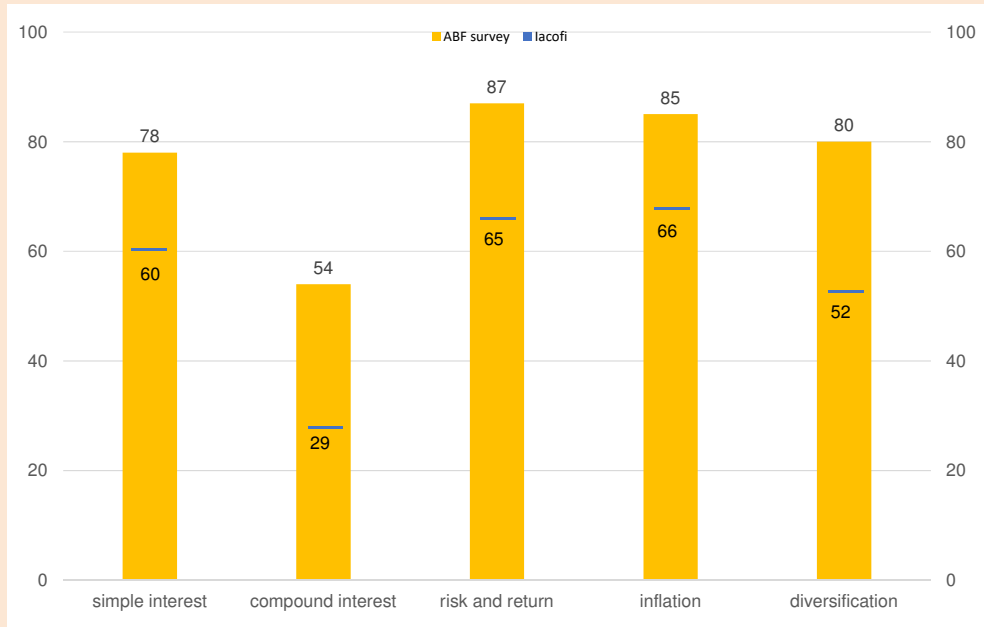
The complainants surveyed showed better results than the average Italian citizen as measured by the IACOFI survey,<sup>3</sup> with the question concerning simple interest being answered correctly by 78 per cent and that relating to compound interest by 54 per cent (60 and 29 per cent in the IACOFI survey; Figure D). There was also a strong correlation between the economic-financial skills demonstrated and the self-assessment of those skills.

<sup>2</sup> The questions were chosen from among those used in the *Survey on the financial literacy and competence of Italian adults (IACOFI)*, carried out by the Bank of Italy at the beginning of 2020.

<sup>3</sup> For further discussion, see the box: *The second survey on the financial literacy of Italians* in Chapter 7 of the *Report on Operations and Activities of the Bank of Italy for 2020*.

Figure D

**Economic and financial literacy**  
(per cent)





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



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#### *Current accounts*

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*Opening an account.* – The ABF ruled on disputes concerning the claimant's right to open a current account and referred to its case law, according to which, except in the case of a payment account with basic features (reserved for consumers), intermediaries are not obligated to open a current account for non-consumers;<sup>1</sup> refusal to open the account falls within the scope of the bank's decision-making autonomy. The bank, according to the ABF's case law, must respect the principles of good faith and fairness in its relations with customers, which also include the duty to explain the reasons for not opening a bank account. The Panel rejected a complaint in which the intermediary, giving adequate reasons for its decision, had refused to open a current account for a non-consumer on the grounds of past irregular transactions concerning the customer, which had generated losses for the bank.<sup>2</sup>

*Joint accounts.* – The ABF ruled on disputes concerning joint accounts: the main feature of a joint account with separate signatures is that each joint holder can use the account independently without restrictions. In the case examined, the customer, who held a joint account with her sister, complained that the intermediary had allowed, without her authorization, a large transfer to be made by the other joint holder.

