



BANCA D'ITALIA  
EUROSISTEMA

# The Banking and Financial Ombudsman Annual Report



Abridged Version





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EUROSISTEMA

# The Banking and Financial Ombudsman Annual Report

Abridged Version

2015

Number 6 - June 2016

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**Address**

Via Nazionale, 91  
00184 Roma - Italia

**Telephone**

+39 0647921

**Website**

<http://www.bancaditalia.it>

ISSN 2281-4116 (stampa)

ISSN 2281-4809 (online)

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*Designed and printed by the Printing and Publishing  
Division of the Bank of Italy*

*Printed in August 2017*

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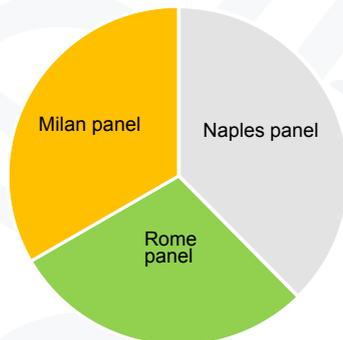
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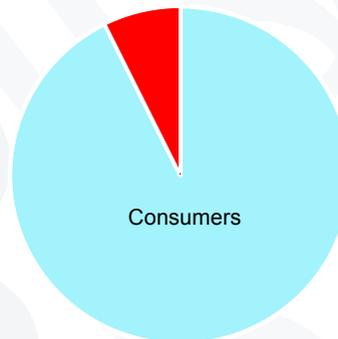
Arbitro Bancario Finanziario  
Risoluzione Stragiudiziale Controversie

## 2015 Data

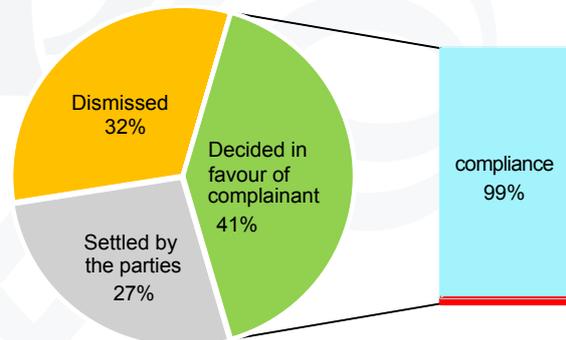
**13,575** complaints received (+21 per cent)  
of which **7,410** regarding loans secured  
by pledge of 1/5 of salary (+102 per cent)



Non-consumers



**195** panel meetings  
**10,450** resolved complaints/  
decisions



Nearly **€10 million** awarded to customers



## FOREWORD

This Report gives an account of the activity of the Banking and Financial Ombudsman (Arbitro Bancario Finanziario, ABF) in 2015. The ABF is an out-of-court settlement scheme for disputes between customers and banks and other financial intermediaries, and is established by Article 128-*bis* of the Consolidated Law on Banking (Legislative Decree 385/1993).

In its sixth year of operation the ABF continues to record a significant increase in its workload. In 2015, the number of complaints submitted to the ABF rose to 13,575, a 21 per cent increase on 2014. On average, more than 1,100 customers per month (900 in 2014) filed complaints with the ABF against a bank or financial intermediary for improper conduct or disputes over the parties' rights, obligations and powers.

The most common type of complaint concerned loans secured by a pledge of one-fifth of salary or pension, with the demand for repayment of part of the costs incurred by the complainant in the event of early termination of the contract.

In 2015, the ABF issued 10,450 decisions, over 1,800 more than in the previous year; the panels reviewed an average of 950 complaints each month (compared with just under 800 a month in 2014). In 68 per cent of the cases the outcome was substantially favourable to the complainant: 41 per cent of complaints resulted in total or partial acceptance of the complainant's request and in 27 per cent of complaints the dispute was settled by the parties prior to the ABF's decision. During the year awards to customers totalled nearly €10 million.

Even more significant is the growth in the number of complaints submitted in the first four months of 2016, which increased by 56 per cent over the year-earlier period; on average, the ABF received more than 1,600 complaints per month.

Both the territorial panels in their decision-making activities and the technical secretariats in their support functions balanced heavy workloads.

Legislative Decree 130/2015 incorporated the [Alternative Dispute Resolution \(ADR\) Directive \(2013/11/EU\)](#) into Italian law and designated the Bank of Italy as the national competent authority (NCA) for the supervision of the ADR system in the banking and financial sectors pursuant to Article 128-*bis* of the Consolidated Law on Banking; this competence relates exclusively to the ABF. As NCA, the Bank has verified that the ABF meets the quality requirements set out in the ADR Directive.

Important reforms are being made to the ABF's structure to improve its functionality and its ability to respond to customers. Steps are being taken to increase the number of panels and technical secretariats: 4 new panels will be operational by the end of 2016, supported by an equivalent number of technical

secretariats located at the Bank of Italy's branches in Turin, Bologna, Bari and Palermo.

A new IT system is being developed which will allow online access to the ABF; it will come into operation by the end of 2017.

\* \* \*

The Report is divided into eight sections.

Section 1 describes the Banking and Financial Ombudsman's main characteristics,<sup>1</sup> how the panels function and the changes to their composition, as well as the activities of the technical secretariats. It also illustrates the role of the Bank of Italy in its capacity as national competent authority pursuant to Legislative Decree 130/2015, the ABF's relationship with the Supervisory Authority and the initiatives in place to raise the public's awareness of the ABF.

Section 2 describes the ADR systems operating in the main European countries for the protection of banking and financial customers; the ABF's participation in Fin-Net is examined in closer detail.

Section 3 provides statistical data on the complaints received by the ABF, the decisions it issued and the activity of the panels in 2015 and the first few months of 2016.

Sections 4, 5 and 6 outline, respectively, the main issues that were brought to the ABF's attention in 2015, issues concerning the limits to the ABF's jurisdiction, and preliminary information on decisions published in 2016.

Section 7 focuses on certain civil court decisions that appear to be similar in substance to those of the ABF panels.

Section 8 provides a summary of the decisions issued by the Coordinating Panel, which has been functioning since 2012; its purpose is to ensure consistency among the territorial panels and solve interpretation issues.

The Report has a Statistical Appendix containing data on the complaints submitted to the ABF during the year and charts that outline the composition of the territorial panels and the Coordinating Panel.

The Report is available online, both on the [Bank of Italy's website](#) and on the [ABF's website](#); a hard copy may also be obtained on request from any of the Bank of Italy's branches and from the Paolo Baffi Library ([richieste.pubblicazioni@bancaditalia.it](mailto:richieste.pubblicazioni@bancaditalia.it)).

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<sup>1</sup> This Report does not take into account the recent measures adopted by the Bank of Italy to strengthen the ABF system. To meet the rising demand for consumer protection, in December 2016 the system was bolstered with the establishment of four new panels with technical secretariats in Bari, Bologna, Palermo and Turin, in addition to those already operating in Milan, Naples and Rome.

The online version has hyperlinks to the legislation and panel decisions that are cited in this Report, as well as hyperlinks to the Bank of Italy's website and the websites of other institutions for further information on specific topics.

With this Report, the Bank of Italy fulfills its obligations under Credit Committee Resolution 275/2008 and the provisions on alternative dispute resolution relating to banking and financial transactions and services (Bank of Italy provisions dated 18 June 2009 as amended, hereinafter 'ABF Provisions'). In addition, the publication of this Report fulfills the obligation under Legislative Decree 130/2015 to make publicly available the annual report on the activity of ADR entities.

This abridged version contains the first three sections.



## 1. THE BANKING AND FINANCIAL OMBUDSMAN: MAIN CHARACTERISTICS

This section describes the main characteristics of Italy's Banking and Financial Ombudsman (ABF) and highlights some of its specific features by providing an overview of the other out-of-court dispute resolution systems. It also illustrates how the panels function and the changes that were made to their composition in 2015 and in the first five months of 2016, as well as the activities of the technical secretariats at the Bank of Italy's main regional branches in Milan, Rome and Naples which offer support to their respective panels.

Special emphasis is placed on the Bank of Italy's role as national competent authority, as provided by Legislative Decree 130/2015 which incorporates Directive 2013/11/EU into Italian law, and the role it has played thus far in coordinating and ensuring the proper functioning of the system.

This section also describes the relationship between the Ombudsman and the Supervisory Authority and the measures taken to raise awareness of the ABF's activities among the public and industry operators.

### *The Banking and Financial Ombudsman: what it is*

In 2009 the Bank of Italy instituted the Banking and Financial Ombudsman, implementing Article 128-*bis*<sup>1</sup> of the Consolidated Law on Banking which stipulates that the banking and financial sectors must have systems in place for the out-of-court settlement of disputes.

The ABF is a decision-making alternative dispute resolution scheme. Decisions regarding disputes between customers and financial intermediaries are entrusted to the panels and are made according to the law<sup>2</sup> on the basis of the complaint brought by the customer and in light of the documents presented by the parties. It is an instrument that directly protects customers with disputes concerning amounts below a certain threshold.<sup>3</sup>

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<sup>1</sup> Introduced by Law 262/2005 (Investor Protection Law).

<sup>2</sup> The panels apply the laws and regulations that govern the matter in dispute and, when applicable, any relevant provisions of codes of conduct to which the bank subscribes.

<sup>3</sup> Additional information on the functioning of the ABF and the applicable legislation are available on the ABF's website at [www.arbitrobancariofinanziario.it](http://www.arbitrobancariofinanziario.it) and in the Banking and Financial Ombudsman Annual Report for 2014.

The Ombudsman's decisions are not legal judgments: they are not legally binding on the customer or the financial intermediary and they do not rule out the possibility of submitting the dispute to the civil courts.<sup>4</sup> However, recourse to the ABF satisfies the prerequisite for filing a judicial proceeding: no complaint can be filed before a court without first going through the mediation process pursuant to Legislative Decree 28/2010 (as amended) or without recourse to the ABF.

The decisions of the Ombudsman may not be appealed. The parties cannot request a re-examination of the merits of the dispute: they may only request that a decision be corrected where there was a material error or omission or where the calculation was incorrect.

If an intermediary refuses to comply with a decision, notice of its non-compliance is published on the ABF's website.

The ABF's authority extends to disputes concerning banking and financial transactions and services as well as payment services; the ABF may not decide disputes relating to investment products, services or activities.

