



BANCA D'ITALIA
EUROSISTEMA



Arbitro Bancario Finanziario
Risoluzione Stragiudiziale Controversie

The Banking and Financial Ombudsman: Annual Report



Abridged Version



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EUROSISTEMA

The Banking and Financial Ombudsman: Annual Report

Abridged Version

2023

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

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

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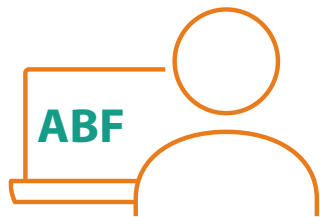
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AVVERTENZE

Le elaborazioni dei dati, salvo diversa indicazione, sono eseguite dalla Banca d'Italia; per i dati dell'Istituto si omette l'indicazione della fonte.

Data for 2023



Complaints received
15.816



of which:

37%

loans secured by pledge of 1/5 of salary

28%

payment instruments and services

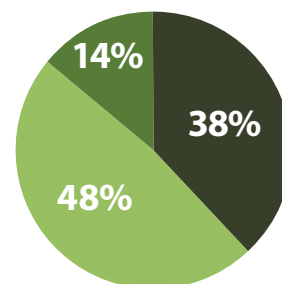


Complaints received by Panels

291
Panels meetings



15.015
Panels decisions



Settled before a decision was issued

Dismissed

Decided in favour of the complainant



Almost **€17 million** awarded to customers;
over **€12 million** repaid by intermediaries

OVERVIEW

This report outlines the cases decided in 2023 by the Banking and Financial Ombudsman (ABF), an out-of-court dispute resolution system for adjudicating customer complaints against banks and other financial intermediaries.

Complaints. Litigation trends in 2023 were affected by changes in case law, especially with regard to repayments of salary- or pension-backed loans and to postal savings certificates. More specifically, of the 15,800 complaints submitted (+2 per cent on 2022), those over salary- or pension-backed loans rose and, as had been the case in the past, account for a significant share of the total. Conversely, disputes over postal savings certificates fell sharply. Complaints over payment services and instruments edged down, although they still made up a large portion of cases.

Decisions. The ABF Panels issued over 15,000 decisions in 2023, with customers' requests fully or partly granted in 48 per cent of cases (versus 34 per cent in 2022; the increase on the previous year largely reflected the outcomes of disputes over salary- or pension-backed loans). In 14 per cent of cases, the parties reached an agreement to settle without a decision being necessary; in the remaining cases, the Panels dismissed the complaints as they considered them to be groundless.

Amounts to be refunded to customers and compliance rate for intermediaries. Complainants were awarded €17.3 million in 2023, of which €12.3 million have already been paid (compared with €19.6 and €17.3 million, respectively, in 2022). The compliance rate for intermediaries remains high at 74 per cent, versus 81 per cent in 2022. Its decline reflects intermediaries' growing non-compliance with the ABF's decisions on salary- or pension-backed loans. On the other hand, non-compliance with ABF decisions on postal savings certificates was lower than in the previous year. Net of these two items, the non-compliance rate was 94 per cent (90 per cent in 2022).

Duration of the proceedings. In 2023, the average duration of ABF proceedings fell further, to 118 days, well below the 180-day regulatory time limit, with 96 per cent of cases being closed by the deadline.

Working with other ADR agencies and the judiciary. The ABF continued to work with the Italian Insurance Supervisory Authority (IVASS) ahead of the roll-out of the insurance ombudsman service. It engaged in further discussions with the securities and financial ombudsman (**Arbitro per le Controversie Finanziarie** - ACF) operating within the Italian Companies and Stock Exchange Commission (Consob) in order to prevent any conflicting interpretations or lack of clarity on their respective responsibilities (ABF-ACF **forum**).

In 2023, a **memorandum of understanding** was signed with the School for the Judiciary (Scuola Superiore della Magistratura) to foster debate among judges, academics, ABF Panel members and Bank of Italy representatives on issues of shared interest relating to customer protection.

Artificial intelligence. The ABF continued to work on machine learning and text mining techniques to be used in proceedings under the soon-to-be-launched AbefTech project, which will help retrieve past decisions on similar cases and identify any conflicting ABF positions, thus improving the service it offers to customers. The Panels will nonetheless continue to decide complaints with full autonomy.

International cooperation. International cooperation projects progressed further through the Fin-Net financial dispute resolution network set up by the European Commission. Top of the agenda at Fin-Net meetings were discussions on the proposed overhaul of Directive EU/2013/11 on alternative dispute resolution for consumer disputes.

* * *

As in previous years, the report is organized into four chapters. The first chapter provides an overview of the ABF and of key events in 2023. The second chapter contains statistical information on complaints and on the decisions and activities of the Panels, as well as the findings of a customer satisfaction survey and an analysis of disputes brought before the civil courts following an ABF decision. The third and fourth chapters outline the main issues addressed by the local Panels and by the Coordinating Panel in 2023 and in the early months of 2024, respectively in terms of subject matter and of formal procedure. A comparison between the ABF's decisions and judicial case law on matters falling within ABF's jurisdiction is also provided. An appendix with statistical data and methodological notes is available online on the **ABF's website**, but only in Italian. The Annual Report on the ABF's activities is published in compliance with the current legal requirements.¹

¹ Credit Committee (CICR) Resolution 275/2008, as amended; Bank of Italy provisions issued on 18 June 2009, as amended; and Legislative Decree 130/2015.

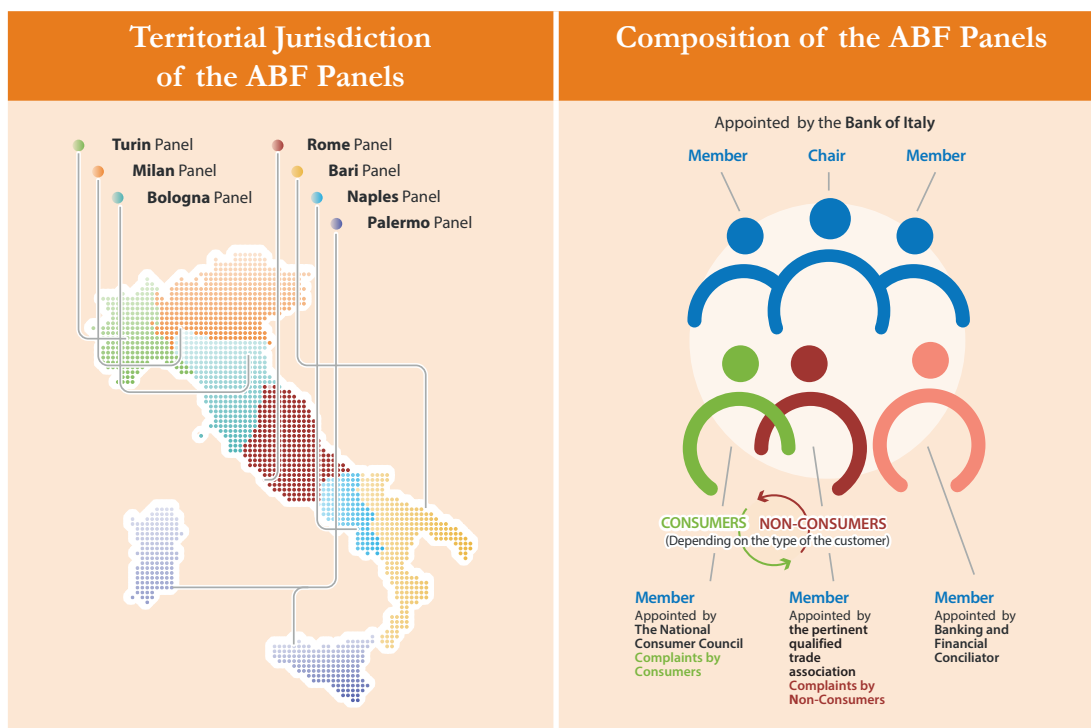
1. THE BANKING AND FINANCIAL OMBUDSMAN



What is the ABF?

The Banking and Financial Ombudsman (ABF):

- is an out-of-court alternative dispute resolution (ADR) system set up to adjudicate customer complaints against banks and other financial intermediaries regarding banking, financial, and payment services and products;
- decides who is right and who is wrong based on the law, exclusively on the grounds of the documents submitted by the parties;
- is autonomous and impartial with respect to the Bank of Italy;¹
- is organized into seven territorial Panels, each one composed of experienced professionals in such a way as to ensure that the interests of the different stakeholders are represented effectively;
- may only intervene once a complaint has been lodged with the bank or the financial intermediary.



¹ Without prejudice to the Ombudsman's autonomy and its distinct roles and responsibilities, the Bank of Italy appoints the members of the Panels, supports them through the Technical Secretariat and drafts the Annual Report.

Alongside the territorial Panels, there is a Coordinating Panel which decides on the most important or controversial issues. An additional forum for discussion is the Panel Conference, which explores issues, both substantive and procedural, of particular significance or interest. The **ABF website** contains brief descriptions of the matters addressed.

In addition to resolving individual disputes, the decisions of the ABF provide valuable information to the public and the Bank of Italy, and serve as an additional source of information for the Bank of Italy in carrying out its supervisory and financial education functions.

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



The benefits of lodging a complaint with the ABF

The ABF:

- essentially provides services free of charge;²
- delivers decisions in a much shorter time than civil justice and has a set limit of 180 days to process a complaint³ (in 2023 the average duration of a procedure was 118 days);
- does not require any legal or other professional assistance;
- enables customers to easily file a complaint via its **online portal** and meets the legal conditions for later submitting the dispute to a civil court, if required.⁴



What can the ABF decide on?

The ABF has the power to decide on disputes concerning banking and financial transactions and services (e.g. current accounts, mortgages, personal loans, postal savings certificates) and disputes on payments made up to six years before filing the complaint.

² In order to file a complaint, customers pay a €20 fee which is then returned in the event of a decision that is even partially in their favour.

³ The duration of a procedure is calculated from the date on which the complaint is received to the date on which the decision is communicated to the parties, excluding the suspension periods provided for by the ABF rules.

⁴ Bringing a complaint before the ABF is treated, in the case of disputes concerning banking and financial contracts, as having initiated a mediation procedure governed by Legislative Decree 28/2010, which is a procedural requirement for submitting the dispute to a court.

Disputes concerning investment services and activities are instead examined by the **Securities and Financial Ombudsman** (Arbitro per le Controversie Finanziarie, ACF), which operates within the Italian Companies and Stock Exchange Commission (Consob).

When you submit a complaint to the ABF, you can demand:

- compensation for up to €200,000;
- to establish rights, obligations and prerogatives with no amount limitations (e.g. the right to receive banking documents or the right to extinguish a mortgage after the repayment of the debt).