The Panel rejected the complaint, pointing out, based on the ABF's case law, that the bank may not refuse to execute an order placed by one of the holders of a joint account.<sup>3</sup>



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

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*Request for a copy of the contract.* – According to the ABF's case law, the customer's right to obtain a copy of the contract is recognized by Article 117 of the Consolidated Law on Banking (Legislative Decree 385/1993, 'TUB') and it can be exercised during the

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<sup>1</sup> For the definitions of 'consumer' and 'non-consumer', see the section *Who can file a complaint?* in Chapter 1.

<sup>2</sup> Decision **14065/2020**.

<sup>3</sup> Decision **1508/2020**.

entire course of the relationship. Therefore, the account holder can request a copy of the contract subject only to the ordinary ten-year limitation period that starts to run from the time of termination of the contract. The ABF observed that in such cases the provision of Article 119, which limits the customer's right to obtain a copy of the documentation referring to transactions carried out in the previous ten years, does not apply.<sup>4</sup>

*Costs.* – The Ombudsman ruled on the appropriateness of the costs requested by the intermediary to release copies of the documentation.<sup>5</sup> In the case under examination, the claimant objected that the costs charged by the intermediary were not justified, as they were higher than the 'production costs' established by law. The ABF noted that the intermediary is not required to provide a detailed proof of costs actually incurred in producing the requested documents, as long as they are not compensation for overhead costs. The Panel therefore rejected the complaint.<sup>6</sup>

*Data protection.* – The ABF dealt with disputes concerning the infringement of laws on data protection. In one case, the claimant asked to have access to the account statements of his deceased parent, who excluded him from his will.<sup>7</sup> The bank released the account statements, but masked data regarding third parties in order to protect their privacy.

The Ombudsman recalled its own established case law according to which the wording of Article 119 TUB, which recognizes the right to obtain a copy of the banking documentation both for the customer and for 'whoever succeeds him in any capacity', must be interpreted in a broad sense. The right is therefore exercisable not only by the heir, but also by anyone, even if not considered in the will, to whom the law reserves a share of the inheritance.<sup>8</sup>



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## *Mortgages and other loans*

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*The granting of credit.* –The granting of credit falls within the intermediary's decision-making autonomy, also for the purpose to ensure its sound and prudent management.<sup>9</sup> However, the bank must comply with the obligations of fairness and good faith by promptly communicating the refusal to grant credit and adequately justifying such decision, as the intermediary did in a case examined by the Ombudsman.<sup>10</sup>

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<sup>4</sup> Decision **1358/2020**.

<sup>5</sup> The intermediary had requested €536.74 for the production of banking documentation (in particular €10.33 for each document and €2.50 for account statements).

<sup>6</sup> Decision **13677/2020**.

<sup>7</sup> In Italy, a child has the right to receive a share of the parent's estate ('quota di legittima').

<sup>8</sup> Decision **7015/2021**.

<sup>9</sup> In order to obtain a loan it is necessary to prove that you are able to repay the amount borrowed at the established deadlines. This capacity (creditworthiness) is assessed by the lender before granting the loan.

<sup>10</sup> Decision **21750/2020**.

*Subrogation.* – The ABF ruled on a request for compensation for damages caused by the delay in completing the subrogation of a mortgage. In that case, after the rejection of a complaint submitted to the ABF against the subrogated bank (the old lender), the customer submitted a new compensation request against the successor bank (the new lender). The Panel, after clarifying that the provision of Article 120-quater TUB<sup>11</sup> is applicable only to the old lender, specified that the liability of the subrogating intermediary can be ascertained according to the general principles that require the bank to operate according to good faith and fairness, also in the pre-contractual phase. The ABF, in evaluating the conduct of the subrogating bank, pointed out that the subrogation procedure had taken too long, also considering the deadlines imposed by the law. The Panel also noted that the complainant had been timely in replying and cooperative in dealings with the intermediary and that the original lender had provided rapid assistance in the procedure. Therefore, the Ombudsman ordered the new lender to pay the amount of €2,000 as compensation for damages settled on an equitable basis, due to the delay of approximately three months in completing the subrogation of the mortgage.<sup>12</sup>



