



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

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Address

Via Nazionale, 91
00184 Roma - Italia

Telephone

+39 0647921

Website

<http://www.bancaditalia.it>

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

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SYMBOLS AND CONVENTIONS

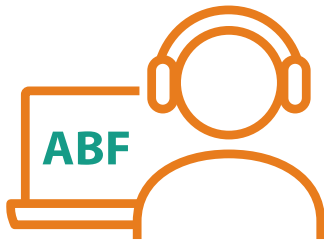
Unless otherwise specified, Bank of Italy calculations; for Bank of Italy data, the source is omitted.

data for 2021

Complaints received

22,382

(-28%)



of which **34%** regarding loans secured by pledge of 1/5 of salary

Complaints received by Panel

Turin 8%

Rome 21%

Palermo 12%



Milan 23%

Bologna 12%

Bari 12%

Naples 12%

Panel meetings:

430



Panel decisions:

27,461



Decided in favour of the complainant

48%

Settled before a decision was issued

17%



More than **€20 million** awarded to customers



FOREWORD

ABF activities under the emergency framework

This Report outlines the activities carried out in 2021 by the Banking and Financial Ombudsman (ABF), an out-of-court dispute resolution system for resolving disputes between customers and banks or financial intermediaries. The Ombudsman continued to operate regularly, despite the pandemic, thanks to the use of information technology, the Panels' ability to meet remotely and the support of the Technical Secretariats operating at the Bank of Italy's branches.

New ABF provisions

In 2021, new ABF provisions were implemented regarding the amount that may be sought before the Ombudsman and the procedures to be followed, which were aligned with the provisions of Directive EU/2013/11 on alternative dispute resolution (ADR).¹

The changes mainly concern the adversarial phase; the amount that may be requested has increased from €100,000 to €200,000. To reduce response times, some Panels have started to apply the new rules on early resolution of disputes by the Chairs, without the need to wait for the full Panel's decision. The new fee structure for the members of the Panels has also been introduced (fees are now linked to the entering of decisions).

Uniformity of ABF case law

The Panels have continued to seek uniformity in their case-law by submitting issues to the Coordination Panel or exploring them during the Panel Conference, an important forum for discussion. However, the analysis carried out by each Panel based on the documents submitted by the parties and the specific facts remain crucial.

Complaints

In 2021, the number of complaints submitted to the ABF – over 22,300 – decreased by 28 per cent, with a significant redistribution by matter under dispute. There was a notable increase in litigation regarding payment systems and services (52 per cent) due in part to the increased use of digital payments during the pandemic. By contrast, the number of disputes regarding the pledge of one-fifth of salary and postal savings certificates fell (by 55 and 31 per cent respectively) also in connection with the increasing complexity of the regulatory framework; nevertheless these issues still make up a large portion of the ABF's caseload.

Decisions

Last year, the decisions issued by the Panels numbered over 27,400, in line with the record year of 2020. In 48 per cent of the cases, the outcome was favorable for customers, with total or partial granting of the claims; 17 per

¹ The Directive was transposed into Italian law by Legislative Decree 130/2015.

cent of the cases were settled with a declaration of termination of the dispute due to an agreement reached between the parties.

The compliance rate for the intermediaries The complexity of the regulatory framework stemming from the European Court of Justice's judgement in the Lexitor case and to the rules regarding postal savings certificates not only affected the number of complaints, but also caused intermediaries' non-compliance with Panels' decisions to increase because they found it preferable to submit the matters to the courts for assessment.

If we exclude non-compliance in these matters, the compliance rate with the decisions of the Panels was 96 per cent. During 2021, around €31 million were awarded to customers (€29 million in 2020), of which over €20 million were paid.

The duration of the procedure Last year, the average duration of an ABF procedure, excluding suspension periods, was 137 days, which is well below the 180 days required by law; 85 per cent of the proceedings were concluded within this period.

Collaboration with other ADRs On 19 November 2021, the **first forum** between the ABF and the Financial Disputes Ombudsman (ACF) established by the National Commission for Companies and the Stock Exchange (Consob) was held pursuant to the memorandum of understanding signed in March 2020, to prevent interpretative discrepancies or uncertainties within the scope of their respective jurisdictions. The collaboration with the Italian Insurance Supervisory Authority (IVASS) was strengthened in view of the establishment of the Insurance Ombudsman, including through staff exchanges between the Bank of Italy and IVASS and the participation of the latter in training initiatives organized by the former on issues of common interest.

...And with the judiciary The ABF's decisions continue to be the subject of attention and analysis by the courts and academia. Dialogue with the judiciary was strengthened on issues of common interest. In addition to the regular **annual conference** on banking and financial contracts held with the Scuola Superiore della Magistratura, the Bank of Italy plans to periodically host roundtables on issues concerning the protection of banking customers.

Dialogue with consumer associations Discussions with consumer associations have been strengthened also thanks to the organization of joint events, like the one held in March 2021 on online electronic payment fraud (**#Truffainvista?**), with specific focus on the ABF's case law on the most common types of fraud.

An international comparison At the international level, the ABF continued to take an active part in Fin-Net, set up within the European Commission, which is an important forum for interaction with the other European ADR systems in the banking, financial, and insurance sectors.

In 2021, three meetings were held to discuss issues such as financial digitalization, the new crowdfunding regulation, and European Banking Authority (EBA) opinions and guidelines on claim management and lending.

Also, in September 2021, the European Commission held a **second assembly** of the European ADRs and the national competent authorities to discuss the main challenges and opportunities for the alternative dispute resolution systems.

Artificial intelligence in the ABF system The study of artificial intelligence applications (e.g., machine learning and text mining) to further increase the functionality of the ABF's procedures continued. The objective is to deploy a tool to simplify the investigation of complaints and the uniformity of decisions without undermining the decision-making autonomy of the Panels (composed of banking and consumer protection experts).

* * *

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

The first chapter provides a description of the ABF's main features and how it operates; the second chapter contains statistical information on complaints and on the decisions and activities of the Panels, as well as on the results of a survey on complainants' satisfaction and an investigation into the litigation submitted to the ordinary courts after the ABF has issued its decision; the third and fourth chapters outline the main decisions adopted by the territorial Panels and by the Coordinating Panel in 2021 and in the early months of 2022. A comparison between the ABF's decisions and the judicial case law on matters falling within 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. The Annual Report on the ABF's activity is published in fulfillment of its current legal obligations.²

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

1. THE BANKING AND FINANCIAL OMBUDSMAN



What is the ABF?

The Banking and Financial Ombudsman (ABF):

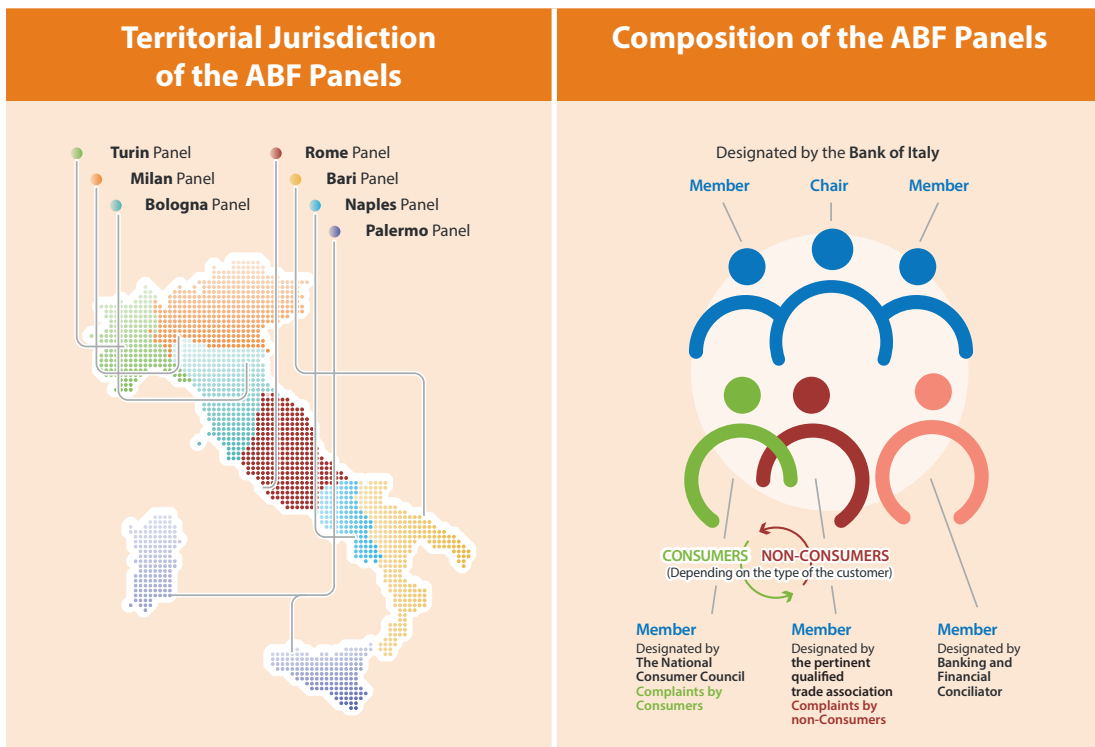
- is a decision-making alternative dispute resolution (ADR) scheme aimed at resolving, through the submission of a complaint, disputes between customers and banks/ financial intermediaries in a way that is faster and less expensive than civil litigation;
- decides who is right and who is wrong, taking into account only the documents submitted by the parties, based on the law; it cannot sanction the customer;
- is autonomous and impartial with respect to the Bank of Italy;
- is organized in seven territorial panels (Milan, Turin, Bologna, Rome, Naples, Bari and Palermo), each one consisting of 5 members with specific requirements relating to experience, professionalism, integrity, independence and the possession of significant and proven expertise in banking, finance or consumer protection.

Besides the territorial panels there is the Coordinating Panel, which 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.¹

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.

ABF decisions are not binding on the parties but, if an intermediary does not comply with a decision, a notice of its non-compliance is published on the **ABF website** for five years and on the homepage of the intermediary's website for six months. 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.

¹ In addition to the Coordinating Panel there is the Panel Conference, a forum for discussion which explore the issues, both substantive and procedural, of particular relevance for the ABF and of interest for the system. A brief description of the issues addressed is published on the ABF website.



The benefits of the ABF

The ABF:

- is almost free of charge: claimants pay €20 euros, which is usually refunded if the decision is made in their favour (even if only in part);
- 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;²
- is faster compared to civil litigation.



What can the ABF decide on

The Ombudsman rules on disputes concerning banking and financial transactions and services (other than investment services), for instance, current accounts, mortgages

² An ABF proceeding, as an alternative to mediation, satisfies the procedural requirement set by Legislative Decree 28/2010, namely the mandatory submission of any civil case to an ADR system before filing the same lawsuit before an ordinary court.

and consumer credit, postal savings certificates, including payment services. Disputes concerning investment services or activities fall within the jurisdiction of the Financial Disputes Ombudsman (*Arbitro per le Controversie Finanziarie* – ACF), established by the National Commission for Companies and the Stock Exchange (Consob).³

You can ask the ABF to:

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

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.

After the exchange of documentation between the parties (complaint, defence briefs, replies, rejoinders), the outcome of the complaint must be communicated within 90 days; when the case is particularly complex, the term can be extended for an additional period of no more than 90 days.