For further information on the procedure, please visit the **ABF website** and the **Simple guide to the ABF (only in Italian)**. There is a step-by-step description of how to file a complaint in the downloadable **Guide on how to use the Web Portal (only in Italian)** and in the **How to file a complaint (only in Italian)** video tutorial.



What's new in 2023 and early 2024

The Ombudsman works closely with other ADR bodies operating both nationally and internationally to share good practices, improve the functioning of the system and raise the level of customer protection. It also holds an ongoing dialogue with the judiciary, each within the bounds of their respective roles, on current issues in banking and financial services contracts. There are also frequent interactions with the academic world on the importance of out-of-court dispute resolution systems.

Cooperation between national ADR entities. – The **third** and **fourth** forum bringing together the Chairs and other members of the ABF and ACF took place in May and December 2023, as part of a **memorandum of understanding signed in 2020**⁵. The meetings addressed a number of organizational issues to strengthen their cooperation and mutual flow of information, to raise public awareness of their activities and to make their portals more readily accessible.

There were further joint initiatives with the Insurance Supervisory Authority (IVASS), with staff from IVASS taking part in joint training and working groups in anticipation of the institution of an Insurance Ombudsman.

International collaborations. – Exchanges between the ABF and the other ADR agencies taking part in Fin-Net, the **European financial dispute resolution network**, were promoted. The ADR agencies that form this network preside over the banking, financial and insurance sectors of Member States of the European Union; the ABF joined in 2011. In 2023, there were two meetings largely focusing on the phenomenon of digital

⁵ For further details, see the box 'Some of the points of discussion at the forums between the ABF and the ACF' in Chapter 4.

payment fraud, which has given rise to a significant number of disputes in recent years. The European Commission's proposal for a revision of Directive 2013/11/EU on alternative dispute resolution for consumer disputes and the drafting of a set of rules for the protection of EU citizens and of the EU financial system against money laundering and terrorist financing were also discussed.

Collaboration with the Judiciary. – A **memorandum of understanding** was signed in July 2023 with the School for the Judiciary (Scuola Superiore della Magistratura). The memorandum involves technical working groups and training sessions, in addition to the traditional **annual conference** on banking and financial services contracts, creating opportunities for members of the judiciary, academics and ABF Panel members to debate issues of common interest relating to customer protection.



Artificial intelligence in the ABF system

Work continued on developing a project named AbefTech in which machine learning and text mining techniques⁶ are to be used to support the Ombudsman in its activities. AbefTech is expected to bring benefits in the form of more uniform decisions and enhanced effectiveness in the procedure, thereby improving the quality and timeliness of the service to users, without prejudice to the Panels' autonomy in deciding the dispute.

THE ABEFTECH PROJECT

AbefTech will especially help to:

- assist the technical secretariats in the preliminary phase of handling complaints by making it easier to search previous decisions on similar cases and identify any discrepancies among Panels in their decisions;
- improve the admissibility assessment of complaints, partly automating checks on potential reasons for inadmissibility;
- identify recurring cases for complaint with a view to detecting new trends in litigation.

⁶ Machine learning makes it possible to automate the analysis of texts in order to extract recurring concepts and phenomena, whereas text mining is a technique for extracting information from unstructured text data.



1040 U.S. Individual Income Tax Return

2015

Filing Status

1 ☐ Single

2 ☐ Married filing jointly

3 ☐ Married filing separately

4 ☐ Head of household

5 ☐ Qualifying widow(er)

Exemptions

6 ☐ Yourself

7 ☐ Spouse

8 ☐ Dependent

9 ☐ Other

Income

10 ☐ Wages, salaries, tips, etc.

11 ☐ Dividends, capital gains, etc.

12 ☐ Tax-exempt interest

13 ☐ Social Security benefits

14 ☐ Other income

15 ☐ Other

16 ☐ Other

17 ☐ Other

18 ☐ Other

19 ☐ Other

20 ☐ Other

21 ☐ Other

22 ☐ Other

23 ☐ Other

24 ☐ Other

25 ☐ Other

26 ☐ Other

27 ☐ Other

28 ☐ Other

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97 ☐ Other

98 ☐ Other

99 ☐ Other

100 ☐ Other



2. DATA ON COMPLAINTS AND DECISIONS OF THE PANELS

Overview

In 2023, the ABF received 15,816 complaints, up by 2 per cent from 2022. Disputes over salary- or pension-backed loans turned upwards, while complaints over payment services and instruments declined.¹ Complaints of fraud involving cards, credit transfers and current accounts (hereinafter referred to as fraud) were slightly down on the previous year and accounted for around 30 per cent of total disputes. The volume of litigation relating to postal savings certificates also continued to fall.

The Panels held 291 meetings over the year, during which they ruled on 15,015 complaints, with an average of 52 decisions per meeting. In 48 per cent of cases the complaint was upheld and in 14 per cent of cases the parties reached an agreement to settle without a decision being necessary; 38 per cent of complaints were dismissed. Complainants were awarded €17.3 million, of which €12.3 million have already been paid.

Demand

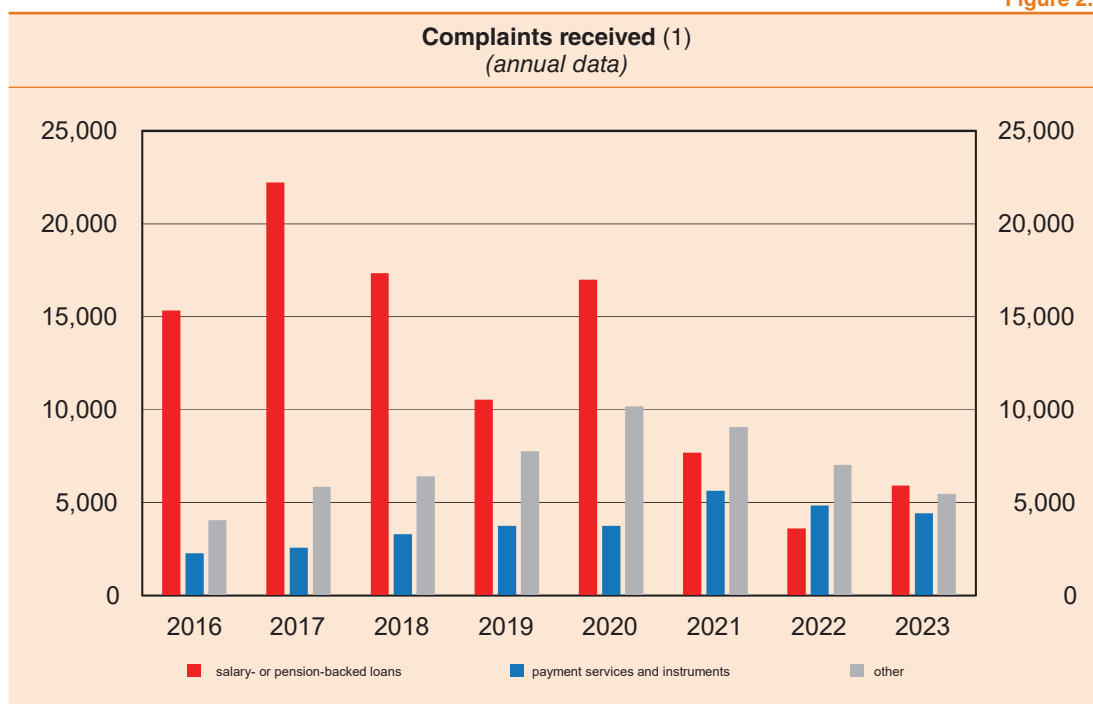
Complaints received

Complaints over salary- or pension-backed loans were affected by changes in the regulatory framework and in case law. After dropping in 2022, largely due to amendments to the Italian Consolidated Law on Banking (TUB) that had limited the eligibility of contracts signed before 25 July 2021 for cost refunds,² they gradually increased in 2023 (+64 per cent), as the regulatory framework became once again more favourable to customers following a ruling by the Constitutional Court (Figure 2.1). With more than 5,900 complaints and a share of 37 per cent of the total volume of litigation, salary- or pension-backed loans were the main subject matter of the complaints received by the ABF last year (Table 2.1; see Figure 2.1 for annual trends).

¹ Starting with this report, this item no longer includes complaints over current accounts, which are classified under 'deposits', while it includes complaints over cheques and promissory notes.

² Date of entry into force of the Law converting Decree Law 73/2021 ('Support-*bis*' Decree; see the section 'Salary- or pension-backed loans' in Chapter 3).

Figure 2.1



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

Table 2.1

Complaints received by matter under dispute (units and per cent)					
MATTER UNDER DISPUTE	2022		2023		% variation 2023-22
	No.	% of total	No.	% of total	% change
Salary- or pension-backed loans	3,606	23	5,909	37	64
Debit cards	2,127	14	1,988	13	-7
Credit cards	1,931	12	1,659	10	-14
Current accounts	1,722	11	1,384	9	-20
Postal savings certificates	1,830	12	1,194	8	-35
Credit reporting agencies	611	4	737	5	21
Credit transfers	582	4	621	4	7
Mortgage loans	406	3	506	3	25
Central Credit Register	439	3	444	3	1
Consumer credit	1,000	6	370	2	-63
Other	1,221	8	1,004	6	-18
Total complaints to the ABF	15,475	100	15,816	100	2
Total complaints excluding salary- and pension-backed loans	11,869	77	9,907	63	-17
Total complaints regarding payment services and instruments	4,839	31	4,431	28	-8
Total complaints regarding fraudulent use	4,808	31	4,532	29	-6

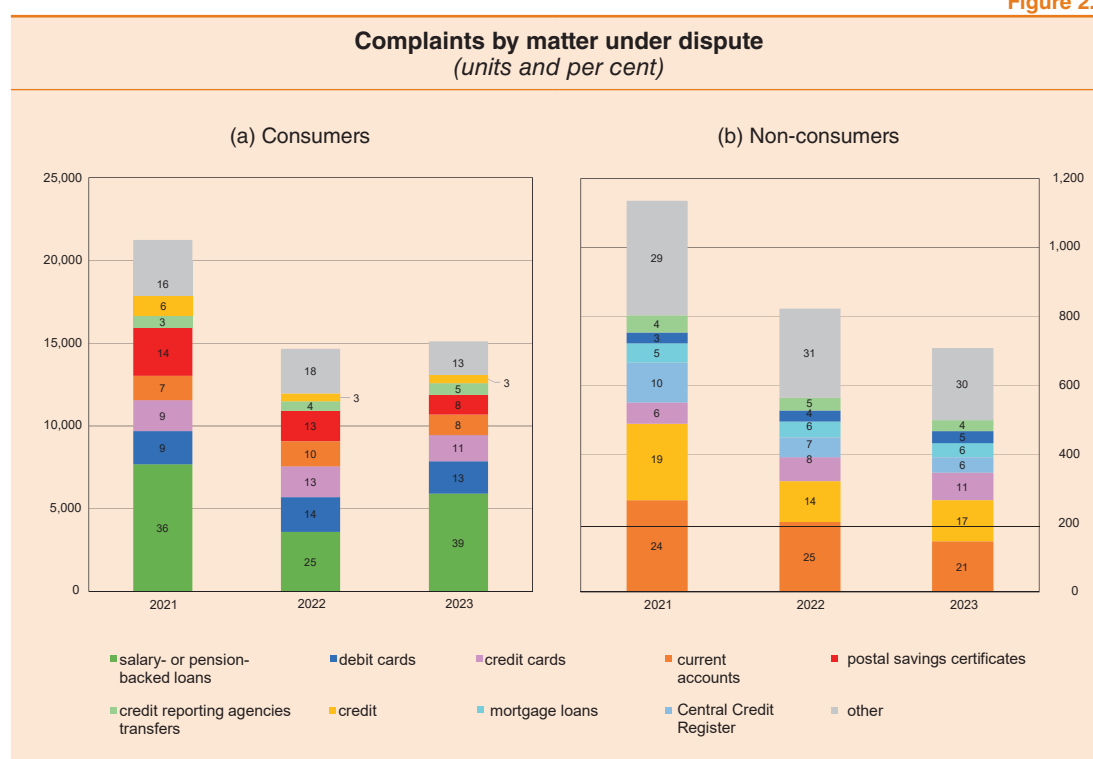
Complaints over postal savings certificates fell by 35 per cent on 2022, as case law has turned against customers and the Coordinating Panel's decisions have embraced this approach (see the section 'Postal savings certificates' in Chapter 3).