Specifically, its authority does not extend to disputes concerning ordinary and subordinated bonds issued or placed by banks. Bonds are financial products with an investment incentive and, as such, fall outside the transparency requirements issued by the Bank of Italy and are instead subject to those of the Consolidated Law on Finance (Legislative Decree 58/1998).<sup>5</sup>

If the dispute concerns bonds or, more generally, investment products, services or activities, the customer may petition the Financial Disputes Arbitrator, the new decision-making alternative dispute resolution tool established pursuant to Legislative Decree 179/2007, as amended by Legislative Decree 130/2015.<sup>6</sup>

Adequate and effective ADR systems are essential for protecting customers, especially with regard to controversies below a certain threshold which have limited access to judicial remedies, and for strengthening consumer confidence in the proper functioning of the market.

The need to streamline the regulatory framework has led to the establishment of a committee at the Legislative Office of the Ministry of Justice. The committee is tasked with drafting a comprehensive reform of the out-of-court dispute resolution systems so that they may function uniformly, to be submitted by 30 September 2016.

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<sup>4</sup> With Ruling 218/2011 the Constitutional Court clarified that the Banking and Financial Ombudsman cannot be considered a court of law, thereby denying the ABF's right to raise questions of constitutionality.

<sup>5</sup> The transparency provisions applicable to banking and financial transactions and services expressly exclude the Bank of Italy's competence regarding 'investment services and activities as defined by the Consolidated Law on Finance and the placement of financial products with an investment incentive such as, for example, bonds and other debt securities, certificates of deposit, derivative contracts, swaps'.

<sup>6</sup> Following a public consultation, Consob adopted an implementing regulation regarding the new ADR system.

## THE ABF AND OTHER DISPUTE RESOLUTION SYSTEMS

There are many alternative dispute resolution systems operating in Italy. Their main characteristics and how they differ from the ABF are outlined below.

In regard to the non-binding nature of the panel's decisions, the ABF differs from arbitration, which is provided for in the Italian Code of Civil Procedure, in that the parties, under an agreement that may precede or follow the onset of the dispute, may have their case settled by one or more arbiters whose decisions are binding.

Nor can the ABF be likened to mediation, as per Legislative Decree 28/2010. When successful, mediation ends with a settlement agreement, signed by the parties and the mediator, which may be approved by a court and made legally binding on the parties.

Decree Law 132/2014 (as amended by Law 162/2014) introduced assisted negotiation, whereby the parties are represented by lawyers who work towards reaching an agreement, commonly referred to as the 'assisted negotiation convention'. The agreement must be concluded in writing and must be signed by the parties and their attorneys or else be nullified; it has the effect of a title empowering to levy execution and is therefore comparable to a court decision.

Unlike the ABF, to which conciliatory functions are not attributed, mediation and assisted negotiation are types of alternative dispute resolution tools that aim to resolve the dispute by means of an agreement negotiated by the parties. Pursuant to Legislative Decree 28/2010, for claims regarding banking, financial and insurance contracts, recourse to either the ABF or mediation satisfies the pre-condition for the commencement of judicial proceedings involving civil and commercial disputes; assisted negotiation is not available for these types of disputes.

Joint conciliation procedures, governed by Legislative Decree 130/2015 which incorporates Directive 2013/11/EU into Italian law, also differ from the ABF. These conciliation procedures are based on memoranda of understanding between firms and the major Italian consumer protection organizations. Joint conciliation allows the consumer and the firm, through their representatives, to seek a common solution that is both rapid and cost-effective, in the form of a settlement agreement.

The ABF also differs from the mechanism provided for in Article 185-*bis* of the Italian Code of Civil Procedure, which gives the judge discretion in deciding whether to make a conciliation proposal, given the nature of the dispute, the amount in controversy and the presence of issues that may be easily resolved. A draft law that amends the Code of Civil Procedure was recently presented; its aim is to enhance the conciliation procedure under Article 185-*bis* of the Code as a means of improving the efficiency of civil proceedings by resolving the backlog of cases more rapidly and limiting requests for damages by litigants in the event of excessively long court proceedings.

### *Who must adhere to the system and how it works*

All intermediaries entered in the registers and lists kept by the Bank of Italy must participate in the system.<sup>7</sup> Adherence is a requirement for the provision of banking and financial services: failure to do so results in the imposition of an administrative sanction under Article 144(4) of the Consolidated Law on Banking.

Foreign financial intermediaries that operate in Italy and are not part of Fin-Net, the European out-of-court settlement system endorsed by the European Commission, must also join the system (see the box 'Alternative dispute resolution of cross-border cases: Fin-Net' in Section 2).

There are limits to the Ombudsman's authority: the panels may not hear complaints regarding conduct or transactions prior to 1 January 2009.

A complaint cannot be heard if the dispute has already been submitted to a judicial authority or an arbitrator or if a conciliation proceeding or mediation is pending (recourse to the ABF is, however, possible if the conciliation proceeding fails).

The Ombudsman can decide disputes relating to the ascertainment of rights, obligations and prerogatives, irrespective of the amount involved. If the customer's request relates to the payment of a sum of money for any reason, the ABF may decide the dispute provided that the amount requested does not exceed €100,000.

Even prefects have the authority to refer certain disputes to the ABF (concerning the granting of credit by financial intermediaries) at the request of the customer and after having obtained a brief from the financial intermediary involved.

The disputes received by the Ombudsman are submitted to a decision-making body divided into three territorial panels (Milan, Rome and Naples). Jurisdiction is according to the complainant's domicile (Figure 1.1).

Each panel is composed of five members appointed by the Bank of Italy, of whom three (including the chair) are selected by the Bank and one each by associations representing financial intermediaries and customers (consumers and non-consumers);<sup>8</sup> appointees must satisfy specific requirements of expertise, professionalism, impartiality and independence.<sup>9</sup>

Alternate members are selected and appointed in the same manner, and are called upon to stand in for members in the event of absence, impediment or abstention. Moreover, alternates also respond to the functional needs of the panels in relation to the flow of complaints and workload.

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<sup>7</sup> Adherence to the system is mandatory for banks, financial intermediaries, payment institutions, electronic money institutions, loan guarantee consortia and Poste Italiane SpA as regards its BancoPosta activity.

<sup>8</sup> For consumers, the members are designated by the National Consumer Council; for professionals/business owners, they are designated by Confindustria acting in agreement with Confcommercio, Confartigianato and Confagricoltura; for financial intermediaries, they are designated by the Banking and Financial Conciliator.

<sup>9</sup> The panel members must abide by the code of conduct in order to ensure the proper, independent and impartial exercise of their functions.

## FILING A COMPLAINT WITH THE ABF

Before submitting a dispute to the Ombudsman, the customer must lodge a dispute with the financial intermediary, which must respond within 30 days. If the financial intermediary fails to do so, or if its response is unsatisfactory, the customer may then submit the complaint to the Ombudsman within twelve months from the day it was lodged with the financial intermediary. The assistance of an attorney is not necessary.

The procedure begins with the filing of the complaint: the customer fills in a form (a fill-in version is available on the ABF website) with details of the case and the request. Any relevant document may be attached: details of how to file a complaint and of the resolution procedure can be found in the Practical Guide.

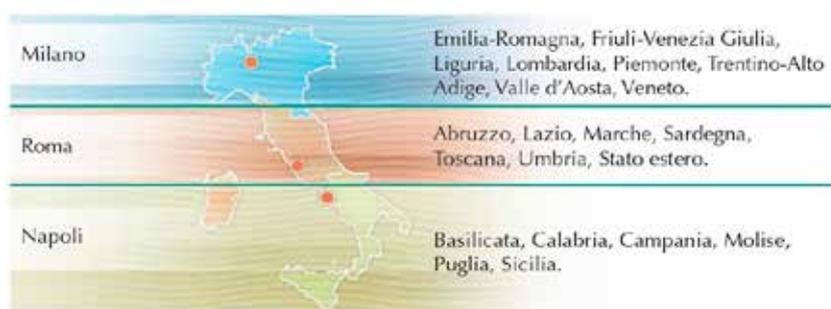
The complaint and the relevant documentation may be sent directly to the competent technical secretariat by mail, fax, or certified email or they may be presented in person at one of the branches of the Bank of Italy, which then forwards the documents to the competent technical secretariat.

The customer is charged €20 to lodge a complaint with the ABF to cover the costs of the procedure. The sum is reimbursed by the financial intermediary if the ABF decides in the customer's favour (in whole or in part), in which case the financial intermediary pays a charge of €200 to the ABF. Failure to do so is tantamount to non-compliance with the ABF's decision.

The Ombudsman cannot examine cases if the complaint is incomplete, irregular or if it was submitted more than twelve months after the initial complaint was made to the financial intermediary. A checklist is available on the ABF website to determine whether a dispute can be submitted to the Banking and Financial Ombudsman.

Figure 1.1

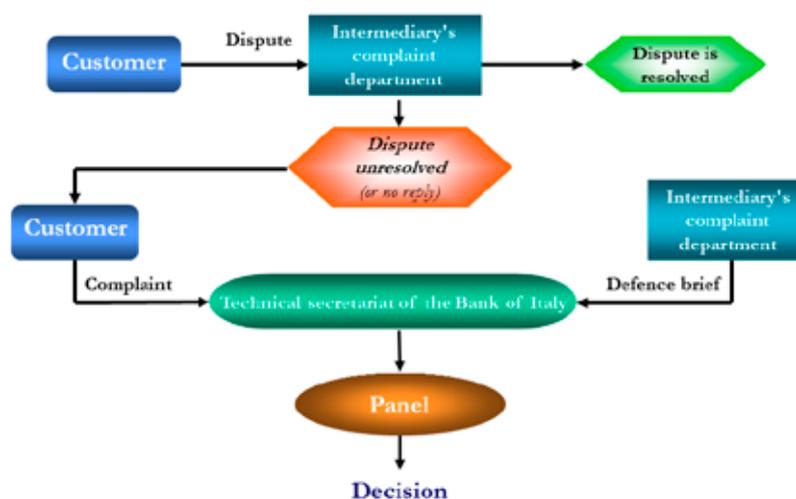
### Territorial jurisdiction of the ABF panels



The maximum term for deciding on a complaint is 105 days: 45 days are granted to the financial intermediary to submit a defence brief and 60 days are allowed for deliberations, net of any periods of suspension. An additional 30 days are allotted to notify the parties of the decision and the grounds for it.

Figure 1.2

### Functioning of the Banking and Financial Ombudsman



Since 2012 the territorial panels have been flanked by a Coordinating Panel, whose purpose is to ensure greater consistency among the single panels' pronouncements. The body is composed of the chairs of the territorial panels plus two members representing financial intermediaries and customers and chosen annually by lot. The Coordinating Panel is chaired by the eldest panel chairperson.