In 2021, the overall average duration of a case before the ABF was 137 days (calculated from the date of filing of the complaint to the notification of the decision, excluding suspension periods).

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

Since 2011, the Ombudsman has been a member of Fin-Net, a **cooperative European network of national alternative dispute resolution** schemes in the banking, financial and insurance services sector. It ensures access to ADR bodies for consumers, even in connection with cross-border financial services. In 2021 three meetings were held, during which the members discussed, among other issues, those of digitalization in the financial sector, the new European crowdfunding regulation and the guidelines issued by the European Banking Authority (EBA) on handling complaints and granting loans. The **second meeting** organized by the European Commission between the European ADR bodies and the national competent authorities was held in September to discuss the main challenges and opportunities for alternative dispute resolution systems.

³ For further information, see the [ACF website](#).



What's new in 2021

The regulatory context. – The year 2021 was the first year of application of the new provisions governing the functioning of the ABF and the new remuneration scheme for the members of the Panels⁴, revised to bring it into line with international best practices and reduce response times for customers. To expand 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; new powers have been granted to the Chairs to enable early settlement of disputes and to make the system more efficient.

Collaboration with other ADRs. – In November 2021, the **first forum** between the Chair and the other members of the ACF and the territorial panel Chairs who are also members of the ABF Coordinating Panel was held. The ABF-ACF forum gave concrete form to the **memorandum of understanding** signed on 19 March 2020 to prevent confusion regarding their respective competences and to institute new ways of exchanging information, in compliance with the decision-making autonomy of their respective panels. The forum addressed issues relating to litigation concerning securities deposits under administration, which is on the borderline between the respective ABF and ACF competences. In preparation for the establishment of the Insurance Ombudsman, the ABF continued to collaborate with the Italian Insurance Supervisory Authority (IVASS) by organizing work experience opportunities for IVASS staff at the ABF Technical Secretariats and by including IVASS in training initiatives organized by the Bank of Italy.

External relations. – As in previous years, the ABF continued to hold meetings with consumer associations. In March 2021 a **virtual meeting** was held on the most common online fraud and scamming methods involving electronic payments and the prevention tools available to customers.

To facilitate discussion on current consumer protection issues, the ABF maintained relations with the *Scuola Superiore della Magistratura*, with which it organized a **conference** on banking and financial contracts, now in its sixth edition. In 2022, in addition to the annual conference, technical discussions will be held on specific topics of common interest.

Artificial intelligence in the ABF system. – A study is under way to examine the application of artificial intelligence techniques (e.g., machine learning and text mining) to the ABF process to further improve the system's functionality. We plan to create a tool that facilitates the preliminary steps in handling complaints, without prejudice to the Panels' autonomy in deciding the dispute.

⁴ The changes apply to complaints submitted from 1 October 2020.

THE ABEFTECH PROJECT

The Abeftech Project focuses on the use of machine learning and text mining techniques in the ABF process.

Abeftech will make it possible:

- to assist the Technical Secretariats during the preliminary phase of handling complaints by making it easier to search for decisions on similar cases and to identify useful legal references to aid the Panels in resolving disputes;
- to promptly identify any conflicts between the case laws of the different Panels on specific issues;
- to extract recurring concepts from the documents contained in the complaints files, in part to identify new trends in litigation.



2. DATA ON COMPLAINTS AND OPERATIONS

Overview

In 2021, the Banking and Financial Ombudsman (ABF) received 22,382 complaints, down from 2020 (-28 per cent). Most of the decrease was attributable to complaints regarding loans secured by a pledge of one-fifth of salary or pension¹ and savings accounts and postal savings certificates; on the other hand, disputes regarding payment instruments and services² recorded a significant increase. In line with the previous year, 27,461 complaints were decided and 430 meetings were held (64 complaints decided per meeting, on average). In 48 per cent of the cases the decision was in favour of the complainant while 17 per cent of the cases were settled before a decision was issued. More than €31 million were awarded to complainants, of which €20 million have been paid

Demand

Complaints received

Complaints relating to loans secured by a pledge of one-fifth of salary and by savings accounts and postal savings certificates decreased by 55 and 31 per cent respectively. There was a significant increase in disputes regarding payment instruments and services (52 per cent), in particular those concerning the fraudulent use of payment cards and cases in which the holder denied making the transaction (Figure 2.1 and Table 2.1).

Loans secured by a pledge of salary continued to make up the largest category of matters under dispute (about 34 per cent of the total), although the number of these disputes has more than halved compared with 2020.³ The share of complaints involving payment instruments doubled, from 15 to 33 per cent (Table 2.1). These trends mirror those in complaints submitted by consumers, who submitted 95 per cent of all complaints received (Figure 2.2.a).

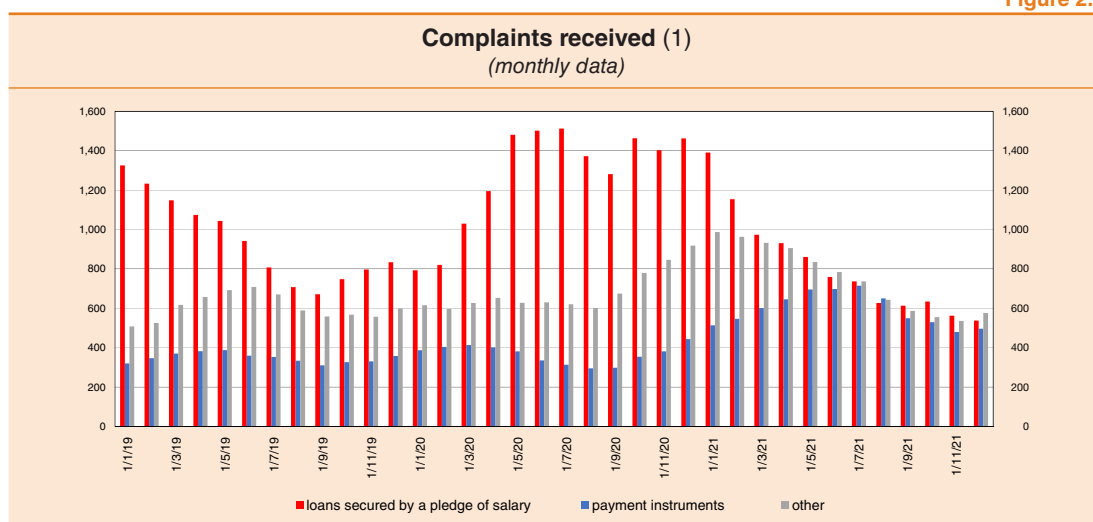
Complaints submitted by non-consumers (5 per cent) were more diverse in terms of matter under dispute: those involving current accounts increased by 24 per cent with

¹ Although loans secured by a pledge of salary fall under the category of consumer credit, in this report they are treated separately due both to the fact that they make up a significant part of the inflow and to the distinct characteristics of the disputes. Therefore, the data referring to consumer credit reported in this chapter are shown net of these disputes.

² In this chapter, “payment instruments and services” refer to complaints concerning ATMs, debit cards, wire payments, credit cards and current accounts.

³ The decrease may also reflect the rise in non-compliance by intermediaries on this area.

Figure 2.1



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

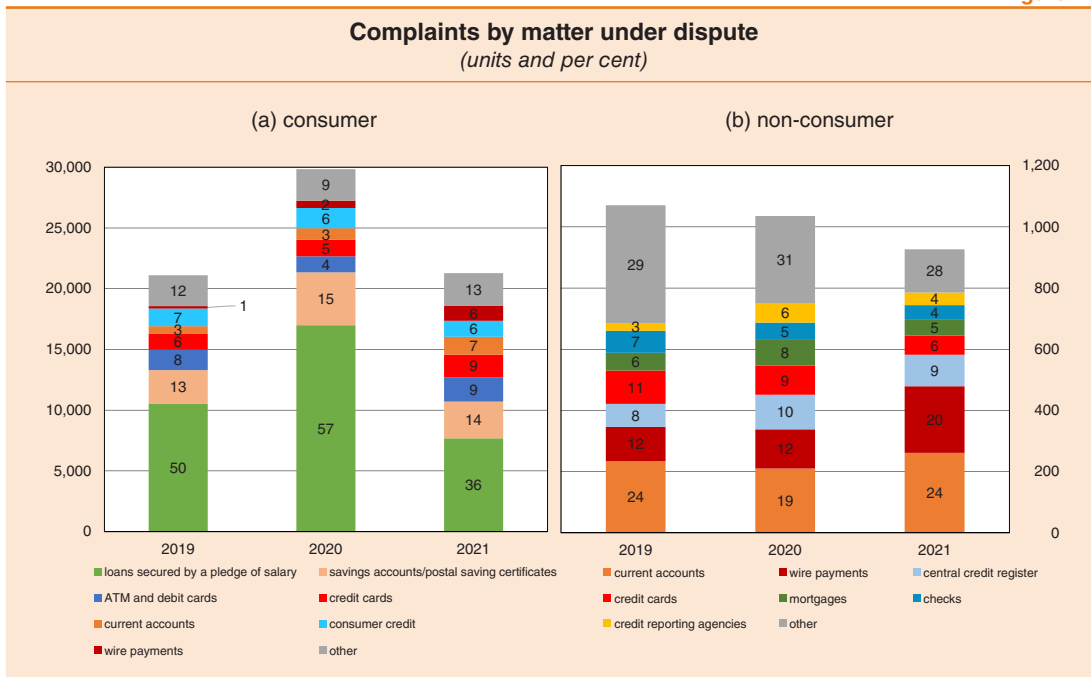
Table 2.1

Complaints received by matters under dispute: comparison with 2020

MATTER UNDER DISPUTE	2020		2021		% variation 2021-20
	No.	% of total	No.	% of total	% change
Loans secured by a pledge of salary	16,993	55	7,681	34	-55
Savings accounts and postal savings certificates	4,367	14	3,029	14	-31
ATMs and debit cards	1,349	4	2,024	9	50
Credit cards	1,444	5	1,934	9	34
Current accounts	1,164	4	1,732	8	49
Wire payments	732	2	1,459	7	99
Consumer credit	1,685	5	1,318	6	-22
Credit reporting agencies	536	2	718	3	34
Mortgages	652	2	552	2	-15
Central credit register	519	2	548	2	6
Other	1,476	5	1,387	6	-6
Total complaints	30,917	100	22,382	100	-28
Total complaints excluding loans secured by a pledge of salary	13,924	45	14,701	66	6
Total complaints regarding payment instruments and services	4,689	15	7,149	33	52

respect to the previous year and continued to represent the most often recurring matter (24 per cent; Figure 2.2.b); complaints regarding wire payments increased by more than 70 per cent year-on-year.