Disputes over fraud remain on the ABF's radar despite their decline (-6 per cent), which may reflect a greater commitment on the part of banks and other financial intermediaries to strengthen security measures for electronic payments and heightened awareness of the associated risks on the part of customers. Disputes concerning phishing, spoofing, smishing and vishing (see the section 'Computer fraud' in Chapter 3) still have the lion's share (40 per cent, versus 42 per cent in 2022).³

The trends described above reflect changes in consumer complaints (Figure 2.2.a), which account for 96 per cent of the total volume of litigation.

The different breakdown by subject matter of non-consumer disputes compared with consumer disputes is largely explained by the different range of banking and financial services and instruments used by firms (Figure 2.2.b).

Figure 2.2



Complainants

Consumers. – While the gender composition of the Italian population is broadly balanced both at national and regional level, data on consumer complaints to the ABF show a prevalence of men, with women accounting for just 38 per cent of disputes in 2023, in line with the figure for 2022 (39 per cent).

³ Among the remaining categories, reasons for complaint include online-payment and ATM fraud (14 and 13 per cent, respectively).

There was still an overwhelming share of complaints submitted with professional assistance (72 per cent), in line with 2022.

COMPLAINANT PROFILES

An analysis of the personal data of the consumers who filed a complaint with the ABF in 2023 using its online portal makes it possible to obtain more detailed profiles of complainants, including in terms of educational attainment and occupation.

The average age of complainants was 54, in line with the previous two-year period. The age distribution across the matters under dispute mirrored the age distribution of holders of banking and financial products,¹ with those who filed complaints over salary- or pension-backed loans and postal saving certificates being older than those who submitted complaints regarding credit reporting systems, payment services and instruments, and mortgage loans.

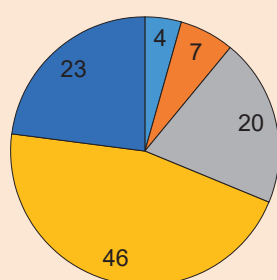
In terms of educational attainment, it was higher among complainants who did not seek professional assistance (Figure A).

The breakdown by subject matter and educational attainment suggests a relationship between these two dimensions; more specifically, there was a higher share of complainants with junior-high-school degrees or lower for complaints over salary- or pension-backed loans and postal saving certificates, while there was a higher percentage of university graduates among those who filed complaints over payment services and instruments.

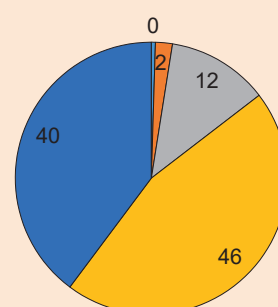
Figure A

Breakdown by educational attainment of the complainants (per cent)

(a) Complaints submitted with professional assistance



(b) Complaints submitted without professional assistance



(1) The response rate to the question on educational attainment is higher for those who submitted a complaint without professional assistance. Specifically, the share of complainants who chose the option 'do not know/do not wish to answer' was 69 per cent for those who submitted a complaint with professional assistance, while it was 2 per cent for those who submitted a complaint without professional assistance.

¹ For more details, see 'Survey on Household Income and Wealth', Banca d'Italia, Statistics Series, 22 July 2022.

Banks and other intermediaries

In 2023, banks still accounted for over half of total complaints to the ABF (58 per cent), with an increase of 8 per cent in absolute terms compared with 2022.

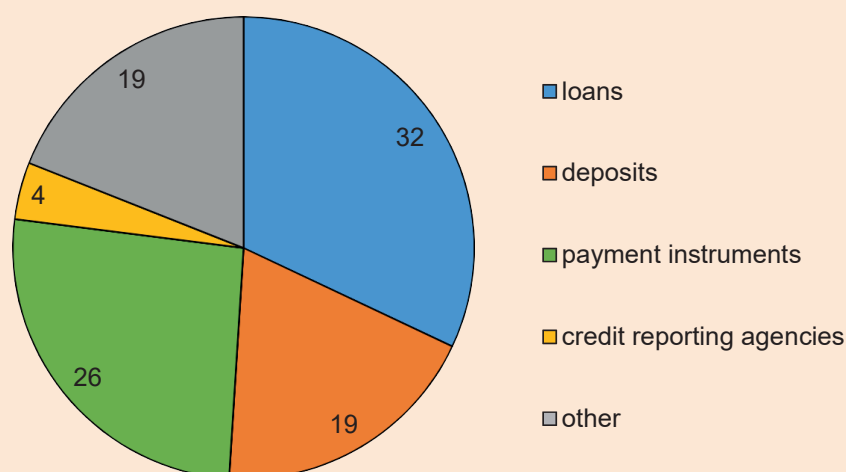
Complaints against financial corporations rose in absolute terms (+25 per cent on the previous year), mainly as a result of a rise in disputes over salary- or pension-backed loans.

COMPLAINTS TO INTERMEDIARIES IN 2023

Based on supervisory reports, the complaints received by intermediaries in 2023 were just over 365,000, up by 15 per cent compared with 2022. The increase in complaints in absolute terms was broad-based but uneven across subject matters, with deposits being affected to a greater extent (35 per cent). The breakdown by subject matter, however, remained essentially unchanged: loans accounted for the largest group (32 per cent, versus 35 per cent in 2022; see the figure).

Figure

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



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

Complainants secured favourable and partially favourable outcomes in 29 and 9 per cent of cases, respectively, while the remaining 62 per cent had negative outcomes (compared with 27, 6 and 67 per cent, respectively, in 2022). The share of complaints rejected was above average for deposits (81 per cent) and in line with the average for the other subject matters (64, 61 and 66 per cent for payment instruments, loans and credit reporting agencies, respectively).

Considering that complaints to intermediaries may concern matters outside the ABF's jurisdiction, those subsequently submitted to the ABF accounted for 4 per cent of complaints received by intermediaries and 8 per cent of those rejected by

them (5 and 8 per cent, respectively, in 2022). Complaints over payment services and instruments accounted for 5 per cent of complaints received and 8 per cent of those rejected by intermediaries.

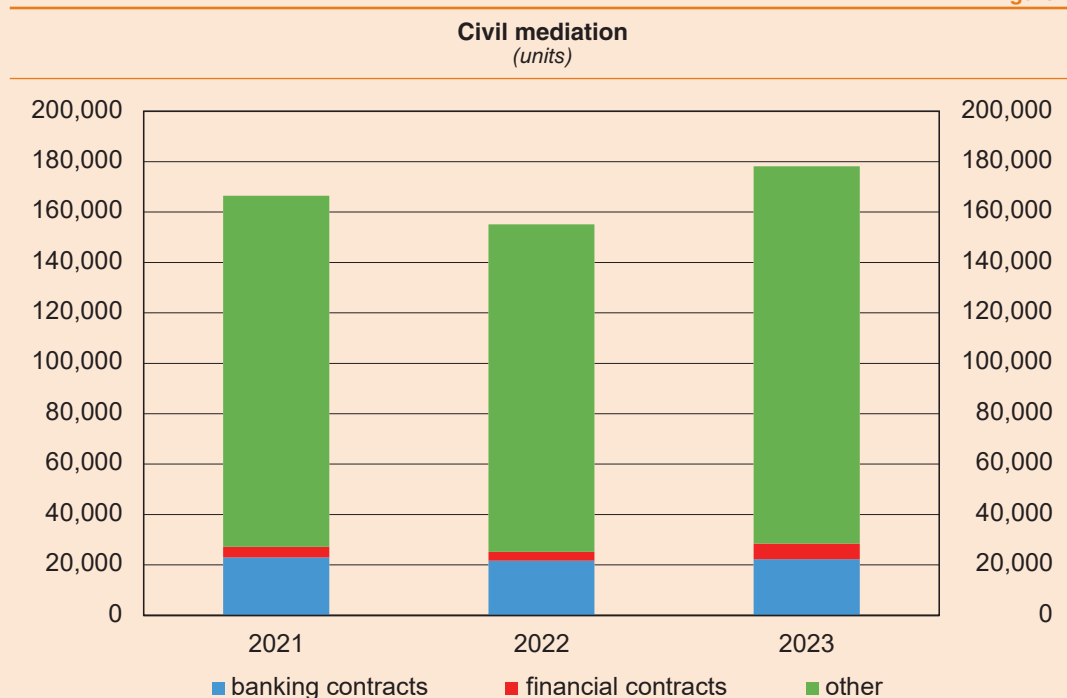
The subject matters of complaints reflect the type of intermediary and its specialty. For financial corporations, complaints about salary- or pension-backed loans prevailed (84 per cent of the total). Almost 90 per cent of disputes against electronic money institutions involved payment cards.

ABF complaints are a useful source of information for supervisory activity, as are complaints sent to the Bank of Italy (through which customers report unfair practices by intermediaries; see ‘**Report on the management of complaints from customers of banks and financial companies**’). An analysis covering the two years 2022-23 shows a positive correlation, at individual intermediary level, between the number of complaints to the ABF, complaints to intermediaries, and complaints to the Bank of Italy.

CIVIL MEDIATION

Civil mediation and the ABF are different in nature and process but they both satisfy the procedural requirement laid down in Legislative Decree 28/2010, in that attempting to solve a dispute through them is a precondition for taking the matter to a civil court. In 2023, mediation proceedings increased by 15 per cent overall; those relating to banking contracts held broadly stable (+3 per cent), while those concerning financial contracts rose by more than 75 per cent (Figure A).