### FUNCTIONING OF THE COORDINATING PANEL

In cases where a territorial panel deems the issue at point to be of particular significance or finds that the dispute under its scrutiny has given or could give rise to inconsistent pronouncements, it refers the decision to the Coordinating Panel, ordering a stay of the proceeding.

A complaint can also be referred to the Coordinating Panel by the chair of the competent territorial panel before the complaint is examined by the panel itself.

When a panel intends to deviate from a decision taken by the Coordinating Panel, it will state the reasons why the specifics of the case call for a different solution.

A complaint cannot be directly presented to the Coordinating Panel nor can the Coordinating Panel be asked to re-examine a decision. The Coordinating Panel is not a vehicle for challenging the decisions made by the territorial panels.

*The composition of the territorial panels*

In 2015 the territorial panels underwent significant changes to their composition. During the year the terms expired for 41 members, 17 of which were designated by the Bank of Italy, 5 by the National Consumer Council, 5 by Confindustria acting in agreement with Confcommercio, Confartigianato and Confagricoltura and 14 by the Banking and Financial Conciliator. Of the 41 members, 17 had completed their second term and, as such, could not have their terms renewed.

Of the members designated by the Bank of Italy, 5 were regular members and 18 were alternates. Their number has increased in order to improve the functioning of the panels in response to the sustained growth in the number of complaints.

The appointments made at the end of 2015 followed a notice published on the Bank of Italy’s website which sought to recruit candidates possessing the level of experience, professionalism, integrity and independence required by ABF Provisions.

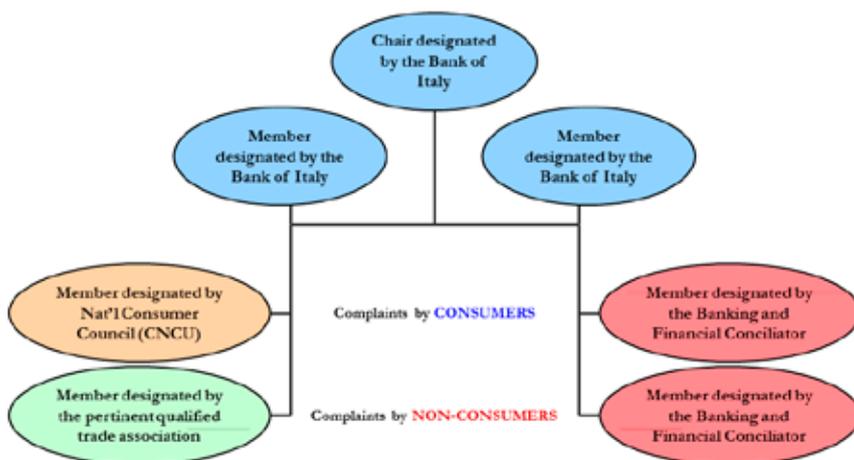
The Banking and Financial Conciliator designated 3 regular members and 12 alternates.

Confindustria, acting in agreement with Confcommercio, Confartigianato and Confagricoltura, designated 1 regular member and 3 alternates, while the National Consumer Council renewed the terms of 4 members (1 regular and 3 alternates).

With regard to the recent changes in the composition of the panels, in the first few months of 2016, 6 members were designated by the National Consumer Council (2 regular and 4 alternates), a regular member was appointed to the Milan panel by Confindustria, and an alternate was designated by the Bank of Italy to the Rome panel.<sup>10</sup>

Figure 1.3

Composition of the ABF panels



<sup>10</sup> Data as at 15 June 2016.

At present the panels consist of 65 members (18 regular members and 47 alternates). Of these, 28 (9 regular, 19 alternates) were designated by the Bank of Italy. The rest were designated by the Banking and Financial Conciliator (3 regular, 14 alternates), by the National Consumer Council (3 regular, 8 alternates) and by Confindustria (3 regular, 6 alternates).

### *The role of the technical secretariats*

The technical secretariats, made up of Bank of Italy employees and established at the Milan, Rome and Naples branches, support their respective territorial panels.

The technical secretariats carry out the following activities: (a) receive complaints and the additional documentation submitted by the parties and check that the documentation is complete, in order, and timely; (b) promptly submit manifestly ineligible or inadmissible claims to the panel chair; (c) handle communications with the parties; (d) prepare a technical report for the members of the panel; (e) arrange for public notice in the event of a financial intermediary's non-compliance; and (f) respond to requests for information from complainants and other entitled persons.

In addition, the technical secretariats prepare the calendar and the agenda of the panels' meetings for approval by their respective chairs, convene and attend the meetings and draft the minutes.

The technical secretariat's workforce grew<sup>11</sup> to 72 staff members (24 in Milan, 27 in Rome, and 21 in Naples).<sup>12</sup> Other branches of the Bank of Italy provided a significant contribution to the activities of the technical secretariats in the form of on-site or off-site cooperation.

The technical secretariat's auxiliary functions and the panel's decision-making functions are entirely supported by computerized procedures. The widespread use of IT resources – required by Article 7 of Credit Committee Resolution 275/2008 – ensures the security of the procedure and facilitates the coordination activities of the technical secretariats; it also assists the central coordinating unit based in the Customer Protection and Anti-Money Laundering Directorate of the Bank of Italy in monitoring the proper functioning of the system.

In the past year, 56 recent law graduates completed six-month internships at the technical secretariats and the central coordinating unit to add work experience within the ABF system to their university studies.

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<sup>11</sup> In June 2015 the technical secretariats consisted of 58 staff members.

<sup>12</sup> Data updated as at 31 May 2016.

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

Legislative Decree 130/2015, containing amendments to the Consumer Code,<sup>13</sup> implemented Directive 2013/11/EU (Directive on consumer ADR) in Italy.<sup>14</sup> The Directive contributes to the proper functioning of the European market through the development of effective, fast and fair ADR systems that satisfy harmonized quality standards and guarantee a sufficient level of consumer protection.

The legislative decree details the stability, efficiency and impartiality requirements as well as the obligation to ensure low-cost access to ADR for consumers, entrusting the monitoring of the system to the relevant National Competent Authority (NCA). ADR entities that meet the qualification requirements set out in the Directive are entered in the list maintained by the NCA and submitted to the European Commission. ADR entities that no longer comply with the requirements are contacted by the NCA and asked to implement corrective measures.

The European Commission sets up a list of the ADR entities notified to it by the NCAs and updates it whenever changes are communicated to the Commission. The list and the updates are transmitted to the member states and to the NCAs. The NCAs then publish the consolidated list of ADR entities on their websites and provide a link to the Commission website.

The list of all ADR entities operating in Europe has been created and published in order to promote consumer awareness of the out-of-court redress mechanisms by disseminating information on the available tools both at national and cross-border level.

Legislative Decree 130/2015 conferred on the Bank of Italy the role of national competent authority with regard to ADR systems governed by Article 128-*bis* of the Consolidated Law on Banking, specifically the ABF.

In Italy, in addition to the Bank, the role of NCA was also conferred on five sector authorities for their respective spheres of competence: Consob, AAEGSI (the authority for electricity, gas and water), Agcom (the communications guarantee authority), the Ministry of Justice and the Ministry of Economic Development.

Since Italy has more than one NCA, the Ministry of Economic Development was designated the single point of contact with the European Commission, tasked with exchanging information between it and the Italian NCAs.

To ensure that the NCAs carry out their functions in a uniform manner, a steering and coordination committee has been established at the Ministry of Economic Development, consisting of representatives of the competent authorities.<sup>15</sup>

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<sup>13</sup> Legislative Decree 206/2005.

<sup>14</sup> The transposition date of the directive into Italian law was 9 July 2015.

<sup>15</sup> The Ministry of Economic Development was tasked with convening and liaising with the authorities participating in the steering and coordination committee.

In the light of the guidelines adopted by the committee, the Bank of Italy, in its capacity as NCA, has verified that the ABF meets the requirements of an ADR entity and is recognized as such for the purposes of the list referred to in Article 141-*decies* of the Consumer Code.

To encourage the proper and effective functioning of ADR entities, Legislative Decree 130/2015 requires that the Ministry of Economic Development, with the contribution of the other NCAs, publish and submit to the European Commission a report on the development and functioning of ADR entities (the first report is due in 2018 and every four years thereafter). The report will identify the best practices of ADR entities and their shortcomings and will make recommendations on how to improve the effective functioning of the ADR system.

Following the notice submitted by the Ministry of Economic Development to the European Commission, the Italian ADR entities recognized by the various NCAs have registered on the online dispute resolution (ODR) platform as provided by Regulation (EU) No. 524/2013 relating to the resolution of disputes between consumers and traders arising from online sales or service contracts.

The ODR platform, managed by the European Commission and operational as of January 2016, contains links to all the Italian ADR entities recognized by the NCAs. The public can access the platform through an interactive, easy to use website that is free of charge and available in all the official languages of the EU.<sup>16</sup>

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

The presence of an effective dispute resolution mechanism such as the ABF gives financial intermediaries an incentive to abide by the principles of transparency and fairness in customer relations and increases the certainty of legal relations.

Such mechanisms are an important safeguard against legal and reputational risk and improve the stability of financial intermediaries and the financial system overall.

Financial intermediaries are under no obligation, in their customer relations, to abide by every statement or interpretation made or endorsed by the Ombudsman in its decisions. Nevertheless, the ABF Provisions<sup>17</sup> require the complaints department or the person responsible for handling complaints to keep up to date with the panels' most recent positions and assess customer complaints on this basis and to determine whether the point raised by the customer has a precedent in earlier cases.

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<sup>16</sup> Consumers who encounter problems in making an online purchase may present a complaint in the language of their choice via the platform; the platform then notifies the trader of the complaint filed against it. The consumer and the trader jointly select an ADR entity to resolve the dispute. That entity, also via the ODR platform, receives the details of the dispute.

<sup>17</sup> ABF Provisions, Section VI, sub-section 1.

The outcomes of the Ombudsman's proceedings make a significant contribution to the supervision of the banking and financial system. The Ombudsman's decisions 'become part of the broader pool of information at the Bank's disposal for its regulatory and control function'.<sup>18</sup>

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

In 2015, the number of visits to the ABF website continued to increase, confirming its role as an important source of information for consumers on the functions and activities of the ABF.

During the year, the website was accessed an average of 2,000 times a day, a 14 per cent increase on 2014. The file of decisions and complaints were the website's most frequently visited pages.

The website includes an archive of the decisions issued by the territorial panels and by the Coordinating Panel, updated monthly (19,500 decisions were available as of 31 March 2016). The decisions most frequently consulted relate to loans secured by a pledge of one-fifth of salary, mortgages (especially with regard to the borrower's obligations) and the fraudulent use of debit cards.