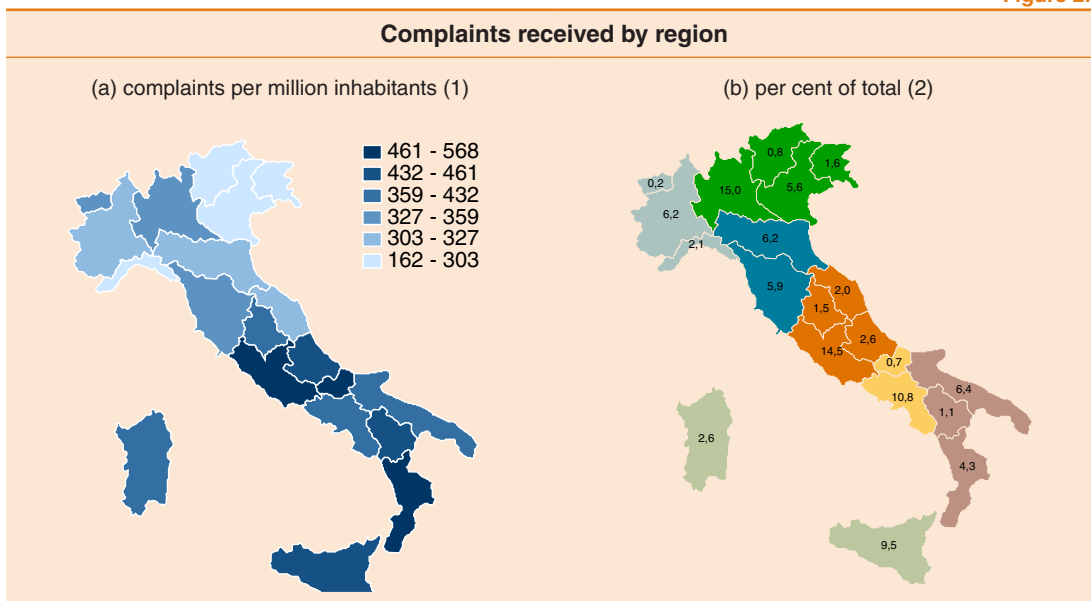
Figure 2.2



Geographical distribution of complaints

Residents in the central and southern regions submitted more complaints per capita than did those in the northern ones (Figure 2.3.a). All Panels saw a drop in complaints received in 2021, although the Milan and Rome Panels still received the highest numbers (Figure 2.3.b).

Figure 2.3



Sources: Based on ABF and Istat data.
 (1) Resident population as of 1 January 2021. – (2) The colours identify the competent Panels, while the numbers refer to the percentage of the total number of complaints.

Characteristics of complainants

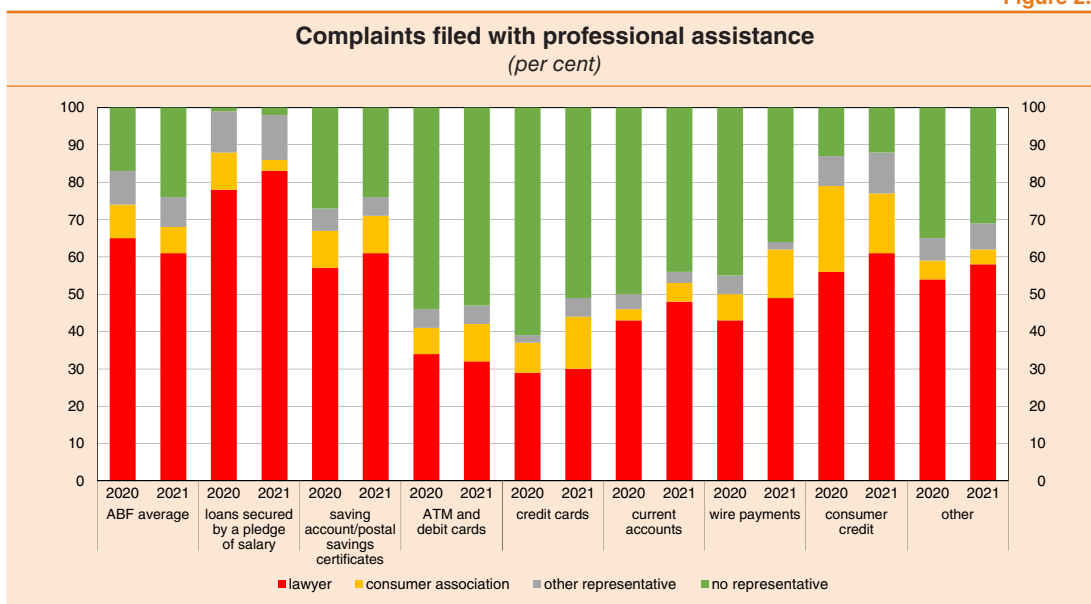
In 2021, complaints were submitted predominantly by men (61 per cent; 64 in 2020)⁴ with gender distribution varying by region: in the southern regions men made up a slightly higher than average share, while their share was lower in the northern regions.

Complaints relating to loans secured by a pledge of one-fifth of salary were submitted by men two-thirds of the time, a result consistent with the gender distribution of customers of this type of financing, while complaints about savings accounts and postal savings certificates, debit cards and wire payments were submitted by women in around 50 per cent of cases.

The average age of complainants (54 years old) also reflects the different age distribution of customers for banking and financial products:⁵ the average age was higher for complaints regarding matters such as loans secured by a pledge of salary, deposit accounts and postal savings certificates, while it was lower for those involving credit reporting agencies, payment instruments and mortgages.

The share of complaints filed with the assistance of an attorney or other professional decreased by 4 percentage points compared with the previous year (61 per cent; Figure 2.4). This is due in part to the decrease in complaints involving loans secured by a pledge of salary, where professional assistance is very common, and to the increase in disputes regarding payment instruments and services, characterized by a higher than average share of complaints submitted without assistance.

Figure 2.4



⁴ The data in this paragraph refer to consumer complainants.

⁵ *Survey on Household Income and Wealth*, Banca d'Italia, Statistics Series, 12 March 2018.

Types of financial intermediaries

The largest share of complaints still involved banks incorporated as limited companies (53 per cent), even though it fell by 5 percentage points compared with 2020. The share of complaints against financial corporations also decreased slightly (18.1 per cent), while that of complaints submitted against Poste Italiane SpA increased marginally (18.6 per cent). There was a notable rise in absolute terms of complaints against foreign banks and payments institutions (29 and 55 per cent, respectively) compared with 2020, mainly due to the increase in disputes about payment instruments and services.

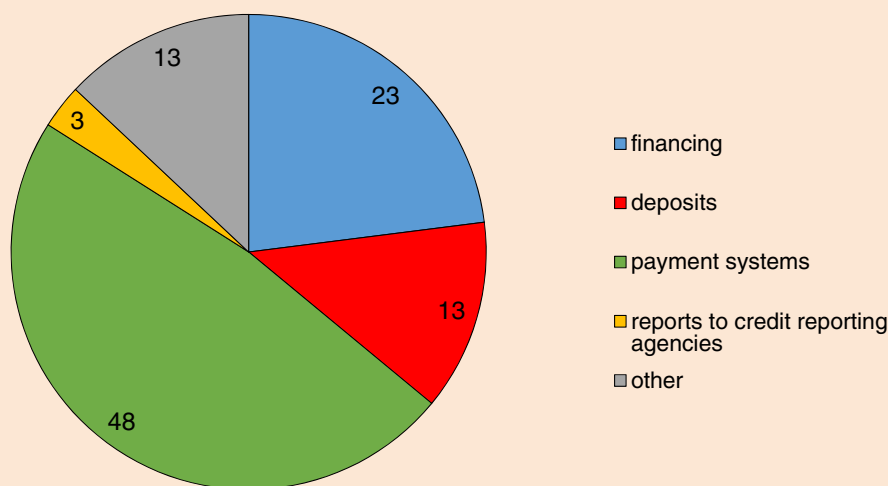
The percentage breakdown of matters under dispute varied according to the type of financial intermediary and the financial products they offer: in particular, for financial corporations, complaints involving loans secured by a pledge of salary (74 per cent of total), which constitute a significant share of all the financing they offer, represented the main matter under dispute; complaints against Poste Italiane decreased with regard to savings accounts and postal savings certificates (72 per cent of the total), whereas those regarding payment instruments and services increased (25 per cent of the total).

LETTERS OF COMPLAINT TO INTERMEDIARIES IN 2021

Based on data from supervisory reports, the number of letters of complaint received by intermediaries increased slightly compared with 2020 (4 per cent), numbering more than 470,000 and sharply up regarding payment systems.

Figure

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



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

Some 48 per cent of the letters of complaint led to a favourable outcome for the complainant, mostly concerning payment systems (of which 65 per cent resolved

in the complainant's favour); another 9 per cent had a partially favourable outcome, while the other 43 per cent of cases were dismissed (44, 10 and 46 per cent in 2020, respectively). Even when accounting for the fact that the letters of complaint may concern matters outside the ABF's jurisdiction, those submitted to the ABF represented only around 5 per cent of the letters of complaint received by the intermediaries and 11 per cent of those rejected by them (7 and 16 per cent in 2020, respectively). The decrease was driven by the drop in complaints concerning financing, and in particular by the significant reduction in complaints regarding loans secured by a pledge of salary.

Complaints submitted to the ABF, together with those to the Bank of Italy (to whom customers can report irregular and unfair behaviour by banks and financial intermediaries; see *Relazione sugli esposti dei clienti delle banche e delle finanziarie*), are a useful source of information for supervisory activity. Analyses carried out on data for 2020 and 2021 revealed a positive correlation between cases before the ABF and both letters of complaint to intermediaries and complaints sent to the Bank of Italy.⁶

For the year 2021, too, it is possible to compare cases in which customers sought recourse to the ABF and those in which civil mediation was used. Indeed, Legislative Decree 28/2010 requires the customer to first seek recourse to the ABF or civil mediation in disputes regarding bank and financial contracts before turning to the ordinary justice system.

CIVIL MEDIATION

In 2021, the number of mediation proceedings increased by 32 per cent overall; those relating to bank contracts rose by 51 per cent, while the increase for financial contracts was less pronounced (13 per cent; Figure A). The increase was partly due to a resumption in judicial activity after the pandemic and partly due to the growth in demand for justice through the courts.

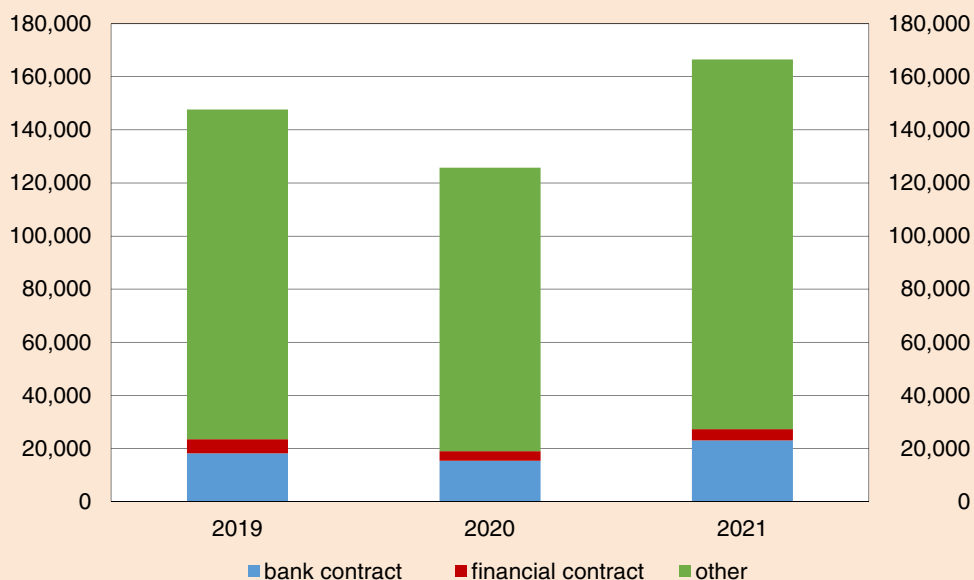
For proceedings relating to bank contracts, the parties appeared before mediators in 54 per cent of cases, in line with the data on all mediations; the share fell to 43 per cent for financial contracts. Mediation was successfully concluded, with an agreement between the parties, in only 7 and 10 per cent of cases, respectively, for proceedings involving bank and financial contracts. When the parties agreed to meet even after the first mandatory meeting, the percentages rose respectively to 25 and 26 per cent. It should be noted that these data could underestimate the percentage of agreements actually reached after mediation, which can be concluded outside the formal process as well.