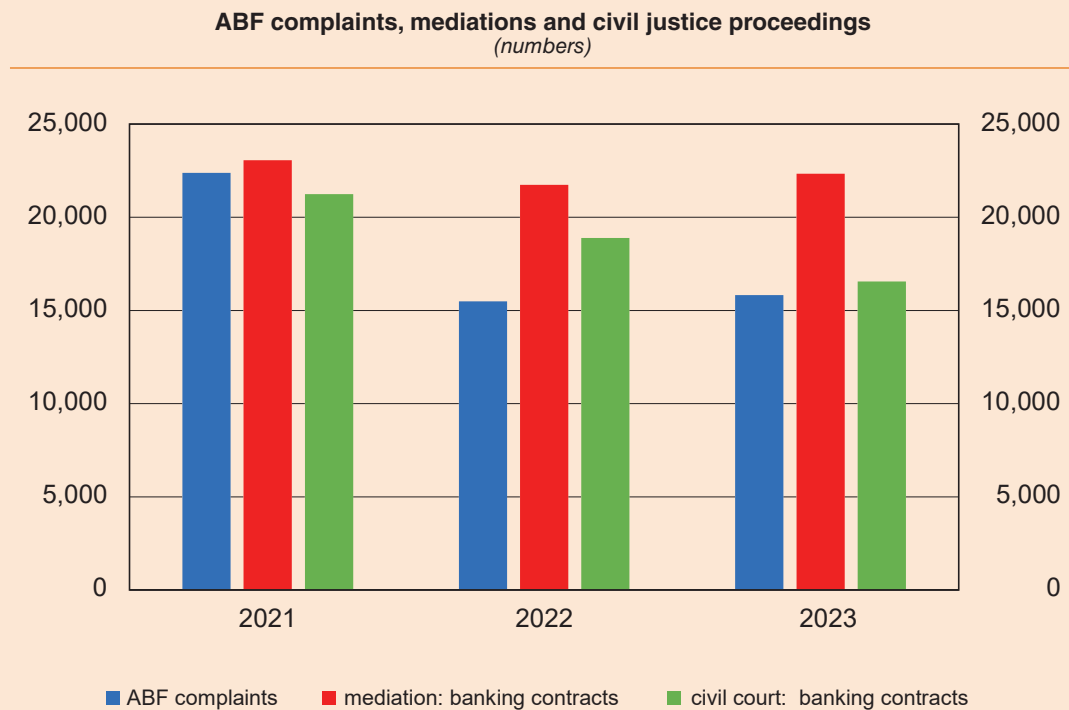
Figure A



Source: Ministry of Justice.

Unlike ABF complaints and new civil mediation proceedings, which were slightly up, civil court lawsuits regarding banking contracts declined by 12 per cent (Figure B).¹

Figure B



Source: Ministry of Justice.

¹ First-instance court proceedings and appeals.

Supply

Outcomes

The Panels issued 15,015 decisions in 2023, compared with 17,378 in 2022. The overall decline reflects the trends in incoming complaints, which fell in the first half of the year and increased in the second half; as a result, part of the cases filed in 2023 were closed in the following year.

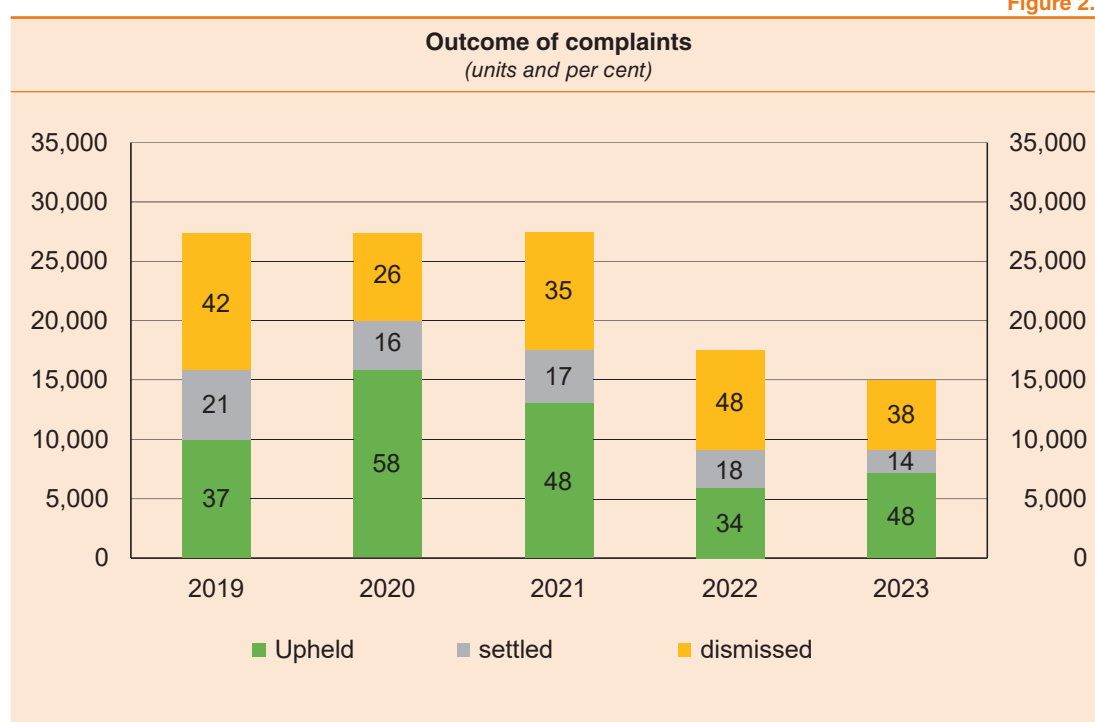
There has been an improvement in the average time for closing a case,⁴ down to 118 days net of suspension periods and 135 days gross of suspension periods (from

⁴ The average time to closing is calculated from the date a complaint is received to the date the parties are notified of its outcome and also refers to cases closed with a settlement or a waiver by the complainant, for which the ABF Panels only notify the parties of the outcome, with no additional details.

120 and 140, respectively, in 2022); 96 per cent of cases were closed within the 180-day period laid down by the law and more than 99 per cent within 270 days.⁵

In 48 per cent of cases, the outcome was in favour of customers, with their requests being fully or partially granted, while 14 per cent of cases were settled between the parties without a decision being necessary. The significant increase in the share of complaints upheld (it was 34 per cent in 2022) is largely attributable to litigation over salary- or pension-backed loans (see the section ‘Salary- or pension-backed loans’ in Chapter 3). The remaining 38 per cent of cases were dismissed as the Panels considered customers’ requests to be groundless, unproven or inadmissible owing to failure to comply with the rules of procedure (Figure 2.7; see Chapter 4).

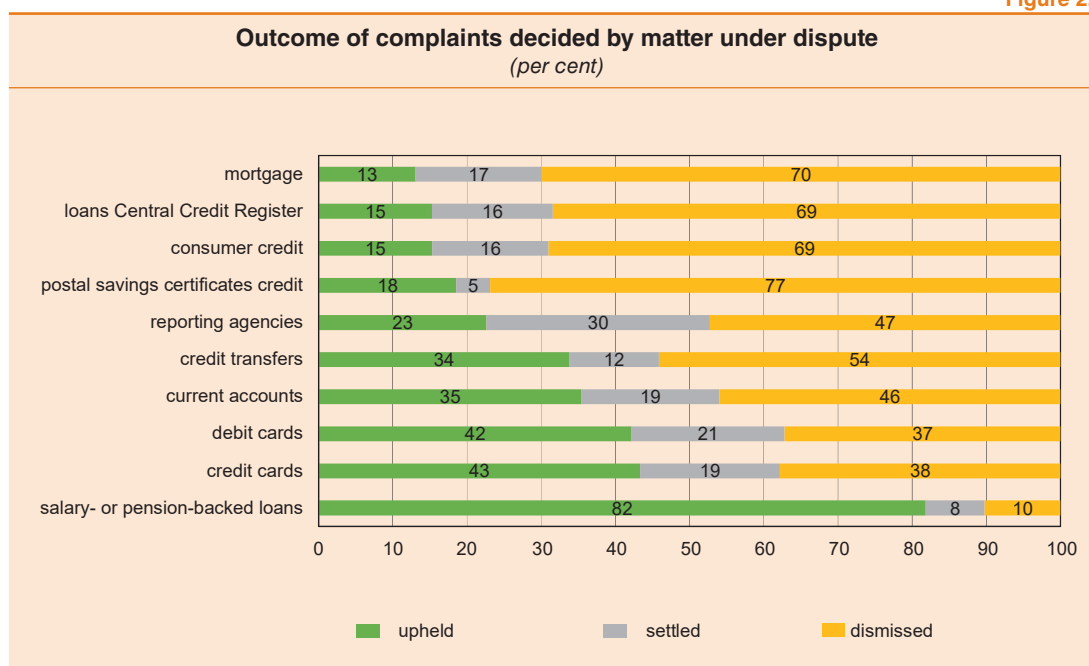
Figure 2.7



By subject matter, the percentage of complaints upheld or settled between the parties was lower, and declining, for cases involving postal savings certificates (23 per cent; 31 per cent in 2022) and mortgage loans (30 per cent; 34 per cent in 2022), while it was very high (90 per cent) for disputes over salary- or pension-backed loans (51 per cent in 2022; Figure 2.8). More specifically, the outcomes of disputes over postal savings certificates were influenced by case law, with a growing number of rulings on Q/P certificate yields being in favour of intermediaries (see the section ‘Postal savings certificates’ in Chapter 3). By contrast, the sharp increase in outcomes that are essentially in favour of complainants in cases of salary- or pension-backed loans reflected the Constitutional Court’s end-2022 ruling (see the section ‘Salary- or pension-backed loans’ in Chapter 3).

⁵ The 180-day deadline may be extended by a further 90 days if the dispute is particularly complex.