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### *Complaints on the measures provided for in the emergency regulations*

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*Moratorium on financing.* – In a complaint concerning the suspension of loans envisaged by Article 56 of the ‘Cure Italy’ decree, the complainant had requested the suspension of the loan instalments at the beginning of April 2020; the bank had only granted the suspension from the following month, charging the instalment relating to March, which was due on 15 April. The territorial Panel noted that the March instalment also fell within the period of suspension: upholding the complaint, it therefore ordered the bank to repay the amount of the monthly payment.<sup>13</sup>

*Granting of guaranteed financing.* – The Ombudsman held that the bank had correctly denied the request for a loan guaranteed by the Central Guarantee Fund, due to the absence of the requirements provided for by the regulatory framework. In the case examined, it was also pointed out that, in addition to numerous protested bills against the director and sole shareholder of the company requesting the loan, the company itself had been reported as non-performing in the Central Credit Register, which precluded the possibility of obtaining the loan backed by a public guarantee.<sup>14</sup>

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<sup>11</sup> Art. 120-quater TUB govern the subrogation procedure, providing that it must be completed within 30 working days from the request for the amount of the residual debt and that, in case of delays due to the behaviour of the original lender, it must compensate the customer.

<sup>12</sup> Decision [7846/2020](#).

<sup>13</sup> Decision [16496/2020](#).

<sup>14</sup> Decision [20376/2020](#).



With reference to another case in which the bank had refused to grant a loan, the territorial Panel noted that the ‘Liquidity Decree’ does not exempt the bank from assessing creditworthiness and that the decision to grant or refuse a loan, even when the conditions are met, falls within the bank's decision-making autonomy. The ABF rejected the appeal, noting that the intermediary remains obliged to comply with the general principles of good faith and fairness in relations with its customers and with the duty to provide clarification in the event of refusal to grant credit.<sup>15</sup>



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## Consumer loans

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*Cost indicators.* – The ABF has clarified that, under certain circumstances, when the costs of ancillary insurance policies are not included in the calculation of the annual percentage rate (APR), even if the insurance policy is defined as optional in the contract, it shall be assumed to have been imposed on the customer. More specifically, it is deemed 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; (c) the insurance indemnity is linked to the residual debt. However, the intermediary may prove, on the contrary, that the insurance policy was optional.<sup>16</sup>

A customer submitted a complaint to the ABF concerning a personal loan; according to the claimant, the APR had been incorrectly calculated because it did not include the cost of the insurance coverage ancillary to the loan: the customer considered the coverage mandatory and not optional (as indicated in the contract). The Panel, after having considered that the customer had proved the existence of all the above-mentioned indicators of obligatory nature, examined the proof to the contrary given by the intermediary. The bank had indeed produced three other personal loan contracts, without an insurance policy, granted to customers with the same creditworthiness as the complainant and under conditions similar to those of the loan under examination. The Ombudsman therefore rejected the complaint.<sup>17</sup>

*The withdrawal.* – According to the ABF's case law, the notice of withdrawal triggers the termination of the loan, once the intermediary is made aware of it within the statutory term (14 days):<sup>18</sup> in order to terminate the contract, immediate repayment of the borrowed principal and the interest is not required. The intermediary may at any time demand the repayment of the loan from the customer.<sup>19</sup>

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<sup>15</sup> Decision [23071/2020](#).

<sup>16</sup> Coordinating Panel, decisions [10617/2017](#), [10620/2017](#), [10621/2017](#), [2397/2018](#).

<sup>17</sup> Decision [23718/2020](#).

<sup>18</sup> Article 125-ter TUB.

<sup>19</sup> Decision [794/2020](#).