The median economic value in dispute taken to mediation was €22,700 for bank contracts and €10,000 for financial contracts, in line with the median economic value for all mediation proceedings.

⁶ 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.

Figure A

Civil mediation
(units)

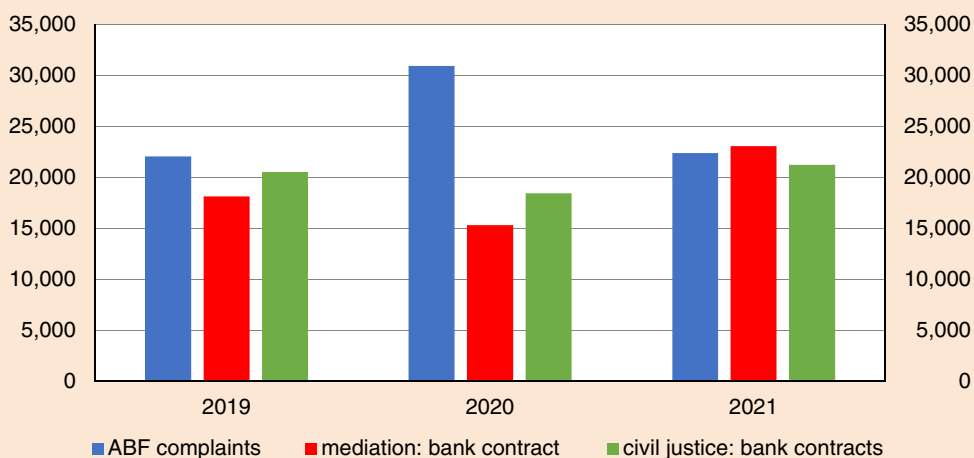


Source: Ministry of Justice.

In 2021, the number of complaints received by the ABF was slightly lower than the number of new cases taken to mediation, and slightly higher than those before the civil courts regarding bank contracts (Figure B).¹

Figure B

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



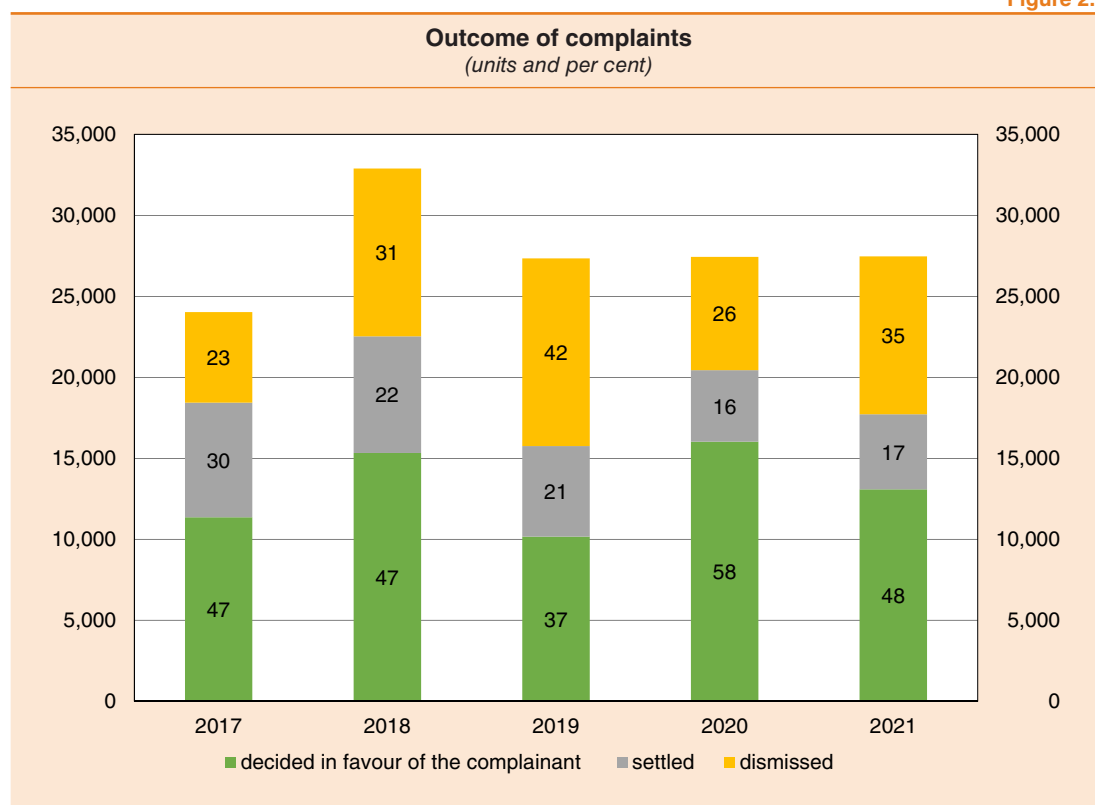
¹ First instance proceedings in the courts.

Supply

Outcomes

In 2021, the Panels decided 27,461 appeals (27,429 in 2020). In 48 per cent of the cases the outcome was totally or partially favourable to the complainants, while 17 per cent of cases were settled before a decision was reached. The decrease in successful complaints (about 10 percentage points) reflected the altered breakdown by matter and in particular the sharp reduction in disputes regarding loans with the pledge of one-fifth of salary⁷, which have a high favourable outcome rate. The remaining 35 per cent were rejected either because the customer's complaint was unfounded or not adequately proven, or was inadmissible due to non-compliance with the procedural rules (Figure 2.5).

Figure 2.5



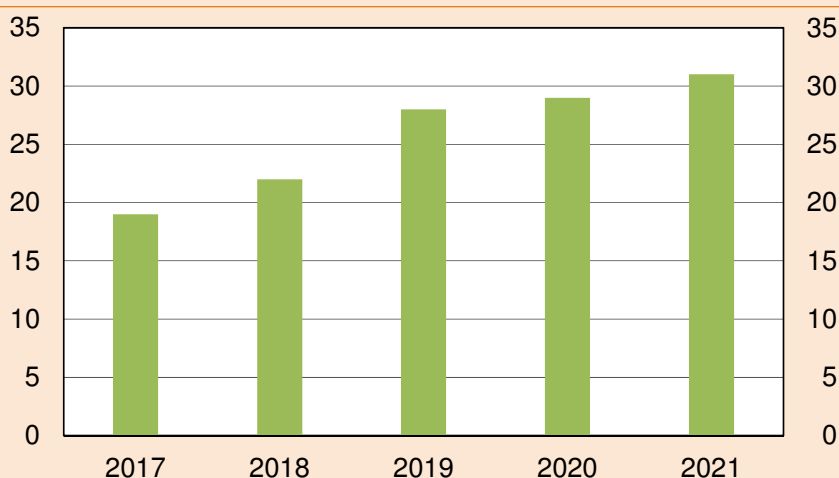
⁷ In 2020, more than half of the complaints concerned loans secured by a pledge of one-fifth of salary (see Table 2.1), which have a favourable outcome rate (above 80 per cent). The ABF's position (Coordinating Panel Decision 21676/2021) and, as a result, the outcome rate, were affected by regulatory changes introduced in July 2021 by Legislative Decree 73/2021 ("Sostegni bis" decree). For further information, see the section: *The pledge of one-fifth of salary or pension* in Chapter 3.

THE AMOUNTS AWARDED TO COMPLAINANTS IN 2021

The Panels awarded complainants a total of €31 million (€29 million in 2020). Almost €20 million has been effectively repaid to customers (in connection with non-compliance by intermediaries, mostly regarding loans secured by a pledge of salary and postal savings certificates). The data do not take account of cases in which repayment took place as part of a settlement prior to the decision. The average amount increased from €2,000 in 2020 to about €2,200 in 2021 (see the figure).

Figure

Amounts awarded
(millions of euros)



The percentage of outcomes substantially in favour of the complainant was lower for complaints regarding the central credit register and mortgages. It was considerably higher for those concerning the pledge of one-fifth of salary or pension, albeit lower than in 2020 (78 per cent, 86 per cent in 2020; Figure 2.6).

The share of substantially positive decisions (upholding of complaints and settlement of disputes) was higher for consumers than for non-consumers (Figures 2.7.a and 2.7.b), owing in part to the percentage of disputes surrounding the pledge of one-fifth of salary. Complaints regarding payment instruments and services had a high settlement rate.

In 2021 many intermediaries were found to be non-compliant with the Panels' decisions regarding the pledge of one-fifth of salary and postal savings certificates⁸ (accounting for 51 per cent of upheld decisions on these matters); these instances of non-compliance brought the overall non-compliance rate to 38 per cent.⁹

⁸ For further information, see the section: *The pledge of one-fifth of salary or pension* in Chapter 3.

⁹ Figure updated as of 30 April 2022.