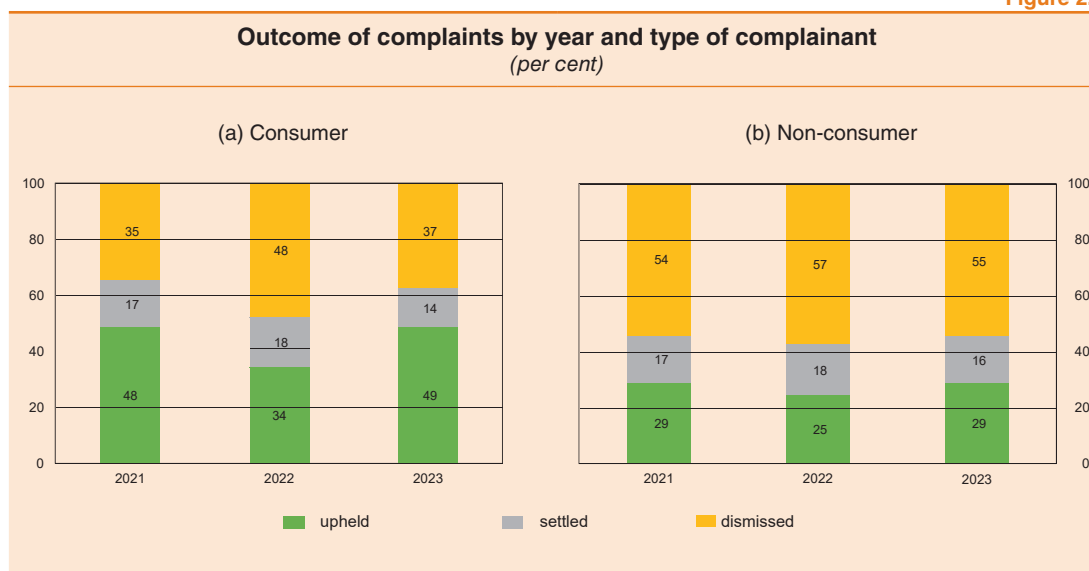
Figure 2.8



The Panels upheld complaints in 42 per cent of fraud disputes; 18 per cent of cases were settled between the parties, while 40 per cent of complaints were rejected.

The share of decisions essentially in favour of customers (i.e. complaints upheld or settled) was still higher for consumers than for non-consumers (Figures 2.9.a and 2.9.b).⁶

Figure 2.9

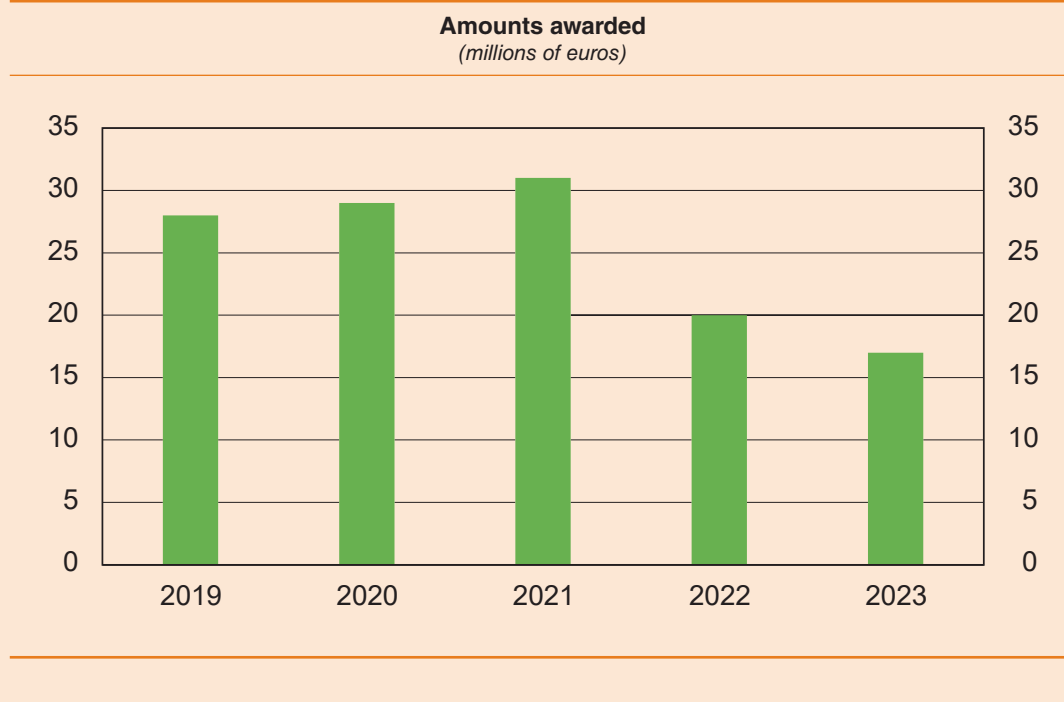


⁶ The difference in the percentage of favourable outcomes for consumers and non-consumers reflects the high share of complaints over salary- or pension-backed loans (33 per cent), which are filed by consumers alone and have significantly higher-than-average upholding rates.

AMOUNTS AWARDED TO COMPLAINANTS IN 2023

In 2023, intermediaries were asked to repay complainants €17.3 million in compliance with the ABF's decisions (see the figure). The amounts actually returned to customers fell to €12.3 million, from €17.3 million in 2022.

Figure



The overall rate for intermediaries' compliance with the Panels' decisions was 74 per cent in 2023 (81 per cent in 2022).⁷ The fall is attributable to disputes over salary- or pension-backed loans, as a number of intermediaries continued not to share the ABF's position despite the Constitutional Court's ruling. By contrast, non-compliance with the Panels' decisions on postal savings certificates was lower than in the previous year, partly due to a smaller number of cases. In these two areas, intermediaries complied with 60 per cent of the Panels' decisions (70 per cent in 2022; see the sections 'Salary- or pension-backed loans' and 'Postal savings certificates' in Chapter 3). Excluding non-compliance with decisions on these subject matters, the compliance rate was 94 per cent,⁸ up from last year (90 per cent).

Looking at complaints for other subject matters, though small in number, it is worth highlighting non-compliance with decisions regarding revolving credit card loans⁹ and unilateral changes to contractual terms and conditions for current accounts.

⁷ Data as of 1 April 2024. Percentages may change following updates after the reference date.

⁸ Information on non-compliant intermediaries is available on the ABF's website in the section '**Non-compliant intermediaries**' (only in Italian).

⁹ Revolving credit is a highly flexible form of financing with generally higher interest rates than other types of loan (for a definition of revolving credit, see the Bank of Italy's financial education portal '**L'Economia per tutti**').

Non-compliance in the area of payment instrument fraud, though on the rise, was still limited. More specifically, there were several cases of non-compliance with decisions on spoofing complaints (see the section ‘Computer fraud’ in Chapter 3).

THE ABF AND THE CIVIL COURTS

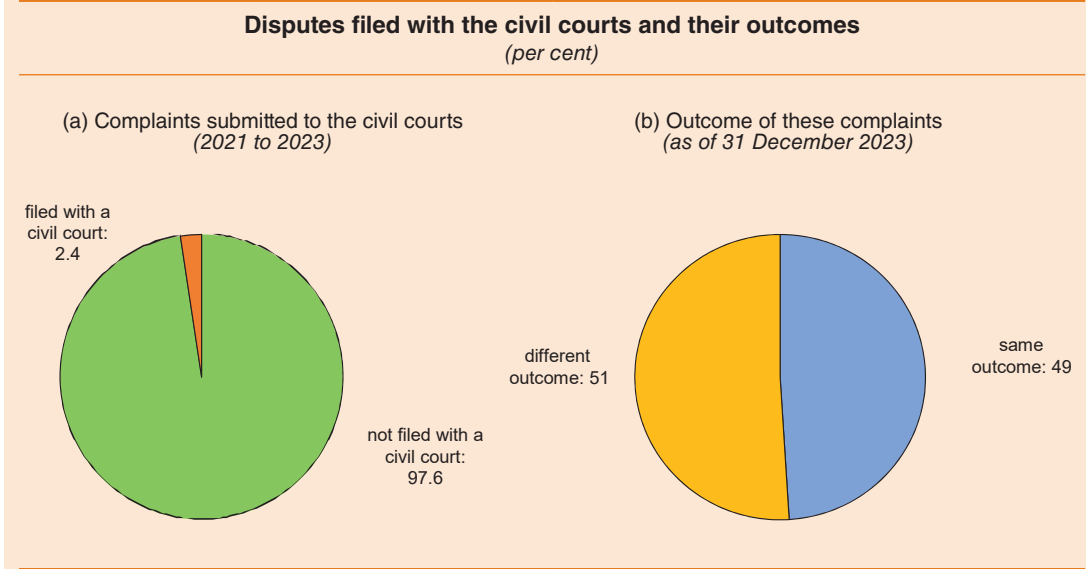
In the first months of 2024, a survey was conducted with a sample of intermediaries¹ to gather information on the cases that either the complainants or the intermediaries themselves brought before the civil courts following an ABF decision over the three years 2021-23.

The survey found that only 2.4 per cent of the roughly 60,000 complaints decided by the ABF during that period were subsequently brought before the civil courts. In 98 per cent of cases, civil court proceedings were initiated by complainants (93 per cent in the survey for 2020-22).

Salary- or pension-backed loans were the matter under dispute in 75 per cent of civil court cases (82 per cent in the previous survey), while postal savings certificates and payment services and instruments accounted for 17 and 2 per cent, respectively (versus 6 per cent in the 2020-22 survey for both categories).

By the end of 2023, 29 per cent of the suits filed with the civil courts after the complaint had been submitted to the ABF were closed. The civil courts upheld 49 per cent of the ABF’s rulings, or approximately 200 decisions (see the figure), a lower share than in 2022 (73 per cent).

Figure



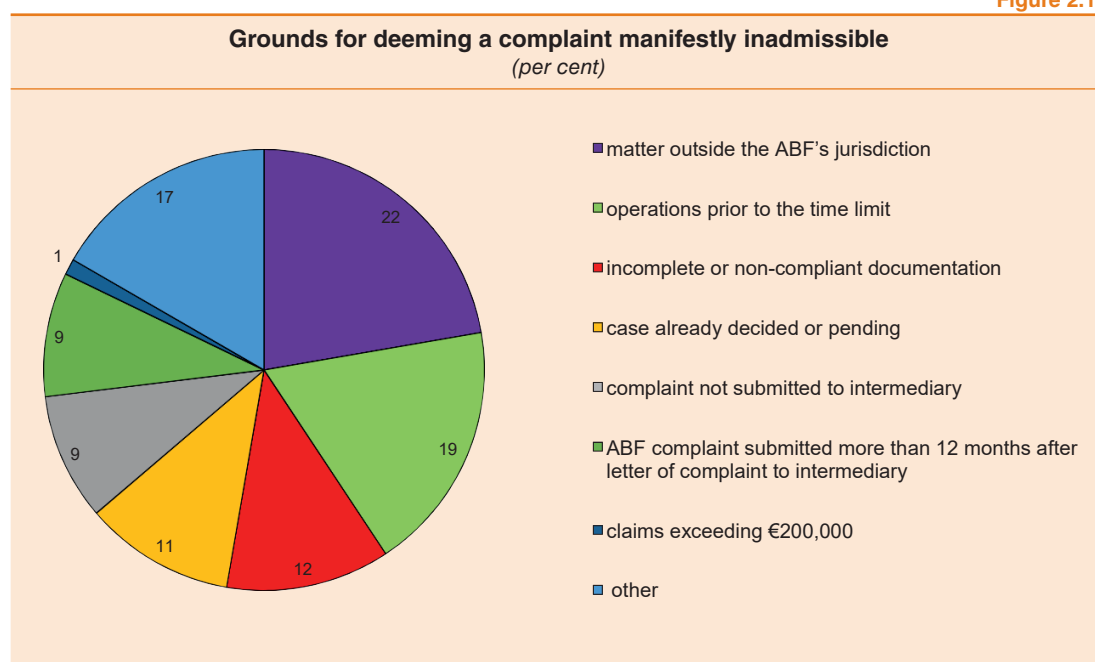
¹ The sample included 27 financial intermediaries selected from among those that received the highest number of complaints; they accounted for about 76 per cent of the complaints decided by the ABF in the three years 2021-23. The survey covered letters of complaint to financial intermediaries, ABF complaints, mediation and civil court cases.