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## The pledge of one-fifth of salary or pension

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*The reimbursement of recurring and up-front commissions.* – On several occasions claimants have requested the reimbursement of all up-front and recurring<sup>20</sup> commissions provided in case of early termination of a loan secured by a pledge of one-fifth of a salary, referencing the judgement of the Court of Justice of the European Union (CJEU) in the Lexitor case. The Coordinating Panel had already clarified that the Lexitor judgement is binding on the national judge and it applies even to contracts stipulated before the judgement.<sup>21</sup> The Ombudsman once again confirmed that the consumer is entitled to a reduction in all components of the total cost of the credit, including up-front costs. According to the ABF's established case law, the preferred criterion for quantifying the part of up-front costs that must be reimbursed to the customer is similar to the criterion that the parties have agreed for calculating the payable interest (the so-called 'interest curve'). The Ombudsman therefore ordered the reimbursement of up-front commissions (specifically the commission on the perfection of the credit and the intermediary of the credit's commission)<sup>22</sup> according to the interest curve criterion<sup>23</sup> and recurring commissions on the basis of the so-called *pro rata temporis* criterion.<sup>24</sup>



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## The ius variandi

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*The ius variandi in mortgages.* – The territorial Panel clarified that the unilateral modification of a contractual provision (in the case at hand, the one pertaining to the collection fees charged by the bank, raised from €1.50 to €8) requires a detailed explanation justifying it whenever the counterparty's right of withdrawal, due to the nature of the contractual relationship, is unlikely to be exercised. When it comes to mortgages, for instance, the withdrawal would entail the obligation for customers to repay the remaining portion of the loan. The Ombudsman therefore upheld the claim, deeming that the assessment of the existence of a justified reason in such cases must be more meticulous; in the case examined, the ABF argued that the proposed modification had not been supported by sufficient motivation.<sup>25</sup>

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<sup>20</sup> Up-front commissions are related to activities that have been concluded with the stipulation of the financing contract (e.g. preliminary costs); recurring ones concern services and activities that accrue during the course of the relationship (e.g. the commission for instalment collection activities).

<sup>21</sup> Coordinating Panel, decision **26525/2019**.

<sup>22</sup> For the definition of 'credit intermediary', see the Bank of Italy's provisions on the transparency of banking and financial transactions and services.

<sup>23</sup> Decision **23809/2020**.

<sup>24</sup> This is the criterion of proportionality to the remaining duration of the contract: the total amount of each cost item is divided by the total number of loan instalments and then multiplied by the number of remaining instalments.

<sup>25</sup> Decision **4126/2020**.



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### *The floor clause*

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The Ombudsman expressed its view on the claim concerning the unfair nature of a floor clause, since it had not been combined with a corresponding cap clause and had not been specifically approved. According to the ABF's case law in this area, the terms, which set a minimum interest rate, can be questioned with regard to unfairness only if they are expressed in an obscure and unclear way. In the opinion of the territorial Panel, the challenged clause set out clear content and was comprehensible regarding the effects of its enforcement (the introduction of a limit on the decrease in the interest rate benchmark) and consequently rejected the complaint.<sup>26</sup>



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### *Computer fraud*

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*Computer fraud.* – Also in 2020, the Ombudsman confirmed its previous rulings regarding unauthorized transactions carried out using payment cards and through computer fraud. The Panel examined a case in which the disputed transactions arose through a vishing scam.<sup>27</sup> The customer had received an SMS alerting him about an attempted credit card fraud and was later contacted by a false bank operator, who asked him to 'reconfirm' the transactions in order to stop the fraud: the claimant therefore revealed to the false operator the codes received via SMS, enabling the authorization of the payments.

The Ombudsman stated that such conduct was indicative of gross negligence on the part of the customer, since the scam was known and no particular elements of sophistication were involved; the complaint was therefore rejected.

In line with this approach, the Panel rejected the complaint of a customer who had received a phishing email containing a link to a site, where he inserted his card details and the code received by SMS from the bank, allowing the criminals to complete a payment transaction to his detriment.<sup>28</sup>

The Ombudsman's assessment is, however, different if the fraud is more sophisticated. In a case in which the fraudulent message seemed to come from the financial intermediary (so-called 'SMS spoofing'), the Panel considered this a sophisticated fraud and, for this reason, did not find gross negligence on the part of the customer: the Panel therefore accepted the complaint, less the statutory deductible.<sup>29</sup>

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<sup>26</sup> Decision [565/2020](#).