Figure 2.6

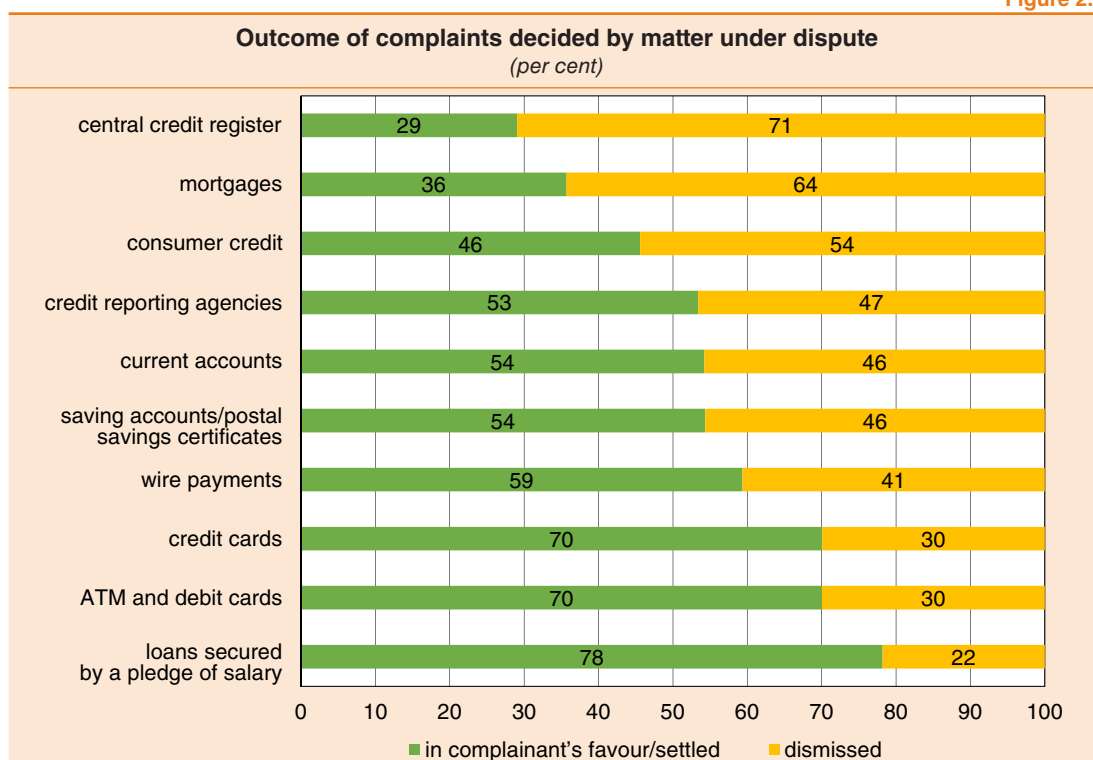
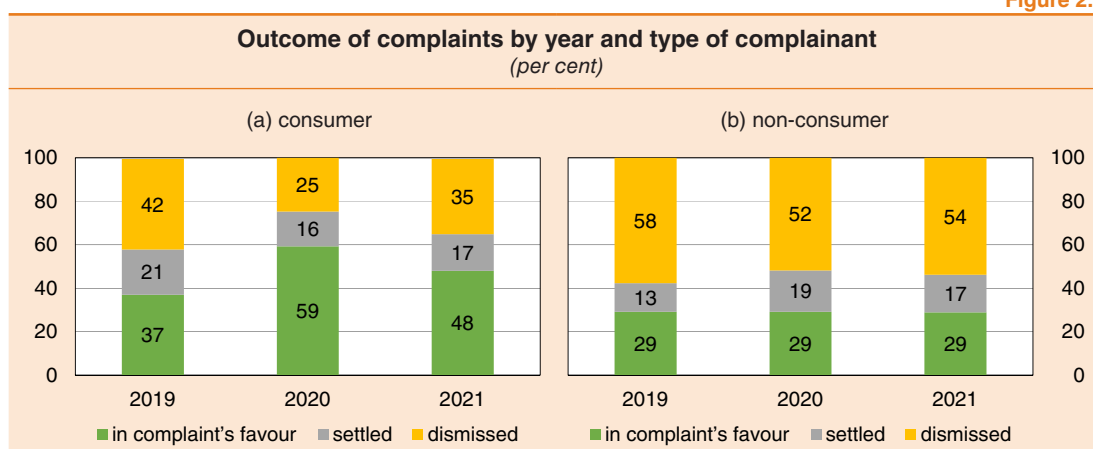


Figure 2.7



Based on the data published as of 30 April 2022, 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 96 per cent.¹⁰

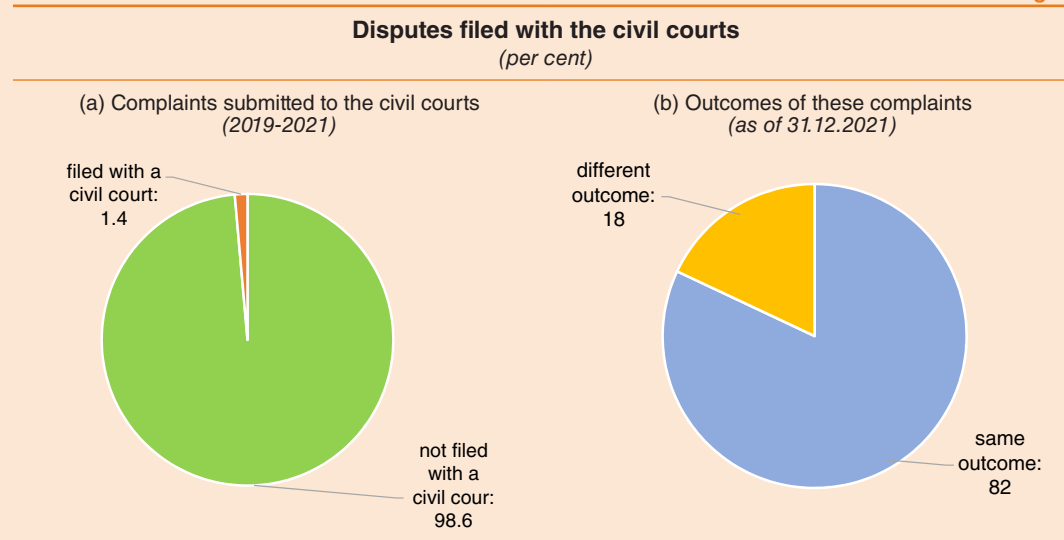
Also in 2021, there were non-compliances with decisions regarding mortgage contracts indexed to the Swiss franc (which are the subject of similar proceedings pending before the civil courts) and, for some intermediaries, the impossibility of locating bank documentation; only a few non-compliances related to the fraudulent use of payment instruments.

¹⁰ Non-compliance by intermediaries is posted on the ABF website, in the section: *Intermediari Inadempienti*.

THE ABF AND THE CIVIL COURTS

In the early months of 2022, a survey was carried out on a sample of intermediaries¹ in order to gather information on the number of disputes filed by complainants or intermediaries with the civil courts following an ABF decision. Only 1.4 per cent of the disputes decided by the ABF were subsequently brought before a civil court judge;² in 87 per cent of cases, the civil court proceedings were initiated by the customer (75 per cent in the previous survey). Almost 80 per cent of the cases brought before the civil courts concerned loans secured by a pledge of one-fifth of salary (66 per cent in the last survey); the share for postal savings certificates and payment instruments was 7 per cent each. Only 14 per cent of the suits have already been decided; 82 per cent of those have upheld the ABF's decision (figure). Over 90 per cent of the cases in which the ABF's decisions were not upheld regarded loans secured by a pledge of one-fifth of salary or pension, where the principles and their interpretation have been affected by the Lexitor judgement and following regulatory changes. In the remaining cases, lack of confirmation is often due to different reconstructions of the facts or formulations of the claims by the parties; they rarely involve a different interpretation of the underlying legal principles.

Figure

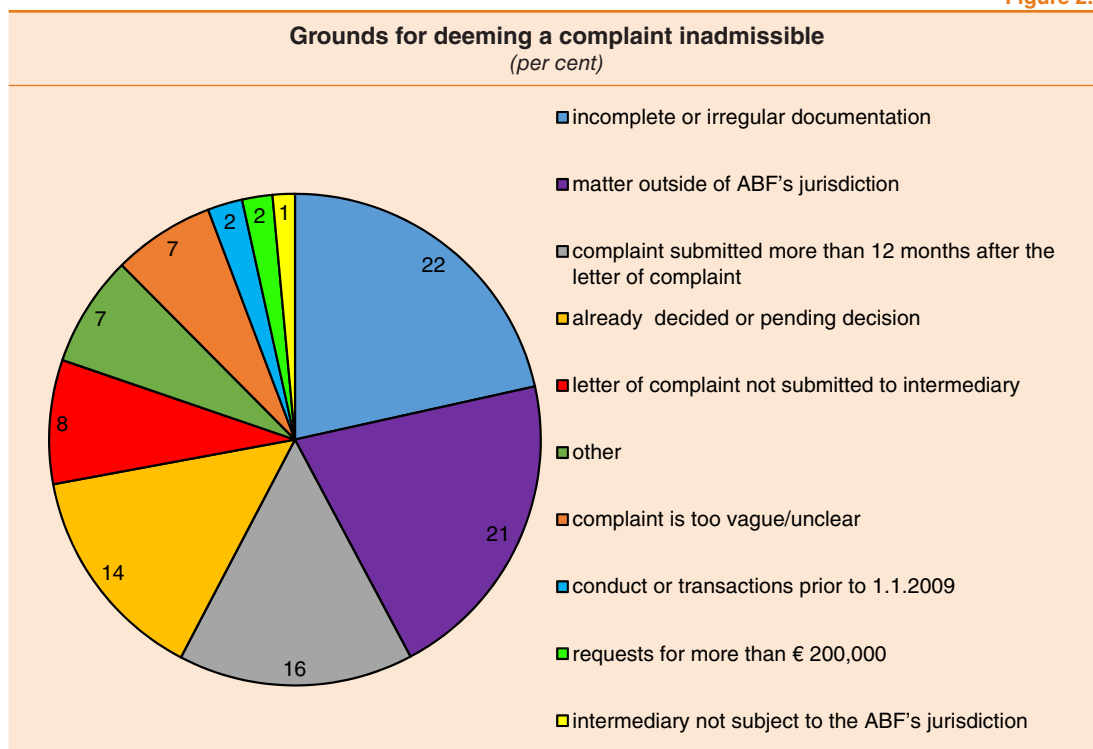


¹ The sample includes 24 of the intermediaries that received the largest number of complaints; these intermediaries accounted for 85 per cent of the complaints decided by the ABF in the period 2019-2021. The survey covered letters of complaint, ABF complaints, mediation and ordinary justice.

² The analysis was conducted for the period 2019-2021.

In 2021, 476 complaints were declared inadmissible by the Chair of the Panel, about 2 per cent of the total. Of these, 22 per cent of the cases were dismissed for incomplete or irregular documentation; 21 per cent concerned matters outside the ABF's jurisdiction; 16 per cent of cases regarded complaints submitted more than 12 months after the letter of complaint (Figure 2.8).

Figure 2.8



The average time frame for reaching a decision on a complaint¹¹ in 2021 was 137 days excluding any suspension period; 157 days when suspensions are taken into account (130 and 181 days in 2020, respectively).¹² The median time was 133 days, net of the suspension periods, and 216 days at the 95th percentile; 85 per cent of the proceedings were completed within the term of 180 days provided for by the ABF's functioning provisions, while 99 per cent were concluded within 270 days.