The ABF's decisions were overturned mostly in disputes over postal savings certificates and salary- or pension-backed loans. With regard to the former, almost all of the cases where the ABF's decisions were overturned dealt with the issue of Q/P certificate yields, on which the ABF had taken a position that was in contrast with case law in 2022. In 2023, the Coordinating Panel aligned with case law and followed the Court of Cassation's guidance on the subject (see the section 'Postal savings certificates' in Chapter 3), suggesting that the overturn rate may drop going forward. As regards salary- or pension-backed loans, part of the discrepancies between ABF and civil court decisions were due to: (a) the fact that the civil court ruled on the matter examined by the ABF against the backdrop of a different regulatory framework, owing both to the legislative amendment introduced in 2021 and the subsequent ruling by the Constitutional Court (see the section 'Salary- or pension-backed loans' in Chapter 3); (b) a different interpretation of the applicable legal principles, especially in terms of how to calculate the amounts to be refunded to customers.²

² In these cases, both the ABF and the civil court had upheld the complaint and ordered the reimbursement of all upfront fees, though on a different legal basis. In fact, the court usually applies the linear proportionality criterion, while the ABF uses this criterion for recurring fees and the interest curve criterion for upfront fees (for the definitions of upfront and recurring fees, see the section 'Salary- or pension-backed loans' in Chapter 3).

In 2023, 516 complaints were declared manifestly inadmissible by the Panel Chairs, around 3 per cent of the total, in line with 2022. The main reason is still that the disputed matter does not fall under the jurisdiction of the Panels (22 per cent; see Figure 2.10 and the section 'Time limits, subject matter limits and limits on amounts claimable' in Chapter 4).

Figure 2.10



CUSTOMER SATISFACTION SURVEYS

In the early months of 2024, customers who submitted a complaint to the ABF, and whose case was closed in 2023, were asked to participate in a customer satisfaction survey in order to identify any areas for improvement. Around 4,500 complainants were contacted at the email address they provided to the ABF when filing the complaint. Of these, almost 1,000 responded to the questionnaire. The response rate, just above 20 per cent, was in line with the figure for 2023. The sample of respondents was then rebalanced to ensure that it was as representative as possible of the actual population of ABF complainants.

The main reasons for submitting a complaint to the ABF were: (a) a high chance that the intermediary would comply with the ABF's decision in the event of a favourable outcome for the complainant; and (b) seeking an impartial ruling from a qualified ombudsman.

95 per cent of respondents said they had read the Panel's decision and 86 per cent of them felt that it was written clearly; the latter percentage was lower (73 per cent) for those whose complaint was dismissed. In addition, 68 per cent of those who had read the decision understood the legal reasoning behind it (versus 54 per cent in the previous survey).

Customer satisfaction was high, in line with the previous surveys. More specifically, a very high share of respondents said that it was easy to find information on how to file a complaint and that the process was user-friendly and explained clearly.

One section of the questionnaire focused on how customers used banking and financial services. According to the findings, about 93 per cent of respondents accessed their accounts using home banking services at least once a month and 79 per cent made online credit transfers; 87 per cent used payment cards at least once a week.

Another section focused on the complainants' financial and digital skills. In both areas, a higher share of respondents rated their skills as being above-average rather than below-average, particularly in terms of digital skills for online payments.

The survey showed a higher level of financial literacy compared with the average for the Italian population as found in the OECD survey:¹ More specifically, 70 and 44 per cent of respondents gave the right answers to the questions on simple and compound interest, respectively (versus 53 and 28 per cent in the OECD survey). There was also a positive correlation between the respondents' assessed and self-assessed financial skills.

¹ The questions were taken from the OECD/INFE 2023 International Survey of Adult Financial Literacy conducted by the OECD in cooperation with 39 countries. The Bank of Italy takes part in the initiative with the Survey on the Financial Literacy of Italian Adults (IACOFI), conducted every three years. For more details, see the Bank of Italy's website: [Financial literacy of Italian adults](#).



3. THE DECISIONS OF THE PANELS: MAIN ISSUES COVERED IN 2023



Current accounts

In the event of a delay in transferring payment services from one current account to another under portability rules, customers are entitled to monetary compensation. The Coordinating Panel ruled again on the portability of payment services¹ in two similar cases. More specifically, those customers had applied for the portability of payment services from their current account and, due to delays on the part of the bank with which the account was held, had claimed damages for infringement of the rules on payment accounts.² The ABF considered first that, from a legal standpoint, a current account can be classified as a payment account, as it allows customers to make the transactions typically associated with this form of account, such as making/receiving payments to/from third parties and making credit transfers. The Coordinating Panel then noted that, according to the applicable legislation, where payment services are not transferred within 12 business days of the application, the non-complying intermediary is obliged to pay customers an amount of money set by law, without prejudice to the right to claim further damages.³

Banks are not obliged to open current accounts for their customers but are required to give reasons for their refusal. According to the ABF's long-standing approach, except in the case of a retail account with basic features, a bank may legitimately refuse to open a current account as it has discretion to determine whether it is a financially sound and viable transaction. However, the ABF made it clear that banks must explain the reasons behind their refusal, in accordance with the principles of good faith and fairness in customer relationships. In the case under review, the Panel upheld the complaint filed by a company that had been refused a bank account without any explanation, not even in broad terms.⁴

Banks may withdraw from a current account contract within two months. The ABF reiterated that banks and other financial intermediaries have the right to withdraw from an open-ended current account contract without cause, provided they

¹ For past decisions, see Coordinating Panel, Decision **26297/2019**.

² For more details, see Article 126-*decies* of the Italian Consolidated Law on Banking (TUB), which makes it clear that a payment account is an account held in the name of one or more customers, used to deposit, transfer or withdraw funds, regardless of any underlying obligations between the payer and the payee.

³ Coordinating Panel, Decisions **25/2024** and **26/2024**.

⁴ Decision **5928/2023**.

comply with the notice period set by law.⁵ In the case at hand, the Panel upheld the complaint as the bank had withdrawn with approximately one month's notice; it also awarded the customer compensation for damages.⁶



The right to receive a copy of bank documents

Banks are required to provide current account holders with a copy of their account statements only for the ten years prior to the application. In one case, the complainant asked the bank for a copy of all the account statements for two accounts (a current account and a securities deposit account) for the period 1995-2001, i.e. including statements dating back more than a decade. The Panel first referenced the ABF's established approach,⁷ according to which the right of a bank account holder to obtain a copy of their account statements is limited to the ten years prior to the application. Given that the customer had requested copies of the account statements dating back before the ten-year limit and that the bank had already provided all the documents for the statutory ten-year period, the ABF dismissed the complaint.⁸

The right to obtain a copy of the contract signed with the bank is subject to the ordinary ten-year limitation period, which starts running when the contract is terminated. In the same case, the complainant also asked the bank to provide a copy of the current account and securities deposit contract. The ABF noted that the bank's obligation to provide and keep contractual documents remains binding for ten years after the account is closed.⁹ The ABF upheld the complaint, as both accounts were closed in 2018, i.e. less than ten years before the customer's request.¹⁰



Mortgages and other loans

Banks are not obliged to grant mortgage loans to their customers, though they must always act in accordance with the principles of good faith and fairness. According to the ABF's established position, the decision to grant a mortgage loan rests with the bank, which may legitimately reject the application based on business considerations, giving reasons within a reasonable period of time. In the case under

⁵ Article 126-*septies* of the TUB states that the payment service user is always entitled to withdraw from the contract without penalty and free of charge; the bank may withdraw from an open-ended contract if this is provided for in the contract itself, with at least two months' notice.

⁶ Decision [6120/2023](#).

⁷ Coordinating Panel, Decision [6887/2022](#).

⁸ Decision [10556/2023](#).

⁹ Coordinating Panel, Decision [15404/2021](#).

¹⁰ Decision [10556/2023](#).

review, the Panel argued that the bank's conduct was rightful, as the decision not to grant the loan had been notified within three weeks with specific reasons.¹¹

The contractual form advertising the interest rate applied in the event of subrogation is merely a proposal and is not binding on the intermediary, which is free to grant subrogation or not, in accordance with the principles of good faith. In one case, the customer declared that they had signed and sent to the bank the contractual form advertising the option of subrogating the mortgage loan at a favourable rate, and complained about the bank's delay in conducting the preliminary assessment process. Moreover, the bank subsequently decided to apply a higher interest rate to the mortgage loan. The complainant therefore withdrew their application for subrogation as the financial terms were no longer favourable, and claimed damages. The Panel pointed out that the form signed by the customer was merely a non-binding contractual proposal and that the bank was free to assess whether or not to enter into an agreement. The ABF, however, considered that the intermediary's conduct had not been guided by the principle of good faith, as more than one month had gone by between the decision to grant subrogation and the disclosure of the terms to the customer. On the other hand, it rejected the claim for compensation as no proof of damage had been provided.¹²



Consumer credit

In the event of a serious breach of contract by the supplier of goods purchased under a consumer credit scheme, customers have the right to terminate the consumer credit agreement: the lender will have to repay the instalments already paid and any other charges, while the borrower will no longer have to pay anything.

In one case, the complainant filed for termination of a consumer credit agreement entered into with a bank for the purpose of buying furniture from a partner shop, which had failed to deliver the goods despite several reminders. The ABF referred to the Coordinating Panel's established position¹³ and noted that customers are entitled to terminate loan agreements in the event of a serious breach of contract by the suppliers of goods purchased under consumer credit schemes and after sending them a breach notice. In the case at hand, the consumer credit agreement stated clearly that the loan was tied to the purchase of the goods and the customer had attached proof of sending a formal breach notice to the supplier. The Panel also found evidence of a serious breach by the seller and upheld the complaint, ruling that the loan agreement should be terminated and the complainant should be granted a refund of all instalments paid¹⁴.

¹¹ Decision **4938/2023**.

¹² Decision **5081/2023**.