The 2014 Banking and Financial Ombudsman Annual Report, published on 30 June 2015, was accessed almost 75,000 times between July and December 2015.

The Bank of Italy has a toll-free number (800 196969) where customers may obtain general information about the activities and functions of the ABF. Users can find out how the Ombudsman works and how to file complaints; they may also leave a voice message with any queries and a Bank of Italy employee will contact them with specific information.

In 2015 there was a 10 per cent increase in phone calls requesting information about the ABF, which accounted for approximately a quarter of the calls received. Most of the queries related to the procedure for presenting complaints (51 per cent) or the scope of the Ombudsman's jurisdiction (34 per cent).

The activities of the Banking and Financial Ombudsman and its jurisprudence were found to be of particular importance with regard to educational/training programmes for trainee judges; a one-day workshop was also held for upper-level students in the Finance Police Academy (Scuola di polizia tributaria della Guardia di finanza) in Milan.

The activities of the ABF were also highlighted during the 28th International Book Fair in Turin, to which the Bank of Italy participated in May 2015.

To further increase awareness of the ABF system, talks continued with consumer groups on issues ranging from the protection of customers of banks and

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<sup>18</sup> ABF Provisions, Section I, sub-section 1.

financial intermediaries, transparency and fairness in customer relations, and the incorporation of the ADR Directive into Italian law.

At the start of this year, the Bank of Italy published a pamphlet containing detailed information on the safeguards available to customers of banks and financial institutions in the event of a dispute (letter of complaint to the financial intermediary, recourse to the ABF, recourse to the civil courts and the presentation of a complaint to the Bank of Italy).



## 2. INTERNATIONAL COMPARISON

This chapter describes consumer protection in the banking and financial sector in the main European alternative dispute resolution (ADR) systems and the steps being taken to develop Fin-Net, a financial dispute resolution network of national out-of-court complaint schemes established at European level.

### *A comparison with other European countries*

In recent years out-of-court settlement schemes have become more widespread and are now well-established in all European countries thanks to initiatives promoted by the European Union.<sup>1</sup>

A wide array of ADR bodies handling disputes on banking and financial matters exists at European level: some of them are conciliation systems, others are decision-making bodies whose pronouncements may or may not be binding on one or both parties; public bodies coexist with private ones which, in some countries, are subject to public oversight.<sup>2</sup>

European countries are working on the development of national ADR systems to comply with the quality requirements set by Directive 2013/11/EU. This work takes priority over other programmes launched in some countries to rationalize and simplify the regulatory framework in which the various public and private out-of-court settlement bodies operate.

A brief overview of the main ADR systems for the resolution of disputes on banking and financial matters in the United Kingdom, Spain, Germany, France, Denmark and the Netherlands will follow.

*United Kingdom.* – The out-of-court settlement system is very complex, featuring about 70 bodies, both settlement-based and decision-based.<sup>3</sup>

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<sup>1</sup> Starting with [European Commission Recommendation 98/257/EC](#) on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and up to Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Regulation (EU) 524/2013 on online dispute resolution (ODR) for consumer disputes arising from contracts concluded online for the sale of goods or the supply of services.

<sup>2</sup> In some countries the law mandates seeking alternative dispute resolution before taking the matter to an ordinary court.

<sup>3</sup> The proliferation of ADR schemes, even covering the same sector, led the government and the industry to consider rationalizing the British system through the creation of an ADR umbrella to function as a centralized point of entry to activate and coordinate out-of-court settlement procedures.

The [Financial Ombudsman Service \(FOS\)](#) is an independent public body covering the areas of banking, finance, insurance and investment services. The FOS enjoys autonomy from the Financial Conduct Authority (FCA), which appoints its Board.

Based on the type of financial intermediary involved and on the object of the dispute, the FOS<sup>4</sup> has either compulsory or voluntary jurisdiction,<sup>5</sup> the latter being based on the financial intermediary's decision to adhere.

The procedure, which is totally free of charge for complainants,<sup>6</sup> requires minimal formalities, mainly connected to the completion of the final steps in the processing of the dispute, and can be broken down into three stages, which must be preceded by a complaint made to the financial intermediary.

The first stage is that of initial enquiries, i.e. requests for assistance and counsel handled (usually with a successful outcome) by a dedicated unit through its call centre or by email.<sup>7</sup>

The second stage, when it occurs, involves settlement with an adjudicator, who re-examines the case file and may order further investigation, including a hearing of the parties. The adjudicator issues a non-binding opinion, which becomes a private agreement only if both parties accept it.<sup>8</sup>

The last stage, which is only reached if the parties do not accept the opinion issued by the adjudicator, is the decision before the ombudsman, which may be triggered by both parties. The decision is binding only if it is accepted by the complainant within 30 days.

Opinions and decisions are rendered by the individual adjudicator or ombudsman according to the principles of good faith and fairness.<sup>9</sup>

This is without prejudice to the parties' right to take the case to court, including in cases of non-compliance with an agreement stemming from the acceptance of a final opinion or decision.

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<sup>4</sup> The FOS handles disputes involving amounts up to £150,000.

<sup>5</sup> The disputes falling under compulsory jurisdiction are those involving entities authorized by the Financial Conduct Authority (FCA) to operate in the banking, financial and insurance business and relating to regulated activities such as consumer credit, mortgage loans and payment services (see the [FCA Handbook](#) on the FCA website).

<sup>6</sup> Besides consumers, micro-enterprises and trusts may also file complaints to the FOS.

<sup>7</sup> Only one in five complaints was not solved during the initial inquiries (see the [Annual review 2014-2015](#) on the FOS website).

<sup>8</sup> As a result of the financial intermediaries' high rate of acceptance of the adjudicator's opinions only about 10 per cent of complaints reach the decision stage before the ombudsman.

<sup>9</sup> As a consequence, although FCA regulations require decisions to be rendered in accordance with the laws, regulations and codes of conduct governing the sector, in practice FOS decisions may deviate from them (see the [FCA Handbook](#)).

In the United Kingdom the ADR Directive was transposed by three pieces of legislation<sup>10</sup> promoted by the government's Department for Business Innovation and Skills. The NCA for the banking, financial and insurance sector is the Financial Conduct Authority which, in July 2015, recognized the FOS as an ADR quality entity pursuant to Directive 2013/11/EU.<sup>11</sup>

*Spain.* – Following the organizational reform of Banco de España in October 2014, oversight of financial intermediaries' conduct and customer protection in Spain falls to the Market Conduct and Claims Department ([Departamento de Conducta de Mercado y Reclamaciones](#)), which has a dedicated task force on the out-of-court settlement of disputes concerning banking and financial matters between financial intermediaries and customers (both consumers and non-consumers). The task force is staffed by employees of Spain's central bank.

Besides the Market Conduct and Claims Department, there are other ADR bodies whose task is to protect customers in the investment services sector and in matters relating to pension funds and insurance.

The Spanish ADR system is totally free of charge. There are no limits based on the amounts at stake in the dispute. The authority cannot, however, handle requests for compensation for damages. There is a time limit tied to the date of the transaction being disputed: no complaint may be brought in relation to events that occurred more than six years earlier.

The procedure starts with a complaint made to the financial intermediary, which must respond within two months. This is a necessary step in order to file a complaint with the authority in its capacity as an ADR scheme;<sup>12</sup> the authority must issue a pronouncement within four months.<sup>13</sup> During the preliminary inquiry phase the defence brief must be submitted by the financial intermediary no later than 15 days after receiving the complaint, while the complainant has five more days to respond. The concluding phase involves the preparation of a reasoned report (*informe motivado*) based on the law,<sup>14</sup> with the possibility of taking account of good practices and custom and practice in the financial sector. While not binding on the

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<sup>10</sup> The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, the Alternative Dispute Resolutions for Consumer Disputes (Amendment) Regulations 2015, and the Consumer Rights Act 2015.

<sup>11</sup> Given the importance attached to the settlement stage in the procedure before the ADR body, the 90-day deadline set by the ADR Directive to complete the process is only applied to the settlement stage before an adjudicator and not to the decision stage before the ombudsman. The time is counted, therefore, starting from the date on which the adjudicator received the complete documentation for the case from both parties.

<sup>12</sup> The Market Conduct and Claims Department also handles phone complaints (*consultas telefónicas*) through its call centre. It processed 51,682 complaints in 2014.

<sup>13</sup> The deadline only applies to complaints that may be defined as claims (*reclamaciones*). In fact, the law distinguishes between two types of complaints: claims (*reclamaciones*) and simple complaints (*quejas*). Almost all complaints are *reclamaciones*, i.e. claims seeking to obtain the reimbursement of interest or the acknowledgement of a right following damage caused by the financial intermediary's conduct; *quejas*, on the other hand, simply report improper conduct on the part of the financial intermediary.

<sup>14</sup> The violation of the law being assessed must concern legislation on transparency and customer protection.

parties, it does constitute a decision and is without prejudice to the complainants' right to go to court to protect their interests.

If the outcome is unfavourable to the financial intermediary, it must state within a month whether or not it accepts the content of the reasoned report.

The draft bill for the transposition of the ADR Directive, which was submitted during the parliamentary term recently ended, envisages the creation of a single ADR body for the banking, financial and insurance sectors, formally separated from the supervisory authorities of those sectors but under their oversight.

*Germany.* – German ADR schemes are predominantly private, voluntary and governed by their own rules and regulations.<sup>15</sup> The process does not require a preliminary complaint to be made to the financial intermediary and is free of charge for customers. The pronouncements are based on a preliminary investigation and are binding on the financial intermediaries for amounts up to €5,000.<sup>16</sup>

Besides these private schemes, a residual role is played by public bodies that are part of the supervisory authority and the central bank.

In 2011 the German Federal Financial Supervisory Authority ([Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin](#)) set up a settlement body for consumer disputes in investment services.<sup>17</sup>

Germany's central bank, the [Deutsche Bundesbank](#), has instead set up an ADR body handling disputes relating to payment services and the remote sale of financial services.<sup>18</sup> Access to both bodies is free of charge for customers (both consumers and non-consumers) and the procedure ends with the adoption of a non-binding recommendation.

In Germany the ADR Directive was transposed into law on 19 December 2016.<sup>19</sup> The new rules will gradually enter into force by April 2019. The Federal Office of Justice (Bundesamt für Justiz) was designated as the national competent authority pursuant to the ADR Directive.