Data on the first few months of 2022

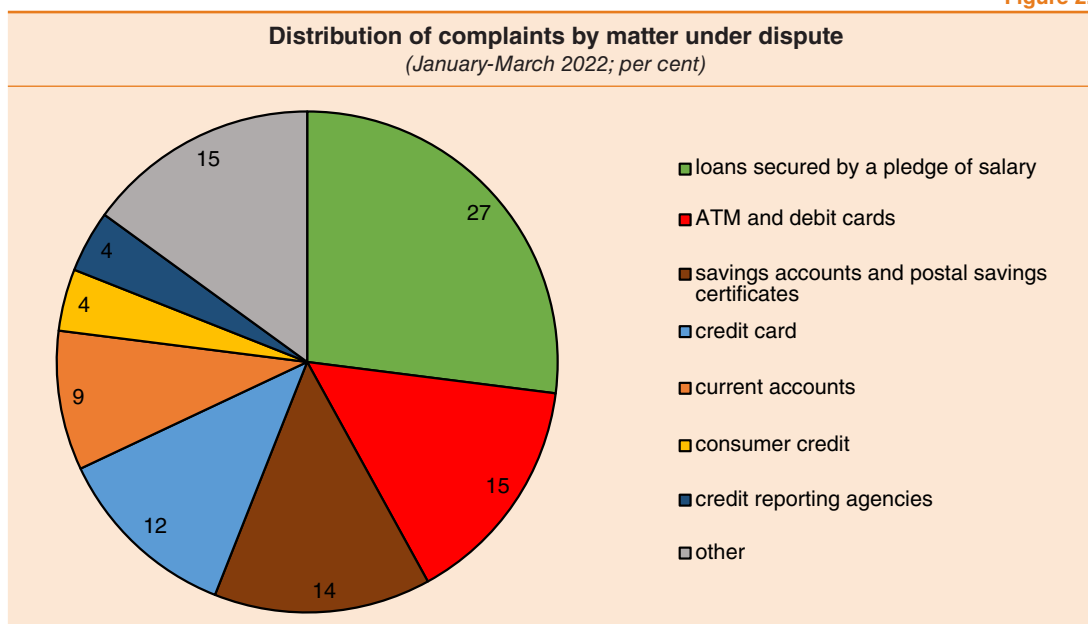
In the first quarter of 2022, over 4,600 complaints were submitted to the Ombudsman, a substantial decrease compared with the same period of the previous year (-37 per cent). The trend was mainly due to the decrease in disputes regarding loans secured by a pledge of one-fifth of salary or pension¹³ and by savings accounts and postal savings certificates, which was only partially offset by the increase in disputes on other matters, such as those relating to ATM and debit cards and credit cards (Figure 2.9); for the latter, the rate of disputes where the parties settled before a decision was issued continued to be high.

¹¹ 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.

¹² In 2020, ABF procedures were suspended from 9 March to 11 May due to the Covid emergency (see *2020 Annual Report: abridged version*).

¹³ The decrease may also reflect the rise in non-compliance by intermediaries on this matter.

Figure 2.9



CUSTOMER SATISFACTION

In the early months of 2022, 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 7,800 complainants were contacted and over 1,600 completed the questionnaire. Among those who responded to the survey, over a quarter submitted a complaint with the help of a professional or an association; over 80 per cent of these customers became aware of the ABF exclusively through a professional or an association. Among the main reasons cited for submitting a complaint to the ABF were: (a) the desire to receive a ruling made by a competent and impartial body; (b) avoid the same thing happening to someone else (Figure A).¹

A special section was added to this survey to ask customers whether they found the Panel's decisions comprehensible. Some 92 per cent of respondents said they had read the decision and 87 per cent believed that it was clear; the latter percentage was lower for those whose complaint was dismissed. The results show that 71 per cent of those surveyed found the decision easy to read and 67 per cent understood the underlying legal reasoning.

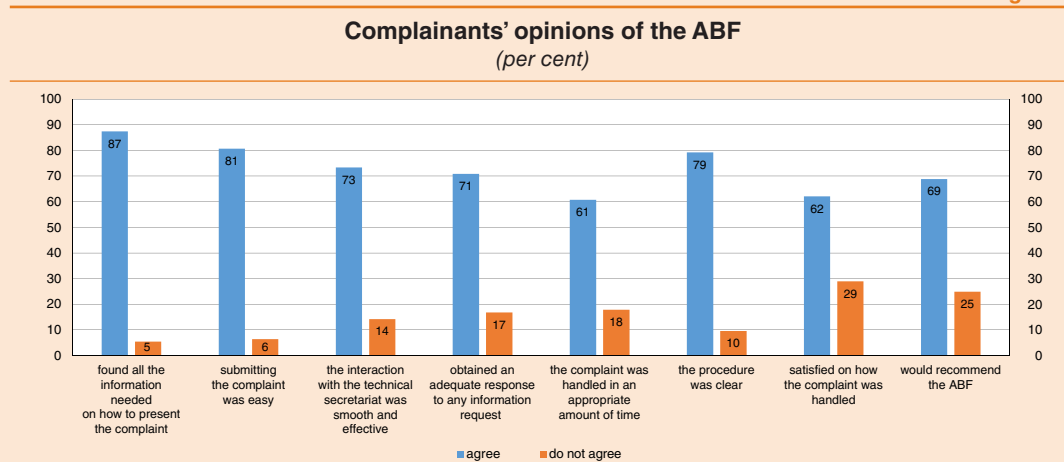
The degree of customer satisfaction was high, in line with the previous surveys. Of the customers surveyed, 87 per cent found that it was easy to locate the information needed to file the complaint and about 80 per cent said that submitting the complaint was easy and the procedure was clear; 70 per cent would recommend submitting a complaint to the ABF if

¹ Among those who responded to the survey, 52 per cent of their complaints were upheld, 35 per cent were dismissed and 13 per cent were settled.

Figure A



Figure B



needed; 61 per cent believed that the length of the procedure was appropriate (Figure B) and 53 per cent did not consider professional assistance necessary to file a complaint.

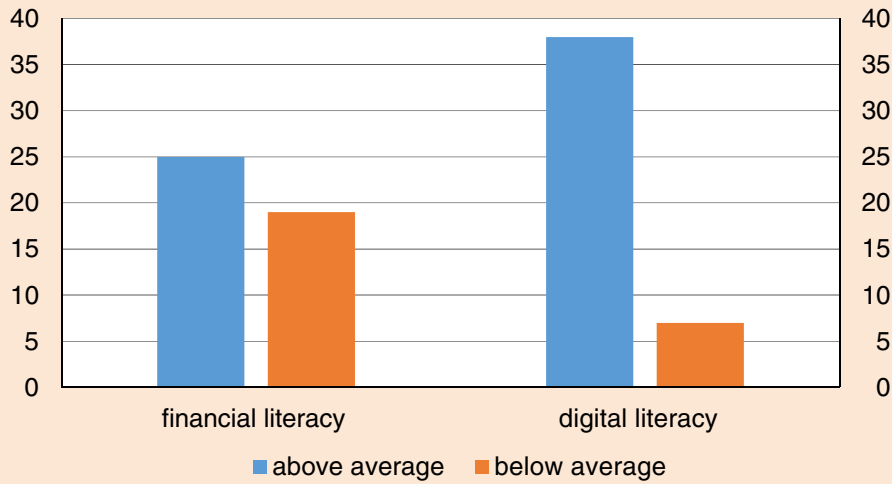
One section of the survey focused on how customers use banking and financial services.

The results showed that over 90 per cent of respondents accessed their account in home banking at least once a month and 74 per cent made online transfers; about 80 per cent used cards or ATMs at least once a week. Another section focused on the economic, financial and digital skills of the complainants. The answers showed that the balance of the respondents who rated their skills above and below average was positive in both areas. The balance was particularly positive with regard to digital literacy in the area of online transactions (Figure C).²

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

Figure C

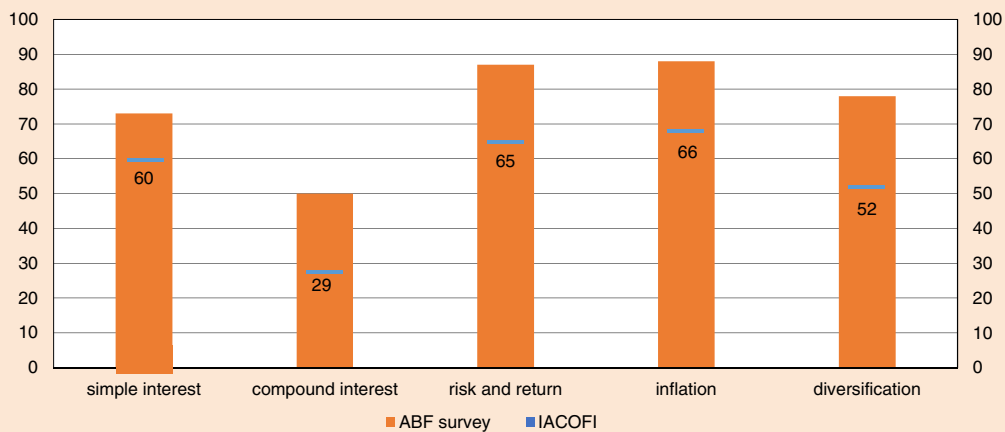
Self-assessment of economic, financial and digital skills
(per cent)



The results of the complainants surveyed were better than those of the average Italian citizen as measured by the IACOFI survey: in particular, 73 per cent correctly answered the question on simple interest and 50 per cent that on compound interest (60 and 29 per cent in the IACOFI survey; Figure D). There was also a strong correlation between the actual economic and financial skills demonstrated and how these skills were self-assessed.

Figure D

Economic and financial literacy
(per cent)



3. THE DECISIONS OF THE PANELS: MAIN ISSUES COVERED



Current accounts

Except for payment accounts with basic features, banks can reject consumers' requests to open current accounts. According to the ABF's consolidated case law, except for the case of payment accounts with basic features, the bank can refuse to open a current account inasmuch as it complies with the principles of fairness and good faith requiring them to explain the reasons underlying its refusal. In the case examined, the Panel stressed that the Ombudsman cannot replace its own evaluation of the benefits of the transaction for that of the bank made in the course of business. Therefore, the Panel rejected the complaint filed by a non-consumer against the bank's refusal to open a current account on the grounds of past irregularities because the bank ensured due transparency in providing the customer with the reasons behind such refusal.¹

Customers can refuse to set off credit and debit balances in their current accounts. The ABF examined a case in which the bank set off, on a contractual basis, a debit of an amount owed by the claimant with the credit balance in their current account. The Coordinating Panel, in deciding the case, referred to the ruling of the Corte di Cassazione (Italian Court of last resort) according to which the customer's expression of disagreement is sufficient to prevent the performance of a set-off pursuant to Article 1853 of the Italian Civil Code.² In the case at hand, the current account contract provided for unconditional and mandatory set-off, therefore the Panel deemed the term unfair inasmuch as it created a significant imbalance in the rights and obligations of the customers (in this case, consumers) and those of the bank.³ Accordingly, the Panel declared the contractual term null and void and upheld the complaint, ordering the bank to re-credit the funds debited from the claimants' current account in performing the set-off.⁴

The bank's withdrawal from a current account contract must be carried out in compliance with the principles of fairness and good faith. The ABF confirmed that the bank has the right to withdraw "without a justified reason" (withdrawal *ad nutum*) from a current account contract of indefinite duration, as long as it complies with the contractual or legal terms of notice. The Panel then reiterated that the intermediary must compensate the customer for violation of the principles of fairness and good faith in the execution of contracts, for example, when the bank decides to terminate the contract

¹ Decision **2139/2021**.

² Cassazione, *Judgement* January 23rd 2020, n. 1445.

³ Article 33, para 1, and article 36 of Italian Consumer code.