¹³ Coordinating Panel, Decision **12645/2021**.

¹⁴ Decision **7334/2023**.

Credit insurance on a personal loan is considered mandatory in certain circumstances and should therefore be included when calculating the annual percentage rate (APR); however, the bank may provide evidence to the contrary and demonstrate its optional nature in relation to an individual loan. The ABF dealt once again with an intermediary's failure to include the insurance premium cost in the APR on a personal loan, where, according to the complainant, credit insurance had been imposed by the intermediary, despite being described as optional in the loan agreement. The Panel confirmed that the insurance policy must be considered as essentially imposed on the client, and therefore mandatory, when all of the following conditions are met: (a) it serves as a loan protection insurance; (b) the policy and the loan are signed at the same time and the two agreements are of equal duration; (c) the insurance proceeds only cover the outstanding balance of the debt. The intermediary can provide evidence to the contrary by demonstrating the optionality of insurance coverage.¹⁵ In the case at hand, the intermediary proved that credit insurance was optional as it had offered similar contractual conditions, but with no credit insurance, to other customers with the same creditworthiness. The Panel therefore dismissed the complaint.¹⁶



Salary- or pension-backed loans

REGULATORY FRAMEWORK

Salary- or pension-backed loans are a form of consumer credit that can have a maximum duration of 120 months. The borrower undertakes to repay the loan by voluntarily transferring up to one-fifth of their net monthly salary or pension to the lender. The loan must be covered by life and unemployment insurance.

Salary- or pension-backed loans can be repaid early at any time, in whole or in part. In such cases, borrowers are entitled to a reimbursement of the fees paid upon taking out the loan, based on the remaining life of the contract.

In the regulatory framework that emerged following the European Court of Justice's judgement of 11 September 2019 in the Lexitor case,¹ the early repayment of consumer loans entitles borrowers to a refund of all fees excluding taxes, regardless of the date on which the contract was signed.

The subject matter – governed by Article 125-*sexies* of the Italian Consolidated Law on Banking (TUB) – was first addressed by Decree Law 73/2021 ('Support-*bis*' Decree)

¹ Court of Justice of the European Union, Judgment of 11 September 2019, Lexitor Sp. z o.o. versus Spółdzielcza Kasa Oszczędnościowo - Kredytowa im. Franciszka Stefczyka and Others (C-383/18).

¹⁵ The Coordinating Panel had previously ruled along the same lines; see decisions 10617/2017, 10620/2017, 10621/2017 and 2397/2018.

¹⁶ Decision 294/2023.

and then by the Italian Constitutional Court which, in its ruling of December 2022,² declared that the transitional rules for contracts signed before 25 July 2021 were partly unconstitutional. Finally, Decree Law 104/2023 ('Assets' Decree) established that, for consumer credit contracts signed before 25 July 2021, borrowers are entitled to a refund of all fees excluding taxes.

For more information, see the webpage '**Salary- or pension-backed loans: what to watch out for**' on the Bank's financial education portal 'L'Economia per tutti' (only in Italian).

² Italian Constitutional Court, Ruling No. 263 of 22 December 2022.

Customers who pay off salary- or pension-backed loans ahead of schedule are entitled to a reduction in the total cost of credit, including both recurring and upfront fees. A customer, who had paid off early a salary-backed loan taken out in 2016, requested a refund of all the upfront and recurring charges that had been paid.¹⁷ The Panel referred to Ruling No. 263/2022 of the Italian Constitutional Court and, in line with what had previously been established by the Coordinating Panel,¹⁸ recognized consumers' right to a pro-rata refund of all costs, including upfront fees, with the sole exception of stamp duty. The amount to be refunded was determined by applying the linear proportionality criterion¹⁹ for the purpose of calculating recurring fees and the interest curve criterion²⁰ for upfront fees.²¹

In another complaint, the intermediary had referred in its defence to the CJEU's conclusions in a judgment following the Lexitor case, concerning the early termination of a retail mortgage loan agreement.²² The ABF ruled out the relevance of that judgment with regard to the early termination of consumer credit agreements, since it concerned the interpretation of Directive (EU)/2014/17 (Mortgage Credit Directive, MCD), which does not apply to consumer credit. It therefore confirmed the customer's right to a pro-rata refund of all costs.²³

¹⁷ Upfront fees cover activities which were closed upon signing of the loan agreement (e.g. preliminary assessment fees); recurring fees cover services provided over the course of the contractual relationship (e.g. instalment collection fees).

¹⁸ Coordinating Panel, Decision **26525/2019**. With this decision, the ABF had recognized the customer's right to a reduction in the total cost of the loan, with no distinction between recurring and upfront fees, by applying the principles of the Lexitor judgment to cases of early repayment of salary- or pension-backed loans.

¹⁹ According to the linear proportionality criterion, the total amount of each cost item is divided by the total number of loan instalments and then multiplied by the number of instalments remaining until full repayment of the loan.

²⁰ The interest curve criterion follows the model adopted to construct the amortization schedule for calculating interest, which decreases from instalment to instalment.

²¹ Decision **10000/2023**.

²² Court of Justice of the European Union, Judgment of 9 February 2023, UniCredit Bank Austria AG versus Verein für Konsumenteninformation (**C-555/21**); on that occasion, the CJEU stated that the consumer's right is limited to a reduction in interest payments and in the 'costs for the remaining duration of the contract'.

²³ Decision **7758/2023**.

The contractual criterion (as opposed to the linear proportionality criterion) is applicable for the purpose of refunding the insurance premium, as long as the customer is informed in advance. Following the early repayment of a salary-backed loan taken out in 2011, a customer applied for a refund of the unaccrued portion of insurance costs and fees. The intermediary stated, among other things, that it had already reimbursed the insurance premium in accordance with the formula set out in the general terms and conditions delivered to the customer when signing the contract. In order to apply the conditions agreed by the parties regarding early repayment, the Panels consider it necessary to ascertain whether the customer has been made fully aware in advance of the criterion to be used as an alternative to the linear proportionality criterion. The ABF noted that the general terms and conditions produced during the hearings had a different file number than the documents that the customer had received when the loan agreement was signed. Therefore, with no evidence that the customer had been fully informed of the alternative calculation criterion in good time, the ABF ordered the intermediary to refund the unused insurance premium by applying the linear proportionality criterion.²⁴



Unilateral amendments to a contract (ius variandi)

Any unilateral amendment to a contractual condition introducing a new fee for a service that was initially free of charge, with no additional services, is unlawful as it amounts to including a new clause. In a case considered by the ABF, a bank customer opened a fee-free online-only current account, with no in-branch services. The offer included unlimited transactions but only online, unlike other deals, which made in-branch services available for a fee. The bank then sent the customer two proposals for unilateral amendments, bringing the annual fee from zero to €12 and subsequently to €24, without adding in-branch services. The Coordinating Panel, which was asked to rule whether the amendments were lawful, assessed the actual set of interests that the parties had intended to regulate in the contract. It considered that, if a cost is zero because the relevant service is not provided, unilaterally changing the fee amounts to inserting a new clause into the original contract, and thus to an unlawful practice.²⁵ Based on this reasoning, the Coordinating Panel declared the fee change null and void and ordered the bank to refund the amounts paid by the customer in the meantime.²⁶

Unilateral changes may be notified electronically, if agreed with the customer. In one case, a corporate customer complained, among other things, about the unlawful application of higher borrowing rates than initially agreed for a current account overdraft; the complainant argued that those changes had not been properly notified by the bank. The latter proved that it had duly sent proposals for unilateral changes to interest rates electronically, as explicitly agreed with the customer. The ABF dismissed the complaint, noting that the intermediary had proven it had obtained the

²⁴ Decision **6922/2023**.

²⁵ Coordinating Panel, Decision **26498/2018**.

²⁶ Coordinating Panel, Decision **6781/2023**.

customer's consent to use digital channels and that this complied with Article 118 of the TUB, which does not contain any specific requirements regarding the way in which these notifications should be sent.²⁷

The rules governing *ius variandi* do not provide for automatic adjustments of interest rates to monetary policy decisions. A customer asked a bank to raise the lending rate on their current account based on the European Central Bank's key interest rate hikes, pursuant to Article 118(4) of the TUB.²⁸ The ABF clarified that the purpose of the provision referred to by the complainant is to protect customers against any unfavourable and unwarranted changes to contractual conditions. The decision to raise interest rates as a result of monetary policy decisions remains at the discretion of the bank. In the case at hand, the Panel dismissed the complaint, seeing no unilateral unfavourable change to the lending rate that would justify a request for a simultaneous change to the borrowing rate.²⁹



The floor clause

The floor clause is not unfair if it is drafted in clear, comprehensible language. A customer – in this case not a consumer but a micro-enterprise – who had entered into a floating-rate loan agreement applied for the floor clause to be declared null and void, considering that it was unfair and therefore subject to the customer's specific approval. In addition, the customer requested a refund of the higher interest paid under that clause. The Panel dismissed the complaint, noting that a floor clause cannot be regarded as unfair per se if it is drafted in plain, transparent language and it is clearly visible in the contract, as it was proved to be the case here.³⁰

Omitting to repeat the floor clause in the contract summary does not make that clause unlawful. In another case, the complainant claimed that the floor clause was null and void because, although it was visible and clearly stated in the contract, it was not stated in the contract summary. The Panel considered that omitting to repeat the clause in the contract summary was not enough to make it unlawful, as the document contained all the contractual conditions and accurately specified the benchmark rate (Euribor), the spread and the rate applied. In addition, the document explicitly stated the floor rate to be applied initially, as Euribor was negative on the loan start date. The Panel therefore rejected the complaint, also based on the principle that the contract and the contract summary must be construed as a whole for the purpose of identifying the parties' common intention.³¹

²⁷ Decision **2160/2023**.

²⁸ Article 118 of the TUB provides that: 'any changes to interest rates in anticipation or as a result of monetary policy decisions shall be made both to borrowing and lending rates at the same time, in ways that are not detrimental to customers.'

²⁹ Decision **104/2023**.

³⁰ Decision **5018/2023**.

³¹ Decision **5288/2023**.