*France.* – The French ADR model for the banking and financial sector has features that set it apart from the other European systems: it is based on private mediation, mostly provided independently by the single financial intermediaries (a scheme known as *médiation en compte propre*), flanked by centralized systems, both public and private (a scheme known as *médiation en compte commun*). Examples of the

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<sup>15</sup> E.g. the Ombudsman for cooperative banks (Verband der Privaten Bausparkassen e.V.–Kundenbeschwerdestelle) and the Ombudsman for private banks (Ombudsmann der Privaten Banken) for the banking sector, and the Ombudsman for investment funds (Ombudsstelle für Investmentfonds) and that for closed-end funds (Ombudsstelle Geschlossene Fonds e.V.) for the investment services sector.

<sup>16</sup> In this case, the financial intermediary cannot take the matter to court.

<sup>17</sup> [Schlichtungsstelle nach dem Kapitalanlagegesetzbuch – Arbitration Board according to the Investment Code.](#)

<sup>18</sup> [Schlichtungsstelle bei der Deutschen Bundesbank – Arbitration Board at the Deutsche Bundesbank.](#)

<sup>19</sup> Published in the Federal Law Gazette of 25 February 2016.

latter are the private mediation bodies set up by the French Banking Association (*Fédération Bancaire Française – FBF*)<sup>20</sup> and the French Finance Companies Association (*Association française des Sociétés Financières – ASF*).

The dispute settlement procedure may be activated by customers (both consumers and non-consumers) free of charge following a complaint sent to the financial intermediary and ends with a mediation proposal, which becomes binding once accepted by the parties.

The mediation scheme for the investment services sector is provided by the Financial Markets Authority (*Autorité des Marchés Financiers – AMF*); access to the service is free of charge, but a complaint must already have been made to the financial intermediary. The body is public and offers a pure mediation scheme: it does not issue binding decisions, but rather proposes a solution that the parties are free not to accept.

Banking mediators are subject to the oversight of the Banking Mediation Committee (*Comité de la médiation bancaire*), chaired by the Governor of the Banque de France, which supervises the bodies operating in the sector.

In France, the ADR Directive was transposed by a presidential ordinance amending the Consumer Code;<sup>21</sup> the measures implementing the ordinance were included in a decree issued by the Prime Minister on 30 October 2015 following consultation with the Conseil d'Etat. The role of national competent authority was assigned to the Consumer Mediation Assessment and Oversight Commission (*Commission d'évaluation et de contrôle de la médiation de la consommation*) established with the French Ministry of Economics and Finance.

*Denmark.* – The *Danish Complaint Board of Banking Services*, a private ADR scheme established following an agreement between the associations representing banks, mutual banks and the Danish Consumer Council,<sup>22</sup> has been active since 1988.

Access to the ADR procedure<sup>23</sup> is contingent on a complaint being made to the financial intermediary and the payment of a fee. The decision issued by the Council is not binding for the customer, who can take the dispute to court, but it is binding for the financial intermediary unless it makes its disagreement public within 30 days.

The Council is assisted by a Secretariat tasked with submitting the dispute to the Council for its decision if the parties have not reached an agreement during the preliminary investigation.

The *Mortgage Credit Complaint Board* is in charge of disputes relating to mortgages. It functions much in the same way as the Danish Complaint Board of

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<sup>20</sup> The mediation body set up by the French Banking Association is currently not a member of Fin-Net.

<sup>21</sup> *Ordonnance 2015-1033 relative au règlement extrajudiciaire des litiges de consommation*, published in the Official Journal of 21 August 2015.

<sup>22</sup> A representative of the Competition and Consumer Authority may attend the Council's meetings.

<sup>23</sup> The procedure may be activated by consumers or firms.

Banking Services, with its General Secretariat tasked with ensuring the exchange between the parties of the documents pertaining to the procedure.

In Denmark the ADR Directive was transposed on 29 April 2015 by the Act on Consumer Complaints, which entered into force on 1 October 2015. The Danish Competition and Consumer Authority, which is part of the Ministry of Business and Growth, was designated as the national competent authority pursuant to the ADR Directive.

*Netherlands.* – The Financial Services Complaints Institute ([Klachteninstituut Financiële Dienstverlening – KiFiD](#)) has been active since 2007. It is a private body established by law from the merger of the pre-existing ADR schemes for banking, financial and insurance matters.

Financial intermediaries are obliged to adhere to the scheme; only consumer customers<sup>24</sup> may file a complaint with the KiFiD, provided they have first sent a letter of complaint to the financial intermediary. The KiFiD handles disputes entailing amounts up to €250,000 for cases involving banks and insurance companies, and up to €100,000 for those involving other financial intermediaries.

Disputes are processed in three stages, which must be preceded by a preliminary assessment of the grounds of the complaint, or lack thereof, carried out by KiFiD staff based on the documentation submitted by the parties and any additions to the preliminary investigation.

If the dispute does not appear manifestly baseless, the KiFiD's dedicated unit decides whether it is best to a) forward the complaint to the Ombudsman to facilitate a non-binding settlement between the parties; or b) defer the matter, owing to its complexity, directly to the Disputes Committee (Geschillencommissie),<sup>25</sup> which is an adjudicatory body whose decision may be binding or not depending on the choice made by the customer when filing the complaint.

If the dispute appears manifestly baseless, the KiFiD staff submits it to the Disputes Committee for a hearing before a single adjudicator, who issues a non-binding decision.<sup>26</sup>

Binding decisions by the Disputes Committee can be appealed in certain cases by applying for a review of the case before a Board of Appeal (Commissie van Beroep).<sup>27</sup> This does not preclude the possibility of taking the matter to an ordinary court to challenge on specific grounds the binding decisions made by the Disputes Committee or the Board of Appeal.

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<sup>24</sup> Apart from limited access for small and medium-sized enterprises as provided for in the KiFiD regulations (Reglement Ombudsman en Geschillencommissie financiële Dienstverlening), available on the [KiFiD website](#).

<sup>25</sup> The Disputes Committee operates through a single adjudicator or a panel of them, depending on the importance of the dispute and the need for special professional knowledge.

<sup>26</sup> In this case the only option is to take the matter before a civil court.

<sup>27</sup> Access to the Board of Appeal is restricted to disputes involving amounts of €25,000 or more.

The Netherlands transposed the ADR Directive into law on 16 April 2015,<sup>28</sup> effective on 9 July 2015. The Ministry of Finance was assigned the role of national competent authority vis-à-vis the KiFiD for appeals concerning financial services.

**Table 2.1**

<b>Statistical data on the main European ADR bodies</b>			
COUNTRY – ADR BODY (2014 data)	Requests to activate an ADR procedure	Decisions/settlements	Percentage of decisions/settlements in favour of complainant (3)
United Kingdom – FOS (1)	1,786,973 (includes initial enquiries)	405,202 (Adjudicator) 43,185 (Ombudsman)	55
Spain – Departamento de Conducta de Mercado y Reclamaciones	84,673 (includes <i>consultas telefónicas</i> )	15,370 (refers to <i>reclamaciones</i> )	64
Germany – BaFin Arbitration Board	75	72	1
Germany – Bundesbank Arbitration Board	4,181	168 (2)	0.6
French – Mediation offered by Fédération Bancaire Française (FBF)	2,984	1,833	34
French – Mediation offered by Association française des Sociétés Financières (ASF)	1,755	957	50
French – Mediation offered by Autorité des Marchés Financiers (AMF)	1,001	276	44
Denmark – Danish Complaint Board of Banking Services	433	281	11
Denmark – Mortgage Credit Complaint Board	68	53	8
Netherlands – KiFiD	7,095	3,511 (Ombudsman) 761 (Disputes Committee) 54 (Board of Appeal)	24

(1) The data cover the period from April 2014 to March 2015, the last month for which they are available. – (2) For 2014, only the data concerning 168 complaints are available. The remaining disputes were affected by procedural simplification that made quantitative analysis impossible. – (3) Financial intermediaries' compliance rate with the decisions/settlements is high.

### *Alternative dispute resolution of cross-border cases: Fin-Net*

In order to foster the development of ADR schemes in Europe and encourage cooperation between them, in 2001 the European Commission promoted the creation of Fin-Net, a network of ADR bodies active in the banking, financial and insurance sectors of member states.

Fin-Net currently has 58 member ADR schemes from EU countries plus Iceland, Liechtenstein and Norway.<sup>29</sup> Italy's Banking and Financial Ombudsman has been a member since 2011.

<sup>28</sup> Published in the Official Journal of 30 April 2015.

<sup>29</sup> Further information is available on the [Fin-Net](#) website.

The network enables consumers who have reason to complain about a financial intermediary of another member state to do so through the ADR system operating in their home country which, through Fin-Net, will connect to its equivalent in the country in which the financial intermediary is based. Italy's Banking and Financial Ombudsman can therefore accept complaints brought by customers residing or established in another member state.

With the support of the European Commission,<sup>30</sup> the network periodically holds meetings to discuss issues of common interest and to exchange and disseminate international best practices. Last year's meetings were held in Brussels in June and December.

The discussion centred on (a) the transposition of the ADR Directive in the member states; (b) the operation of the online dispute resolution (ODR) platform managed by the European Commission; and (c) the revision of the Memorandum of Understanding<sup>31</sup> between ADR bodies, which is necessary to ensure full alignment with the recent changes in legislation.

During the meeting of 22 April 2016 the final version of the Memorandum was shared. It distinguishes between (a) members of the network, i.e. ADR bodies recognized pursuant to Directive 2013/11/EU, a list which includes Italy's Banking and Financial Ombudsman; (b) temporary members (ADR systems for which recognition from the relevant national competent authority is pending);<sup>32</sup> and (c) affiliated members, i.e. ADR bodies operating in countries where Directive 2013/11/EU is not applicable.

The Fin-Net activity report highlights the differing level of compliance with the ADR Directive of its current members and the need to grant a transitional period to members for which recognition from the home national competent authority is still pending.

As regards the future development of Fin-Net, the European institutions are devoting special attention to the network's potential, including as a tool to increase consumer trust in the purchase of financial products in other member states.

The European Commission's Green Paper,<sup>33</sup> for which the public consultation process ended on 18 March, shows that the degree of representation enjoyed by the various European countries is still partial. While the number of complaints managed through Fin-Net has increased, rising from 2,931 in 2013 to over 3,500 in 2014, consumers are still not fully aware of the network and of the opportunities it offers them to protect their rights.

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<sup>30</sup> The Commission also publishes an annual Fin-Net activity report.

<sup>31</sup> The Memorandum of Understanding, in force since 2001, sets out the principles and functioning of cooperation between the ADR schemes adhering to the network.

<sup>32</sup> A two-year transitional period, effective from the date the new MoU entered into force (16 May 2016), was granted to temporary members to achieve compliance.