⁴ Coordinating Panel, Decision **2438/2021**.

suddenly and without notice. In the case at hand, the Panel rejected the complaint, denying any violation of such rules of conduct on the bank's part, since the latter guaranteed adequate notice to the customer.⁵

The current account contract does not terminate upon the death of the account holder. In a dispute the claimant, in the capacity as co-heir, asked the ABF to declare the current account closed due to the holder's death. The Panel, according to its consolidated case law, rejected the complaint since the current account contract is not automatically terminated upon the holder's death but only once a specific request is made by the holder's heirs.⁶ Therefore, the Panel denied the claimant's request for reimbursement of all the fees and commissions paid in connection with the current account (e.g. account balances and other periodic notification costs) and debited after the request to liquidate the balance was made. Indeed, the ABF found that the current account lawfully continues to incur management fees up to the time the heirs submit a request to terminate the contract.⁷



The right to receive a copy of banking documentation

Article 119, paragraph 4, of the Consolidated Law on Banking (TUB) allows the bank to charge the customer the costs actually incurred to retrieve the requested documentation. On several occasions the Ombudsman has verified the appropriateness of the costs charged customers for the delivery of bank documents. In the case examined, the Panel deemed legitimate the bank's request for €302.26 for the production of 119 documents (applying the cost of €2.54 per copy), which were then delivered to the complainant. However, the Ombudsman clarified that the bank could not also require a deposit of €2,000.00 as a guarantee for the payment of the costs of issuing the additional documentation requested by the complainant.⁸

An intermediary that declares it is not able to find the bank documentation and does not prove innocent loss has failed to fulfill its obligation to deliver the documentation itself. The fact that a bank declares that it has lost the required documents without proving that the loss occurred by chance or force majeure cannot, in itself, relieve it from the obligation to deliver the documentation. In particular, the Panel pointed out a disservice of the bank from an organizational point of view as the bank had the duty to diligently keep the contractual documentation. The Panel therefore found that it failed to fulfill its obligation, specifying that the customer may request compensation for any damage suffered.⁹

The right to obtain a copy of the account statements is part of the request for bank documentation relating to individual transactions governed by Article 119,

⁵ Decisions **11903/2021** and **18311/2021**.

⁶ Coordinating Panel, Decision **24360/2019**.

⁷ Decision **20478/2021**.

⁸ Decision **6343/2021**.

⁹ Decision **13753/2021**.

paragraph 4, of the TUB. The Coordinating Panel assessed whether the obligation of the intermediary to deliver the account statements to the customer must be considered as limited only to the ten years prior to when the request is made (in application of Article 119, paragraph 4, of the TUB), or whether it refers to the entire contractual period and is subject to the limitation period of ten years from the end of the relationship, as in the case of the request for a copy of the contract (in application of Article 117 of the TUB).

The Ombudsman stated that account statements are considered “documentation relating to individual transactions”, pursuant to Article 119, paragraph 4, of the TUB, as these summarize all the transactions carried out within a certain period of time. Considering the protection tools that the legal system offers the customer to obtain the relevant documentation,¹⁰ the Coordinating Panel specified that, if the account holder has failed to keep the account statements received periodically or to request a copy before the expiry of the ten-year term under Article 119 of the TUB, the bank is not obliged to deliver such documents beyond the ten-year limit. In the dispute examined, the Ombudsman, after reiterating that the right to obtain a copy of the banking documentation belongs not only to the heir, but also those who have a title to inheritance and to anyone with a reasonable expectation of inheritance, pointed out that the bank had already provided a copy of the account statements to the heir of the deceased account holder. The Panel therefore rejected the complaint.¹¹



Mortgages and other loans

Exceeding the legal loan-to-value ratio set for a senior mortgage loan does not nullify the contract but reclassifies it into an ordinary loan secured by mortgage.

In one case, the claimant complained that the intermediary had exceeded the loan-to-value (LTV) ratio established by law for senior mortgage loans¹² and asked the Ombudsman to declare it null and void and order the intermediary to return the sums paid in execution of the contract. The Panel, based on the Corte di Cassazione’s case law,¹³ held that the fact that the bank exceeded the LTV ratio does not nullify the contract but instead reclassifies it into an ordinary loan secured by mortgage. The Panel therefore rejected the complaint, stressing that the contract nonetheless generated interest and that the customer did not have the right to reimbursement of interest already paid on the loan.¹⁴

¹⁰ In particular, the right to obtain a copy of the contractual documentation pursuant to Article 117 of the TUB, to periodically receive account statements pursuant to Article 119, paragraph 2, TUB and to obtain a copy of the documentation certifying the individual transactions pursuant to Article 119, paragraph 4, TUB.

¹¹ Coordinating Panel, Decision **15404/2021**.

¹² The definition and regulation of senior mortgage loans is set by Articles 38 et seq. of Legislative Decree 385/1993 (‘Consolidated Law on Banking’, TUB). The Bank of Italy, pursuant to Article 38 TUB set the loan-to-value ratio for this type of loan at 80 per cent of the value of the underlying real estate securing the loan or of the value of its renovation costs (**Resolution of the Interministerial Committee for Credit and Savings of April 21, 1999** and subsequent amendments – in Italian only).

¹³ Cass., Section III, judgment no. 17439 of June 28 2019.

¹⁴ Decision **3479/2022**.



Complaints on the measures provided for in the emergency regulations

The emergency regulations do not exempt the bank from assessing clients' creditworthiness. With reference to a case in which the bank had refused to grant a loan guaranteed pursuant to Article 13 of Decree Law 23/2020 ('Liquidity Decree'),¹⁵ the Panel noted that the legislation does not oblige the bank to grant credit, but only to provide State guarantees when certain requirements are met. Based on its established case law, the Panel therefore rejected the complaint, reiterating that the assessment of the client's creditworthiness and the decision of whether or not to grant a loan falls within the entrepreneurial autonomy of the bank, without prejudice to its obligation to comply with the general principles of good faith and fairness.¹⁶



Consumer loans

The insurance policy ancillary to the loan is considered mandatory in certain circumstances and must therefore be included in the calculation of the APR; however, the bank can offer proof to the contrary and demonstrate its optional nature with respect to the single loan. The insurance premium must be included in the calculation of the annual percentage rate (APR) if the policy is mandatory in order to obtain the loan: the bank can overcome the presumption by proving that it is optional with respect to the single loan. The Panel returned to the topic confirming that, in certain circumstances, the insurance policy shall be assumed to have been imposed on the customer, and therefore is compulsory even if the contract itself states that it is optional. More specifically, the insurance policy is deemed compulsory when all the following are present: (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 premium is linked to the residual debt. However, the intermediary may prove, on the contrary, that the insurance policy was optional.¹⁷

A customer filed a complaint before the ABF claiming that the contractual APR had been incorrectly calculated because it did not include the cost of the insurance coverage ancillary to the loan. Indeed, the customer deemed the coverage compulsory and not optional (as indicated in the contract). The Panel, once it ascertained that the claimant had proven the existence of all the above-mentioned indicators of the compulsory nature of the credit insurance, examined the evidence to the contrary offered by the intermediary and found that the contract indicated the total cost of the loan both including and excluding the costs relating to the disputed policy. Since this was one of the exonerating

¹⁵ Decree Law 23/2020 converted into law with amendments by Law 40/2020, enabled companies, whose business was damaged by the pandemic, to apply for loans guaranteed by the Fund for SMEs (Central Guarantee Fund).

¹⁶ Decision [23937/2021](#).

¹⁷ Coordinating Panel, Decisions [10617/2017](#), [10620/2017](#), [10621/2017](#), [2397/2018](#).

proofs recognized by the ABF's consolidated case law, the Panel excluded the compulsory nature of the policy stipulated by the customer and rejected the complaint.¹⁸

In case of partial discharge of the supplier's obligations, the consumer can request the termination of the linked credit agreement for the part corresponding to the value of the obligations not discharged. The Coordinating Panel examined a case in which the consumer asked for the partial termination of a credit agreement linked to the provision of dental care since the supplier did not fully discharge their obligations under the supply contract.

The Ombudsman clarified that the claimant bears the burden of proving that the supplier's contractual default, even if partial, was still sufficient to justify the partial termination of the linked credit agreement. Accordingly, since the claimant failed to provide such proof the complaint was rejected.

The Panel also specified that in the case of the supplier's partial default, the consumer can ask to terminate the linked credit agreement for the corresponding part if the goods or services are divisible. In this case, the consumer shall be entitled to a proportional reduction in the instalments paid to cover the goods or services not provided and thus shall be required to pay back the loan net of this amount.¹⁹



The pledge of one-fifth of salary or pension

Consumers are entitled to a reimbursement of only recurring costs in case of early repayment of a loan secured by a pledge of one-fifth of salary or pension signed, at the latest, in July 2021 (date of entry into force of the amended Art. 125-*sexies* of the Consolidated Law on Banking – TUB); upfront costs are not refundable. Following the amendments to Art. 125-*sexies* of the TUB, the Coordinating Panel returned to the issue of refundable charges in the event of early repayment of a loan secured by a pledge of one-fifth of the salary or pension.²⁰ The Panel noted that the Italian legislature has aligned Art. 125-*sexies* of the TUB to the Lexitor ruling of the European Court of Justice. Namely, the provision currently clarifies that consumers are entitled to a proportionate reduction in the total costs of the credit (excluding taxes),²¹ and that such principle only applies to future contracts. Indeed, the previous version of Art. 125-*sexies* of the TUB as well as the version of the Bank of Italy's provisions on the transparency of banking and financial transactions and services in force on the date the contract is signed still apply to all contracts signed before July 2021. The Panel noted that

¹⁸ Decision **25191/2021**.

¹⁹ Coordinating Panel, Decision **12645/2021**.

²⁰ The Coordinating Panel has already expressed its opinion on the issue with Decision **26525/2019**; for more information, see also *Chapter 3: The decisions of the Panels: main issues addressed* in the **2019 Report on the activity of the Financial Banking Ombudsman**.

²¹ These are both recurring costs, which concern services and activities that accrue during the duration of the contract (e.g. installments collection charges), and upfront costs that are connected to preliminary activities instrumental in granting the loan (e.g. preliminary investigation costs).

the distinction made by the new provision between contracts signed before and after the law was amended is an indication of the precise and conscious will of the legislature to exclude then-existing contracts from its scope of application. Hence, for these contracts, the reimbursement of costs due to early repayment is still limited to recurring costs.

The Panel questioned the compatibility of this legislative choice with the European regulatory framework (specifically with Article 16 Directive EC/2008/48, as interpreted by the Court of Justice in the *Lexitor* case). It found that the duty of consistent interpretation cannot be applied in the case at hand because the letter of the amendment is clear and unequivocal, therefore an interpretation contrary to domestic law would be inadmissible. The potential conflict with EU primary law cannot be avoided by disapplying the conflicting national provision, as this is only possible when the European directive has direct effect (ruled out in this case as Directive EC/2008/48 does not have a direct effect on horizontal relationships between banks and customers).²² Finally, the ABF reiterated that even if a law raises questions of constitutionality, the Ombudsman cannot bring the issue before the Constitutional Court.²³

The Coordinating Panel acknowledged the change in the regulatory framework and found that, according to the legislative amendments introduced by Legislative Decree 73/21, in the event of early repayment of a loan secured by a pledge of one-fifth of salary or pension signed before its entry into force, only recurring costs can be reimbursed, proportionally to the residual duration of the contract, whereas upfront fees remain non-refundable.²⁴

The intermediary cannot charge early repayment penalties if the residual debt, net of the costs to be paid back to the consumer, amounts to less than €10,000. The Coordinating Panel was asked to clarify how to calculate the residual debt in order to establish whether the intermediary can legitimately apply an early repayment penalty. Art. 125-*sexies*, paragraph 3, of the TUB provides that, in the event of early termination of a consumer loan, the creditor is not entitled to any compensation if the residual debt amounts to less than €10,000. However, the provision does not specify whether the residual debt amounts to what is owed by the consumer at the time of the early repayment or if it must be calculated by subtracting the recurring fees and charges to be paid back to the consumer proportionally to the residual duration of the contract.