<sup>27</sup> Decision [23754/2020](#).

<sup>28</sup> Decision [3078/2021](#).

<sup>29</sup> Decision [21696/2020](#).

*SIM swap fraud.* – In one case, a debit card holder complained that the SIM card in his cell phone had suddenly stopped working and, once the problem was resolved, he realized that unknown persons had made a payment transaction with his card.

The Panel confirmed that, in the case of a disputed transaction, the intermediary must first prove that it has adopted a strong customer authentication system<sup>30</sup> and that the transaction was authenticated, accurately recorded and entered in the account. After that, the intermediary must prove the fraud or gross negligence of the customer. The Ombudsman thus observed that the intermediary had provided evidence of the first, but stated that there was not any negligence (or at least gross negligence) on the part of the customer. The disputed transaction, carried out when the SIM was blocked and then replaced, was not the customer's fault in part or in full, unlike in the case of theft, loss or embezzlement of the card. The request for reimbursement was therefore fully accepted.<sup>31</sup>

*The theft of payment cards.* – Several cases of stolen payment cards<sup>32</sup> were brought to the ABF's attention. In one case, the customer had disputed the losses arising from unauthorized payment transactions, resulting from the use of payment instruments that had been stolen with her purse. The Panel found that the thieves withdrew money within a few minutes after the theft: according to the ABF, this circumstance proved by presumption that the payer had kept her cards' PINs together with the payment instruments, an act of gross negligence.<sup>33</sup> In another case, the ABF observed that the SMS alert service had not been activated; however it would not have prevented the execution even of the last unauthorized withdrawal, given the short span of time in which the unauthorized payment transactions were executed. The Panel, however, ordered the reimbursement of the amount of the last unauthorized transaction, because it had determined that the payment card limit had been exceeded.<sup>34</sup>

*ATM frauds.* – The Ombudsman addressed frauds carried out at ATMs and linked to online ads for the sale of products. In one case, the customer posted an online ad for the sale of a bookcase and, following the fake buyer's phone instructions, went to an ATM to obtain the agreed payment; however, instead of receiving the money, the customer unknowingly recharged a prepaid card. The Panel found that the payment service provider demonstrated that the payment transaction under dispute had been authenticated, recorded and entered in the customer's account; it also observed that the transaction could not be considered unauthorized because it was executed by the customer, even if under the fraudster's instructions. The ABF noted that this type of fraud is easily avoidable if the customer uses payment instruments with diligence and, therefore, rejected the complaint.<sup>35</sup>

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<sup>30</sup> Decision [3416/2021](#).

<sup>31</sup> Decision [9504/2020](#).

<sup>32</sup> On payment cards, see Bank of Italy website: [Payment Instruments](#).

<sup>33</sup> Decision [4159/2021](#).

<sup>34</sup> Decision [3416/2021](#).

<sup>35</sup> Decision [14477/2020](#).

*The execution of credit transfer orders.* – In accordance with the ABF’s established case law,<sup>36</sup> the Ombudsman reaffirmed that a payment order shall be deemed to have been executed correctly if done using the International Bank Account Number (IBAN) supplied, even though the payment service user had provided further information. In particular, the payee’s payment service provider is not required to verify the correspondence between the payee linked to the IBAN and the one indicated by the customer.

The Panel also added that according to the law, if the IBAN provided by the payment service user is incorrect, the payer’s payment service provider and the payee’s payment service provider shall make reasonable efforts, with professional diligence, to recover the funds involved in the payment transaction.

In the case examined, the ABF found that the payment service provider had not breached the duties of care imposed by the legislation: it had cooperated in efforts to recover the funds, despite the payment account having been emptied after receiving the credit transfer, by trying to contact the account holder, blocking the account, and reporting the event to the postal police.<sup>37</sup>

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<sup>36</sup> Coordinating Panel, decision [162/2017](#).

<sup>37</sup> Decision [12195/2020](#).