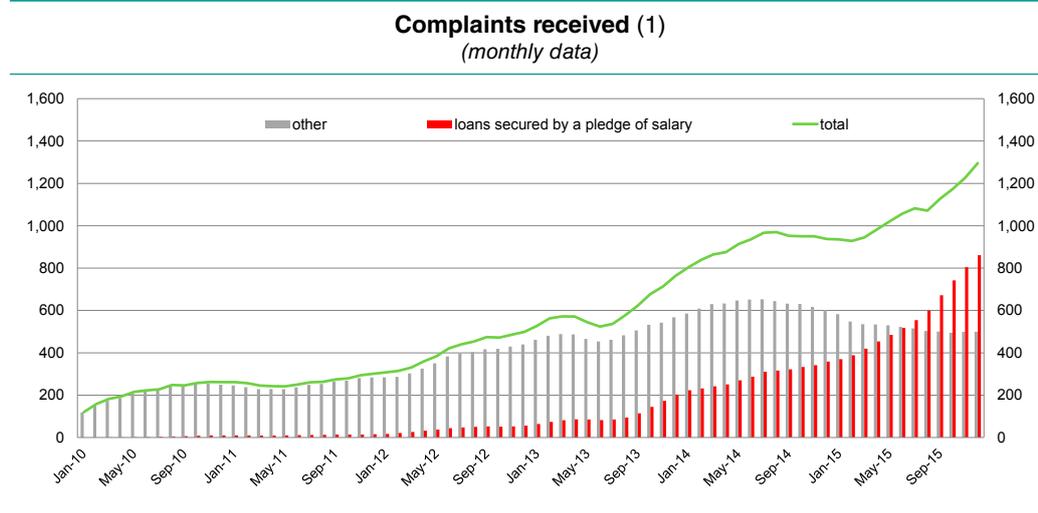
<sup>33</sup> European Commission, *Green Paper on retail financial services. Better products, more choice, and greater opportunities for consumers and businesses*, COM(2015) 630 final, 2015.

### 3. DATA ON COMPLAINTS AND OPERATIONS

#### OVERVIEW

The number of complaints received by the Banking and Financial Ombudsman continued to increase in 2015, by a further 21 per cent; the monthly average rose from 936 to 1,131 (Figure 3.1).

Figure 3.1



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

The increase in complaints is attributable to an increase in those regarding loans secured by a pledge of one-fifth of salary or pension (102 per cent; 33 per cent in 2014); excluding this category, the number of complaints fell by 19 per cent.

The majority of complaints were filed by consumers (93 per cent).

In 2015, there were 195 panel meetings, deciding an average of 54 cases per meeting (48 in 2014) for a total of over 10,450 cases; in 68 per cent of the cases the decision was substantially in favour of the complainant. The intermediaries almost always complied with the ABF's decisions (more than 99 per cent compliance).

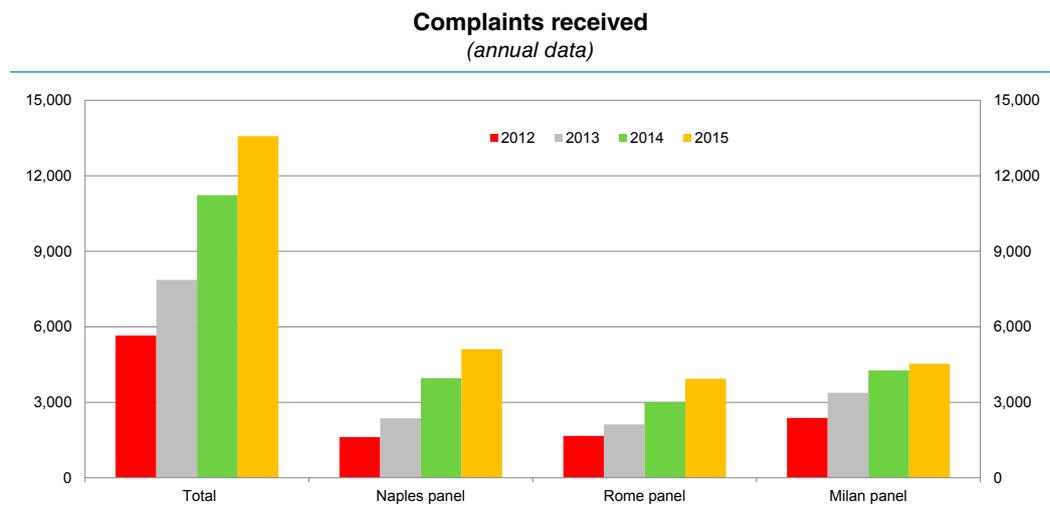
The sub-sections that follow provide data on the complaints submitted to the ABF (amounts and characteristics) as well as the outcomes and activities of the panels.

## DEMAND

### Aggregate data

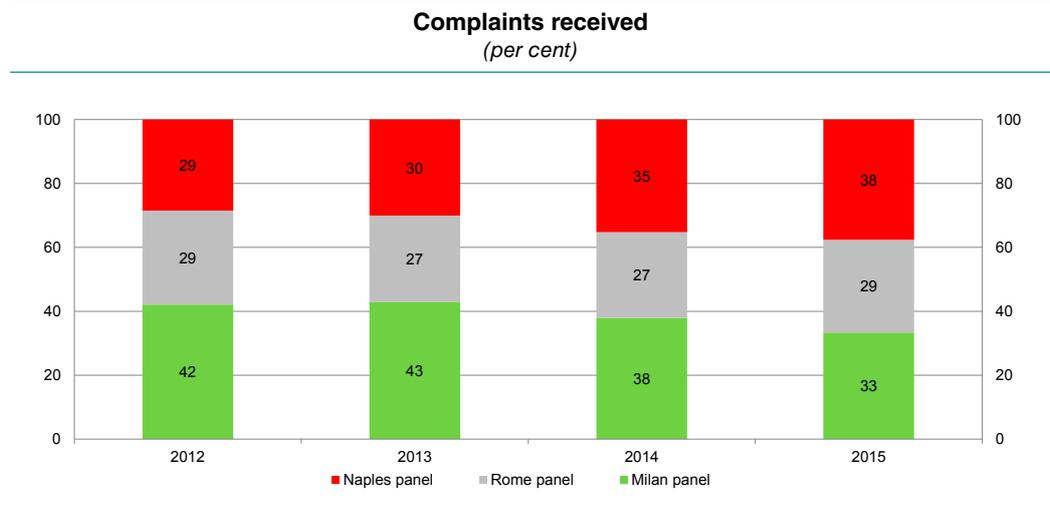
In 2015 the ABF received 13,575 complaints. The number grew in all the Italian regions except Trentino-Alto Adige and Valle d'Aosta. The largest growth was recorded by the Rome panel (31 per cent) and the Naples panel (29 per cent) while the increase was smaller for the Milan panel (6 per cent; Figure 3.2).

Figure 3.2



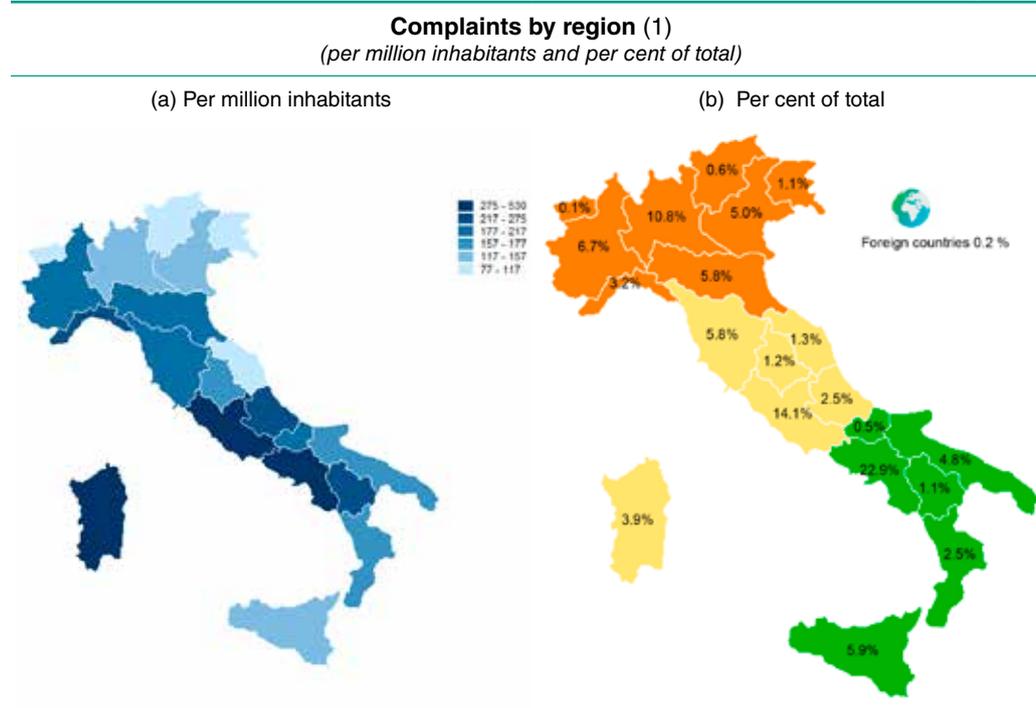
Of the complaints received, 38 per cent were submitted to the Naples panel (35 per cent in 2014), 33 per cent to the Milan panel and 29 per cent to the Rome panel (respectively 38 and 27 per cent in 2014; Figure 3.3).

Figure 3.3



Campania and Lazio continued to be the regions where the most complaints were submitted, both in number and in proportion to the population (Figure 3.4). In proportion to the population, high levels were recorded in Sardinia as well. A significant number of complaints were submitted by residents in Lombardy.

Figure 3.4



Sources: Based on ABF and Istat data.  
(1) Resident population as at 1 January 2015.

The increase in complaints submitted to the ABF reflects the rise in the number of letters of complaint sent to financial intermediaries. Breaking down the letters of complaint within the ABF’s jurisdiction according to the matter under dispute and the amount,<sup>1</sup> it emerges that less than 10 per cent of those rejected by the financial intermediaries were then submitted as a complaint to the ABF (see Section 1: The Banking and Financial Ombudsman: main characteristics).

The increase in complaints in 2015 was exclusively due to the growth in consumer complaints, up by more than 25 per cent; instead, those submitted by non-consumers fell by 16 per cent (Figure 3.5). Consumers accounted for 93 per cent of complaints.