The Panel clarified that the residual debt corresponds to the amount actually owed by the consumer to the lender, i.e. to the residual capital net of the costs to be reimbursed to the consumer. In the case examined, the ABF concluded that the residual debt, once all refundable fees and charges are subtracted, amounted to less than €10,000. Therefore the

²² Court of Justice of the European Union, Judgment. *David Smith v Patrick Meade and Others* (Case **C-122/17**).

²³ The Ombudsman's power to raise questions of constitutionality was denied by the Constitutional Court because of the out-of-court (i.e. non-judicial) nature of the ABF (Constitutional Court, Order 218/2011); see also *Chapter 1: The consolidation of the Financial Banking Ombudsman* in the **2011 Report on the activity of the Financial Banking Ombudsman**.

²⁴ Coordinating Panel, Decision **21676/2021**, recalling its pre-*Lexitor* case law (see Coordinating Panel, Decision **6167/2014**).

early repayment penalty was unlawfully charged and the ABF ordered the bank to return the sums to the consumer.²⁵



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

The addition of an instant wire transfer service can be done through a unilateral modification of the contract that fully sets out the characteristics of the service. The Coordinating Panel examined the issue of a unilateral modification of a current account contract that introduces the instant wire transfer service pursuant to the legislation on unilateral modification of contract (i.e. *ius variandi*) for payment services (Article 126-sexies, paragraph 4-bis, Consolidated Law on Banking - TUB).

In the case examined, the complainant had denied having intended to make an instant wire transfer operation, but was unable to recover the funds, as this type of operation is by its nature irrevocable. The bank had introduced the payment service through a proposed unilateral modification to the current account contract, but the customer denied having received the related communication and the existence of a justified reason for the change, both required for the change to take effect pursuant to current legislation. The Panel noted that the instant wire transfer service can be introduced with a unilateral modification to the contract since it is a different method of execution of a wire transfer, which is already considered a payment service.²⁶ As for the existence of a justified reason, the Ombudsman clarified that, if the customer is a consumer, the proposal of unilateral modification to the contract must contain complete and correct information on the characteristics of the wire transfer, with particular reference to the increased risk for the customer as the payment is irrevocable. This condition was satisfied in the case examined since the proposed unilateral modification clearly regarded the instantaneous nature of the wire transfer service and indicated, albeit briefly, the reasons behind its introduction. On the other hand, the intermediary had not provided proof that the customer had received the communication. The Ombudsman then accepted the complaint and ordered the reimbursement of the stolen sum, pointing out that the bank had executed a payment order without the customer's permission, as it was carried out in a manner not included in the contract originally signed.²⁷

A proposed contract modification that is unfavourable to the customer must comply with the formal requirements set out in Article 118 of the TUB and must be supported by a suitable justified reason. In one case, the complainants, holders of a credit line granted by an intermediary subsequently put into liquidation, considered the unfavourable change in the original borrowing interest rate, made by the intermediary that took over the contract, to be illegitimate.

²⁵ Coordinating Panel, Decision **11679/2021**.

²⁶ For the scope of the *ius variandi*, see Art. 126-sexies TUB.

²⁷ Coordinating Panel, Decision **15627/2021**.

The Panel noticed that the communication of the interest rate increase, the receipt of which however was not proven, did not contain the title “Proposal of unilateral modification of the contract”, or state the justified reason, as required by Article 118 of the TUB. According to the consolidated case law, the communication of unilateral changes must enable the customer to evaluate whether the change is appropriate in light of the reason given to justify it.²⁸ Due to the clearly unfavorable nature of the change, the Panel declared it ineffective, as it should have been communicated in the manner provided for by Article 118 of the TUB. The Ombudsman therefore upheld the complaint, finding the change in the interest rate to be ineffective.²⁹

In another case, the Panel rejected the complaint, pointing out that the proposals of unilateral modification referring to a factoring contract³⁰ were supported by justified reasons, illustrated in a sufficiently exhaustive way that allows the customer to assess their adequacy in relation to the proposed changes. Indeed, the Panel considered that the changes in market rates with consequent repercussions on the cost of loans and on the increase in the cost of collection for the bank constituted justified reasons for the increase in costs applied to the customer.³¹



The floor clause

If the floor clause is formulated in a clear and comprehensible way, it cannot be assessed in terms of unfairness. With reference to a variable rate mortgage loan, the complainant had disputed the validity of a floor clause due to lack of clarity regarding the negative trend in the Euribor used to determine the interest rate. The Panel first ascertained the existence of the contractual provision and, secondly, remarked that these clauses can be challenged in terms of unfairness only if they are written in an obscure and unclear way. The Ombudsman rejected the complaint, considering that in the case examined the mechanism described in the clause instead appeared clear (even to the complainant himself, in the light of the deductions made).³²



Computer fraud

For e-wallet payment transactions, the intermediary must prove that card registration and payments made using the wallet are protected by strong customer authentication (SCA) solutions. The Coordinating Panel examined a case in which

²⁸ Coordinating Panel, Decision 1889/2016.

²⁹ Decision 16841/2021.

³⁰ Factoring is a form of financing for companies carried out through the transfer of trade receivables.

³¹ Decision 25161/2021.

³² Decision 7906/21.

phishing led to fraudulent transactions being carried out using a digital wallet.³³ The Ombudsman first of all noted that customers can add a payment card to either their intermediary's mobile banking app or a digital wallet app: in both cases, SCA, managed directly by the card issuer, is applied in registering the card (so-called "tokenization"). To make a payment, the customer accesses the wallet and chooses which card to use from among those registered; SCA is also usually required to carry out transactions. The Coordinating Panel pointed out that, in the case examined, the intermediary had demonstrated that it had applied SCA to the mobile bank app installation process, but not to adding a card to the wallet. The Panel therefore upheld the complaint concluding that, in the absence of this proof, the intermediary must reimburse the customer for the entire amount of the fraudulent transactions without the need to examine the customer's behavior. The Ombudsman specified that the intermediary is required to provide proof of strong customer authentication not just for payment card tokenization, but also for subsequent e-wallet transactions.³⁴

When the intermediary proves that the disputed transactions were correctly carried out with SCA and the customer's complaint does not contain a description of the computer fraud committed, the Ombudsman can consider this lack of information indicative of gross negligence on the part of the customer. In one dispute the complainant alleged that several online transactions attributed to him were unauthorized. The intermediary reported that the scammer used the mobile banking app downloaded to the scammer's own device to perform the transactions and, in order to do this, he had to have known the complainant's online banking credentials, the payment card data and the dynamic password sent to the customer's mobile number, which is necessary to set the static code for payment authorization. The Ombudsman noted that the payment services legislation imposes obligations on both customers and intermediaries. Customers are required to use payment tools and services in a diligent manner, respecting contractual provisions, adopting suitable measures to keep their credentials secret and promptly notifying the bank when they notice unauthorized transactions. Intermediaries must develop security systems that prevent third parties from accessing customers' personal devices and from using payment instruments after receiving notification of an unauthorized transaction. In the case examined, the Panel noted that the authorization system designed by the intermediary for the installation and subsequent use of the app for transactions complied with SCA security requirements. In particular, "knowledge" (the static code set in the app) and "possession" (the app associated with a specific device) factors had to have been met to complete the transaction. Furthermore, considering that the plaintiff had not described how the fraud could have been committed in a way that would have excluded negligence on his part, the Panel denied the request, presuming he had violated the obligations of duly protecting his access credentials.³⁵

³³ A digital wallet (e-wallet) is a data container, usually a mobile phone app, into which the customer enters his payment card information. For more explanation, see **"The guides of the Bank of Italy. E-commerce payments made easy"** (only in Italian).

³⁴ Coordinating Panel, Decision **21285/2021**.

³⁵ Decision **24969/2021**.

In spoofing cases, if the scam message contains anomalies or signs of unreliability the customer can be held partly liable for the unauthorized use of his payment instrument. The Ombudsman noted that in general, in the case of spoofing, gross negligence cannot be attributed to the customer due to the insidiousness of the means of attack. However, if the text of the scam message contains signs of blatant unreliability (e.g. grammatical errors) or anomalies (such as asking the SMS recipient to click on a link unrelated to the intermediary in any way) which should alert a prudent user, the ABF recognizes contributory negligence based, on the one hand, on the gross negligence of the customer who facilitates the fraud and, on the other, on the organizational gaps in the payment service offered by the intermediary.

However, in a case where the customer was victim of a combined spoofing and vishing attack and the intermediary had provided proof that the disputed transactions were correctly authenticated, the Ombudsman partially upheld the claim due to the contributory negligence of the complainant. Indeed the SMS message sent to the complainant with the dynamic password (OTP) used to confirm the transactions contained a warning to keep confidential the confirmation code for online purchases and to not share it with anyone else.³⁶ In another case, the customer alleged to have been the victim of a combined spoofing and vishing attack, but did not provide evidence of the scam message. The Panel stated that, in the absence of the SMS, it was not possible to verify the type of scam perpetrated on the customer. Since the complainant himself had admitted to having shared credentials and codes associated with his payment instruments with the scammers, the ABF therefore deemed such conduct to be grossly negligent. Considering that the intermediary provided proof that the disputed transactions had been authenticated, accurately recorded and entered in the account, the Ombudsman rejected the complaint.³⁷

If the customer falls victim to a sophisticated computer fraud, such as a man-in-the-browser attack, his conduct is generally not one of gross negligence, unless there are further factors to consider. The ABF dealt with a disputed bank transfer in favor of a beneficiary different from that specified in the payment order. The complainant argued that the intermediary's computer system was infected by malware that enabled the fraudster to overwrite the data entered by the customer, thereby redirecting the bank transfer to an IBAN different from that originally entered. With regard to the transaction, carried out using home banking services, the complainant produced the credit transfer request form and the transfer receipt, which showed different IBANs and beneficiary banks.

The Panel noted that, when a transaction is disputed by a customer, the intermediary must prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and was not affected by a technical breakdown or some other deficiency of the service; in addition, it must provide evidence of fraud or gross negligence on the part of the payment service/instrument user. It therefore found that, in the case

³⁶ Decision [24878/2021](#).

³⁷ Decision [18053/2021](#).

examined, the intermediary had provided proof that the bank transfer had been carried out with a two-factor authentication system, using a dynamic password (OTP) sent to the customer via SMS. However, the bank did not prove gross negligence on the part of the plaintiff; on the contrary it reported that the bank transfer had been tampered with by the scammer and redirected to an IBAN other than the one entered by the customer.

According to the consolidated case law of the ABF, there is no gross negligence on the part of customers who fall victim to man-in-the-browser attacks, which are particularly sophisticated frauds, unless there are further factors involved. In this case, however, the Panel found the complainant liable for not having verified the transaction details summarized in the SMS containing the OTP to execute the bank transfer: if he had checked the message, he would have noticed that the beneficiary's IBAN and bank were different from those entered in the payment request form. The Ombudsman therefore found that the customer was contributorily negligent and ordered the requested refund to be reduced to 70 per cent of the unauthorized transfer amount.³⁸

³⁸ Decision [24811/2021](#).