Electronic payments

A bank making a credit transfer and the bank receiving it must rely exclusively on the IBAN as entered by the payer, not on any other information contained in the payment order. A customer claimed they had entered an incorrect IBAN when making a credit transfer and asked the ABF to sanction the beneficiary's bank because, in crediting the amount, it did not consider certain suspicious circumstances, such as the inconsistency between the name of the beneficiary and that of the account holder, or the VAT reference in the payment description whereas the account holder was not VAT-registered. The ABF rejected the complaint, citing legislation according to which a credit transfer is deemed to have been properly executed based on the IBAN shown in the order. The ABF also specified that this rule applies to both the payer's and the beneficiary's payment service providers. Any further details in the order, such as the name of the beneficiary and the payment description, are not relevant for the purposes of assessing the intermediary's conduct.³²



Computer fraud

In the event of SMS spoofing, the user is guilty of gross negligence only if there are serious indications of unreliability or anomalies in the messages sent by fraudsters. A customer reported receiving a text message, apparently from their bank, informing them that their ATM card had been hacked and prompting them to click on a link and enter their personal data. They were subsequently contacted by someone who self-identified as a bank employee and asked for the user's confidential credentials to stop the alleged fraud. The customer provided their credentials. Only later did they realize that someone had made a transaction to their detriment, which they disputed, and requested that the bank credit the relevant amount back to their account. The Panel first remarked that a customer disputing a formally authenticated transaction shall be responsible for it only if they acted fraudulently, or failed to keep their payment instrument and credentials safe, whether wilfully or out of gross negligence. That said, the ABF noted that the customer had been the victim of a deceptive fraud, where fraudsters sent a misleading message by altering the sender's name to make it appear that it came from the bank. However, the ABF only partially upheld the complaint, based on evidence of contributory negligence on the customer's part, as they did not doubt the genuineness of the text message, even though it contained grammatical errors and a link that did not direct to the bank's website.³³

³² Decision **9318/2023**.

³³ Decision **3606/2023**.

In the event of ‘boxing’, users who give their card PIN to fraudsters may be partly liable for damages. A customer received a call from someone who self-identified as a bank operator. They informed the customer that their payment card was about to expire and asked them to click on a link received via SMS and type their old credit card credentials, in order to confirm its renewal. The customer did so and was debited with two transactions they had not authorized. They therefore asked the ABF to order the bank to repay these amounts. In this case, the Panel noted that fraudsters got hold of many new cards sent to customers to replace expiring ones and noted that, according to the law, payment service providers bear the risks linked to the mailing of payment instruments. However, the ABF only partially upheld the complaint, as the customer had contributed to the fraud by giving the expiring card PIN to the fraudsters.³⁴

Changing the phone number associated with a payment account requires strong customer authentication (SCA). A customer received an SMS, apparently from their bank, informing them that their account was about to be blocked. They clicked on the link contained in the message and followed the system update instructions in order to retain access to their account. They then learned that some unauthorized transactions had been made, and asked the ABF to order the bank to credit the relevant amounts back to their account. More specifically, fraudsters had accessed the victim’s account, changed the phone number associated with it and thus managed to carry out those transactions. The Panel pointed out that intermediaries are required to take SCA measures including for changing the phone number associated with an account. Since the bank had not proven that SCA measures were in place for changing the phone number, the ABF ordered it to fully reimburse the amounts misappropriated by the fraudsters.³⁵

When fraud is committed by sending a bank customer a QR code to authorize a transaction, the bank shall not be required to refund the customer, if the latter is found guilty of gross negligence. In a case examined by the ABF, a customer was contacted by a self-identified bank employee and urged to block a fraudulent transaction: they were then asked to scan the QR code received via a messaging app and to provide the codes thus generated. After realizing it was a fraud, the customer applied for a full refund of the amount fraudulently withdrawn from an ATM using cardless access. The Panel dismissed the complaint, noting that the intermediary had proven that SCA measures were in place, while the customer was guilty of gross negligence as they had failed to keep their credentials safe.³⁶

If a customer is the victim of sophisticated computer fraud, such as man-in-the-browser (MitB), they are generally not guilty of gross negligence, unless further evidence exists. The ABF dealt with disputed credit transfers to payees other than those shown in the payment order. In the case in question, a company complained that a transfer for a large amount (over €30,000) had been credited to the

³⁴ Decision 9104/2023.

³⁵ Decision 3955/2023.

³⁶ Decision 92/2023.

account of unknown persons, rather than to the usual account of a payee to whom the company made frequent transfers; the attached credit transfer statement actually contained the right IBAN, which was not shown in the final payment receipt. The ABF noted that, while the credit transfer statement did not show the transaction reference number (TRN) used to identify financial transactions, it contained a code identifying that specific transaction. The Panel therefore concluded that in this case the customer had been the victim of MitB. The ABF ordered the bank to reimburse the amount of the credit transfer as the customer is not considered guilty of gross negligence in these circumstances.³⁷



The Central Credit Register

Failure to send prior notice of reporting to the Central Credit Register (CR) does not mean that the report is unlawful; it can only give rise to damages. The Coordinating Panel confirmed the ABF's ruling that prior notice of reporting a non-performing loan to the CR is a transparency requirement rather than a prerequisite for the report's legitimacy, unlike with private credit reporting agencies (SICs).³⁸ A bank's failure to send prior notice of reporting to the CR may only result in an obligation to pay damages, subject to certain conditions. In the case at hand, the complainant had not claimed damages, but only cancellation of the report as they had not received prior notice. The Panel therefore dismissed the complaint and confirmed that the report to the CR was lawful.³⁹

Banks are required to assess non-performing borrowers' overall financial situation before reporting them to the CR. In one case, the complainant sought cancellation of the report, which they considered unlawful as there was no serious, persistent financial stress, which is a prerequisite for reporting non-performing loans. The Panel believed that the bank had properly assessed the borrower's debt exposure: the report was made more than six and a half years after the first payment reminder, following a gradual deterioration of the customer's risk position and many reminders. The ABF therefore considered that the prerequisite of serious, persistent financial stress existed and dismissed the complaint.⁴⁰

³⁷ Decision **3793/2023**.

³⁸ For further details, see the box 'Private credit reporting agencies'.

³⁹ Coordinating Panel, Decision **4519/2023**.

⁴⁰ Decision **7988/2023**.



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4. THE SCOPE OF THE ABF'S INTERVENTION AND OTHER PROCEDURAL MATTERS



Time limits, subject matters and amounts claimable

Cases can be brought before the ABF to seek compensation for amounts up to €200,000 or, irrespective of the amount, if the complaint seeks to establish rights, obligations and prerogatives and is not intended as a means to obtain compensation above the statutory limit of €200,000. In a case the complainant, in her capacity as testamentary heir, challenged the legitimacy of bank's conduct in several respects and requested the repayment of €485,000 from the bank. The Panel replied that, under ABF provisions, the Ombudsman may settle disputes with banks and other financial intermediaries when the request for repayment does not exceed €200,000, or when the request is intended to determine a right and is not intended as a means to obtain compensation for amounts above the statutory limit, irrespective of the amount in question. The Panel therefore declared the request for repayment inadmissible in so far as it exceeded the ABF's statutory limit for amounts claimed. Instead, it deemed it could examine the remaining claims relating to the right to receive copies of bank documents and the legitimacy of the arrangements regarding assets made by an agent with power of attorney.¹

The ABF can decide on complaints relating to anti-money laundering regulations if the complaint addresses the fairness of the intermediary's conduct. The Coordinating Panel ruled on a complaint made by a customer who claimed the intermediary had failed to fulfil its obligations under anti-money laundering rules and was in breach of the general rules of fairness and good faith (in particular, for removing the customer's authority to sign). The Ombudsman deemed the complaint admissible, on the grounds of the principle that the ABF has the power to rule over a dispute concerning anti-money laundering legislation if the complaint seeks to establish the fairness of the intermediary's conduct and not a breach of the law.²

¹ Decision 3392/2023.

² Coordinating Panel, Decision 11070/2023.



Who can make a complaint to the ABF (capacity to submit a complaint)

Any person declaring that they are the heir of a deceased bank customer is entitled to submit a complaint to the Ombudsman. In one case, the complainant, in her capacity as testamentary heir, sought compensation for losses incurred in the transfer of the sums previously held in a joint account with the deceased. The bank maintained the complainant had not proven her status as heir. The Ombudsman cited its established position whereby a distinction needs to be drawn between the legal capacity to submit a complaint, which enables the complainant to simply declare their standing as heir, and beneficial ownership of the right, for which proof of one's status as heir is instead required. In the case in question, the complainant had declared she was acting in her capacity as heir and the Panel thus established she did have the legal capacity to submit a complaint. The complaint was declared inadmissible, however, in so far as it required interpreting the terms of the will (a matter outside the Ombudsman's remit).³



Identifying who may be the subject of a complaint (legal capacity to be the subject of a complaint)

In the case of sales of business units, the complainant may also make their complaint to the seller within three months of the official publication of the notice of the sale. Having disputed a payment transaction, the complainant requested that the sums which had been charged to his account be reimbursed by the intermediary. The intermediary denied that it could be the subject of a complaint before the ABF on the grounds that it had sold that business unit of its business to another intermediary (including the contract which had given rise to the customer's complaint). The Panel noted that, under Article 58 of the Consolidated Law on Banking (TUB), when a customer is affected by a sale of a business unit, they may defend their rights also vis-à-vis the seller within three months of the publication of the notice of the sale in the Official Journal of the Italian Republic. The Ombudsman further noted that, if the complaint is lodged with the seller within that three-month term, the seller can be called in the ABF proceeding. In the case examined, the Ombudsman, while rejecting the complaint on its merits, still deemed it admissible because it had been lodged within the time limit.⁴

³ Decision **3535/2023**.

⁴ Decision **5232/2023**.



Complaining to the intermediary first

Before complaining to the ABF, the customer must allow their bank to respond to the complaint within the set deadline. In a case involving a loan, the Ombudsman declared the complaint inadmissible, in line with its established position,⁵ on the grounds that the complaint had been made to the ABF before the expiry of the 60-day period the law allows for the intermediary to reply.⁶ At the same time, the Panel reminded the complainant they could make a new complaint to their bank and would then have the right to file a new claim to the ABF.⁷



Other procedural matters

Customers may not waive their right to submit complaints to the ABF. In a case in which the customer made a complaint regarding unlawful charges made to their current account, the intermediary maintained the complaint was inadmissible on the grounds that the customer has agreed to a recovery plan⁸ containing a clause whereby the parties further agreed that any dispute concerning the interpretation of the terms of the plan would fall under the sole remit of the judicial authority. The Ombudsman noted that prior submission of a complaint to the ABF is a precondition for a judicial proceeding in a court of justice⁹ and that the right to make a complaint to the ABF cannot be waived by the customer.¹⁰ It therefore decided on the complaint on its merits.¹¹

⁵ Coordinating Panel, Decision **15400/2021**.

⁶ Intermediaries are allowed a maximum of 60 days from the receipt of a complaint to respond. For payment services, the deadline is set at 15 business days (see '**Transparency in Banking and Financial Services – Fairness in the relations of intermediaries with their customers**', Section XI(3)).

⁷ Decision **1787/2023**.

⁸ Article 67(3)(d) of Bankruptcy Law (Royal Decree 267/1942).

⁹ Article 5 of Legislative Decree 28/2010.

¹⁰ See '**Provisions on out-of-court settlement of disputes in banking and financial transactions and services**', section VII, paragraph 3.

¹¹ Decision **3250/2023**.