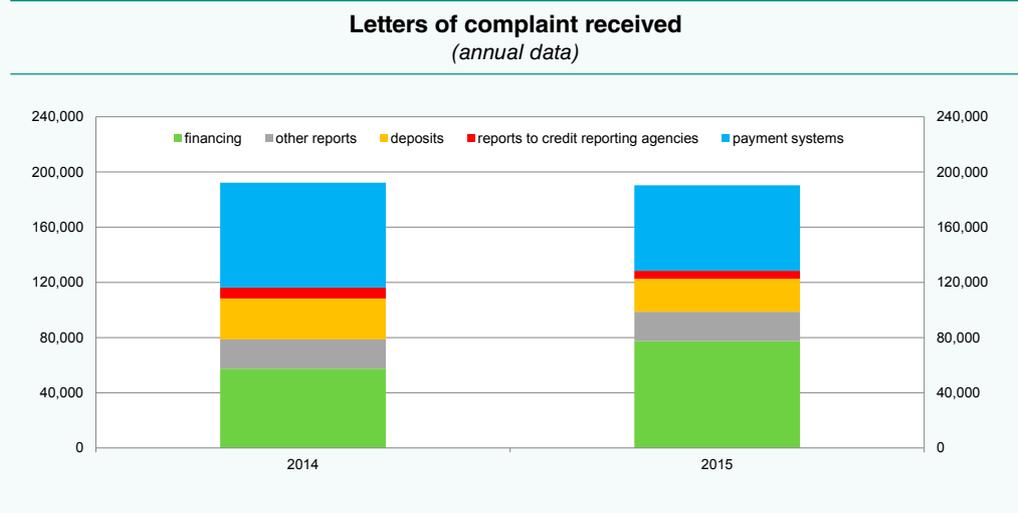
Among consumers, there was an increase in the number of complaints submitted by both men and women (29 and 18 per cent; Figure 3.6). In 2015, the former accounted for 68 per cent of the total.

<sup>1</sup> The letters of complaint submitted to financial intermediaries may pertain to matters outside the jurisdiction of the ABF, both with regard to the amount and the substantive issues involved.

## LETTERS OF COMPLAINT TO FINANCIAL INTERMEDIARIES

A quantitative analysis of the main issues and outcomes of the letters of complaint provides a wealth of information relevant to the activities of the ABF panels. Based on data from supervisory reports, the number of letters of complaint remained stable in 2015; the fall in the amount of claims relating to deposits, payment systems and reports to credit reporting agencies was offset by those relating to financing (Figure A).

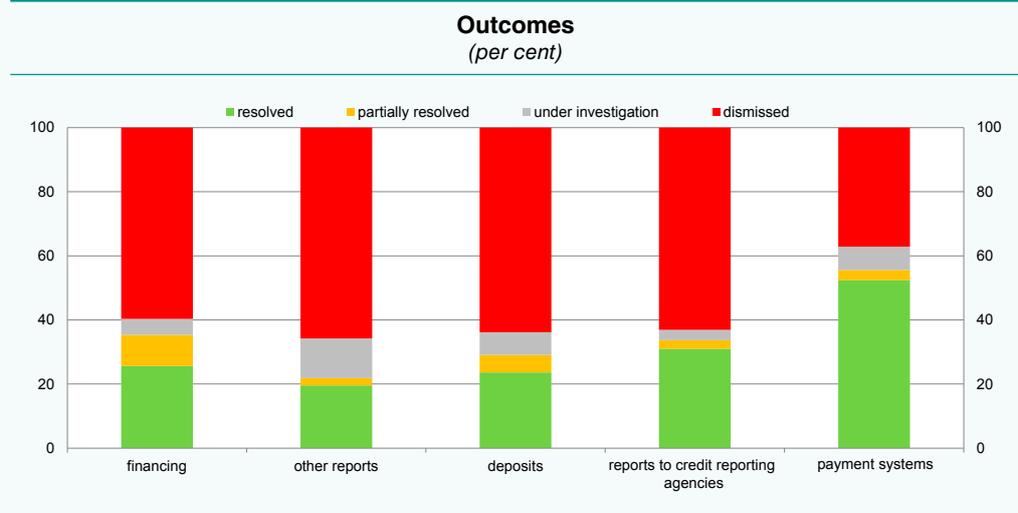
Figure A



Source: Supervisory reports

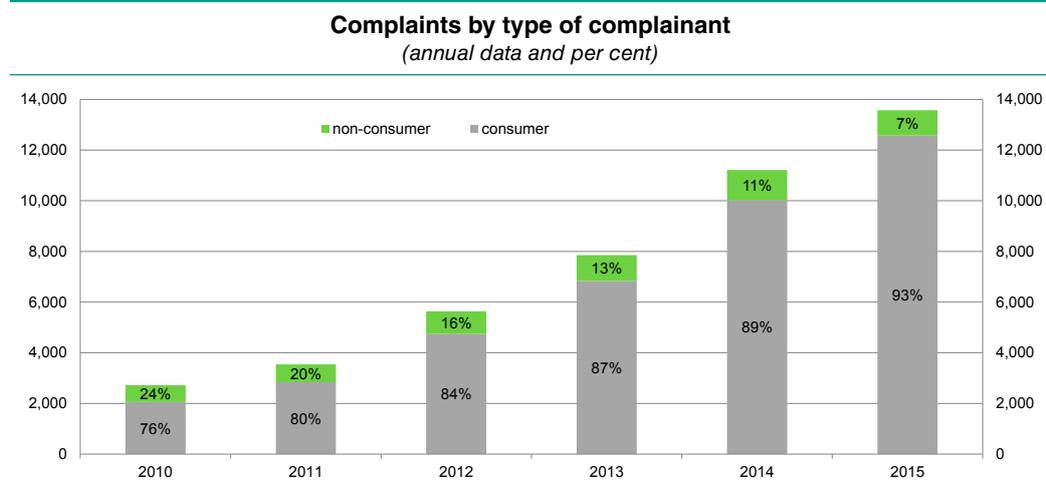
In 2015, about 34 per cent of the letters of complaint resulted in a favourable outcome for the complainant; 6 per cent were partially favourable (37 and 3 per cent in 2014; Figure B). The share of favourable outcomes regarding payment systems is significantly higher than the average, at 52 per cent.

Figure B



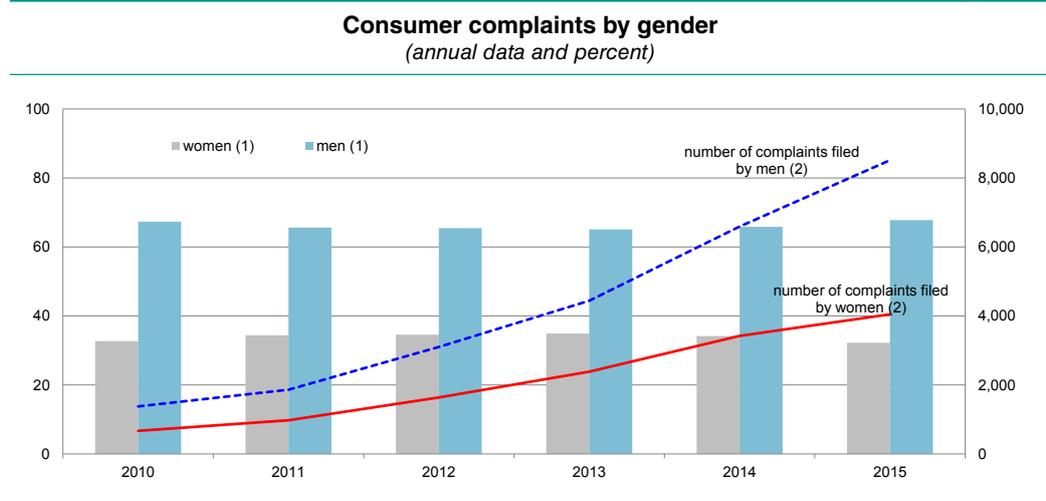
Source: Supervisory reports.

Figure 3.5



The distribution of complaints by gender remained uniform across the regions. In 2015, almost 40 per cent of complaints were submitted by women in Lombardy, Tuscany, Piedmont, Liguria and Valle d’Aosta; in Puglia, Basilicata and Campania the share fell below 24 per cent.

Figure 3.6



(1) Per cent. – (2) Right-hand scale.

Approximately half the complaints submitted by women and more than half of those submitted by men concerned loans secured by a pledge of one-fifth of salary (50 and 63 per cent; Figure 3.7). Complaints relating to ATM cards had the second highest incidence of filing for both genders (18 and 7 per cent), while for women the third most frequent complaint concerned mortgages and for men, current accounts.

Complaints concerning ATM cards were the only matter under dispute for which female complainants outnumbered their male counterparts; for those involving credit cards, current accounts and savings deposits the share of female complainants was above average at 36, 37 and 45 per cent respectively. As regards loans secured by a pledge of one-fifth of salary, 73 per cent of the complainants were men.

Figure 3.7

Consumer complaints by gender and by matter under dispute

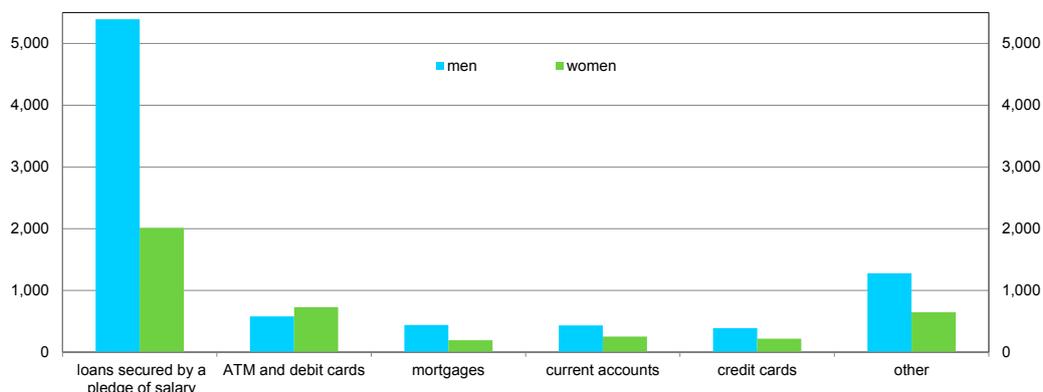
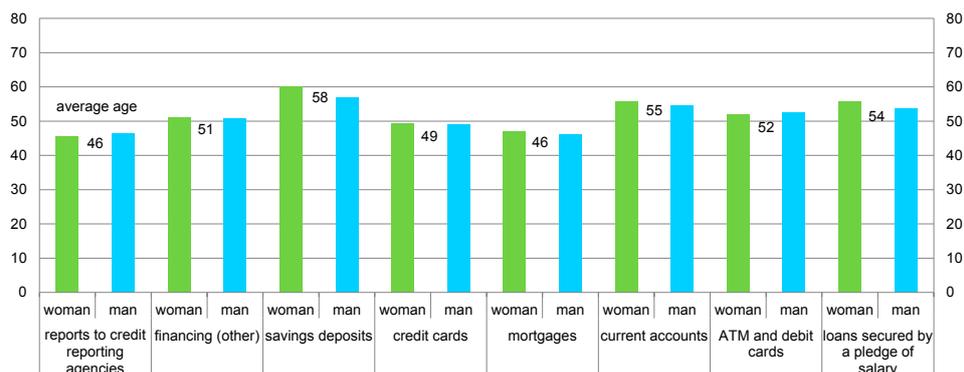


Figure 3.8

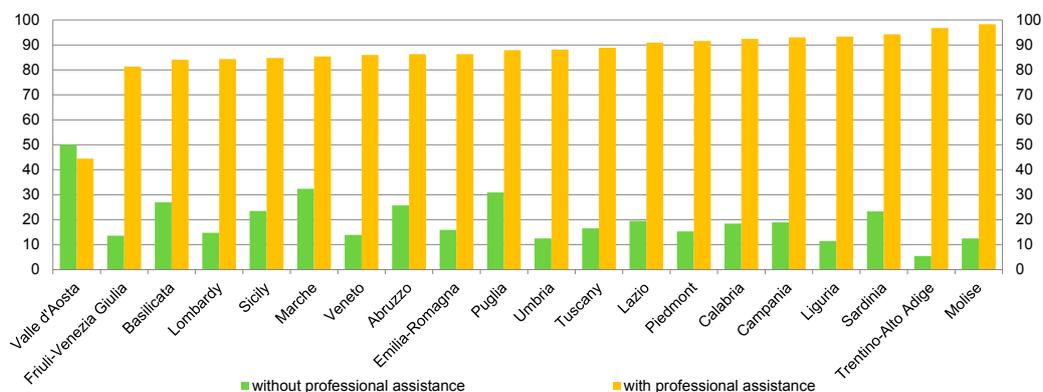
Age of complainant by matter under dispute (1)  
(age; average values)



(1) Data refer to the main matters under dispute.

Figure 3.9

Consumer complaints submitted by certified e-mail, with and without professional assistance, by region  
(per cent)



Consumer complainants had an average age of 52 (51 in 2014; Figure 3.8). For complaints involving savings deposits, the average age was higher, at 60 for women and 57 for men. For those concerning mortgages the complainants were generally younger (47 for women and 46 for men).

In submitting their complaints, 54 per cent of complainants used certified e-mail (47 per cent in 2014). For complaints filed with the assistance of a professional, the share jumps to 86 per cent, while for those filed directly by the consumer it falls to 20 per cent. The share of consumer complaints submitted by certified e-mail varies greatly by region (Figure 3.9).

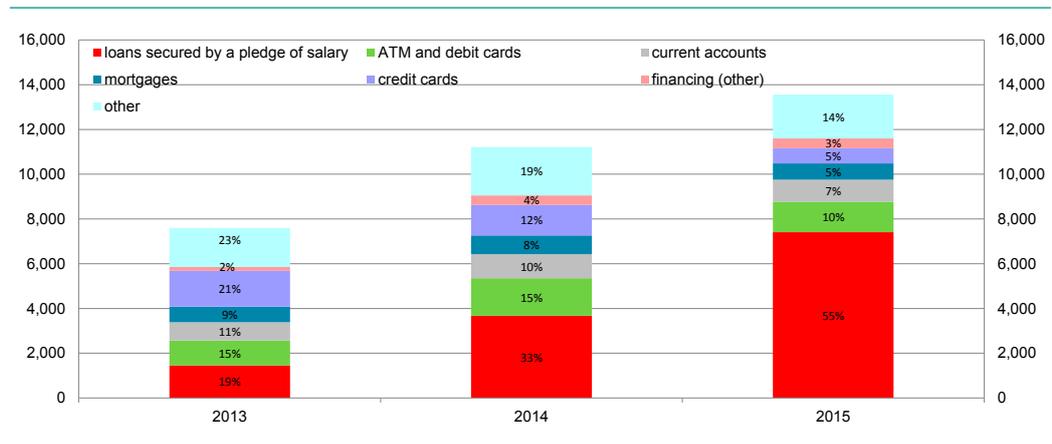
### Matters under dispute

Again in 2015 the complaints involved a variety of matters, with some changes in the distribution and in the issues involved. Disputes concerning loans secured by a pledge of one-fifth of borrower’s salary doubled in 2015, accounting for more than half of all complaints.

Apart from loans secured by a pledge of salary, the number of complaints fell for all matters under dispute except those involving other financing, credit reporting agencies and cheques. The decrease was especially pronounced for disputes involving credit cards, ATM cards and mortgages, falling by 50, 19, and 14 per cent respectively (Figure 3.10 and Table 3.1).

Figure 3.10

Appeals received by matter under dispute  
(annual data and per cent)



The breakdown by matter under dispute varies according to the type of complainant (consumer or non-consumer). With regard to consumers, the share of complaints concerning loans secured by a pledge of salary increased, while those concerning current accounts decreased (Figure 3.11).

Among non-consumers, there was a higher incidence of complaints regarding current accounts, mortgages, cheques and credit cards as well as disputes involving the Central Credit Register (Figure 3.12).

Table 3.1

## Complaint by matter under dispute: 2014-2015

	2015		2014		Variation 2015/2014
	No.	% of total	No.	% of total	
Loans secured by pledge of one-fifth of salary	7,410	55	3,671	33	102
ATM card	1,358	10	1,678	15	-19
Current account	987	7	1,073	10	-8
Mortgage	728	5	844	8	-14
Credit card	679	5	1,361	12	-50
Financing (other)	433	3	427	4	1
Savings deposits	405	3	428	4	-5
Credit reporting agencies	361	3	335	3	8
Cheques	204	2	192	2	6
Consumer credit	172	1	267	2	-36

Figure 3.11

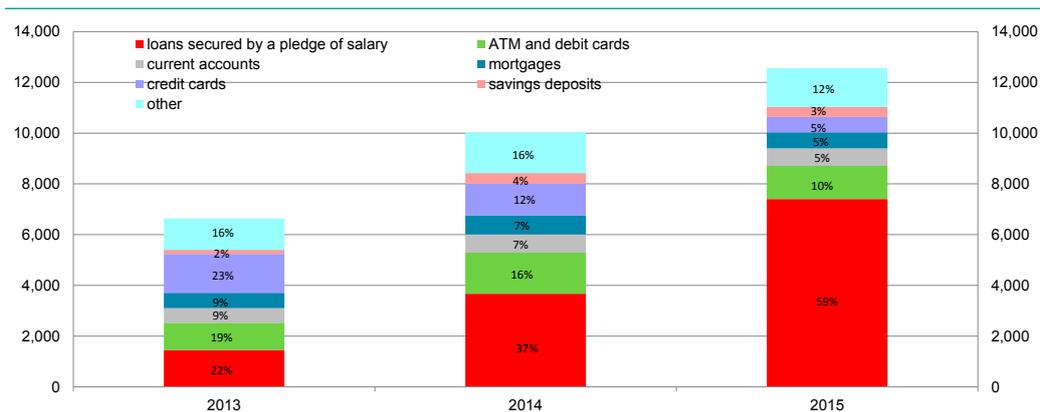
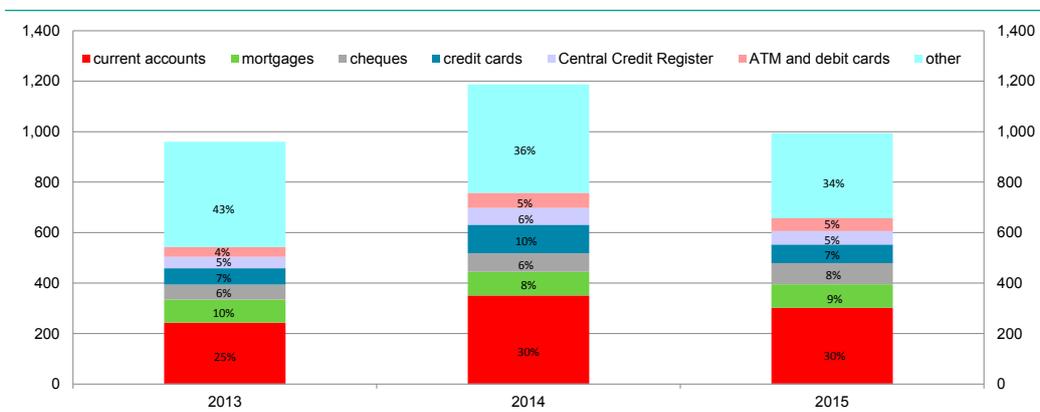
Consumer complaints by matter under dispute  
(annual data and per cent)

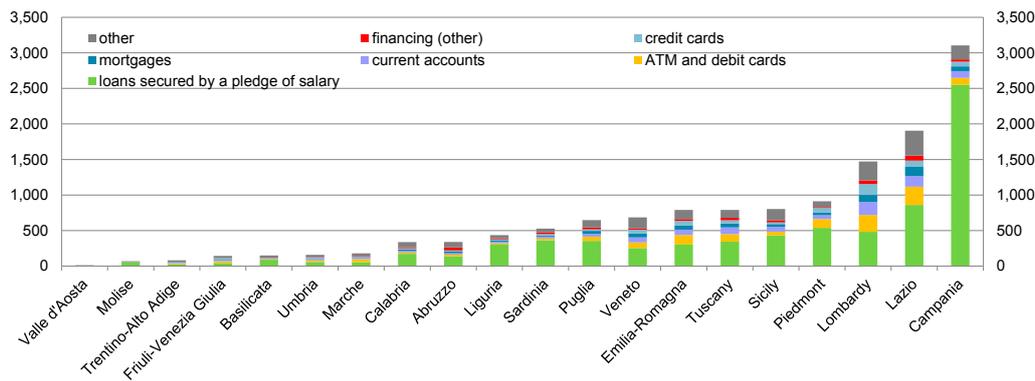
Figure 3.12

Non-consumer complaints by matter under dispute  
(annual data and per cent)

In 2015, more than 2,500 complaints involving loans secured by a pledge of salary were filed in Campania (more than 850 in Lazio and about 540 in Piedmont; Figures 3.13 and 3.14). Lazio filed the largest number of complaints involving ATM cards followed by Lombardy and Emilia-Romagna. Lombardy submitted the highest number of complaints both with regard to current accounts and credit cards.

Figure 3.13

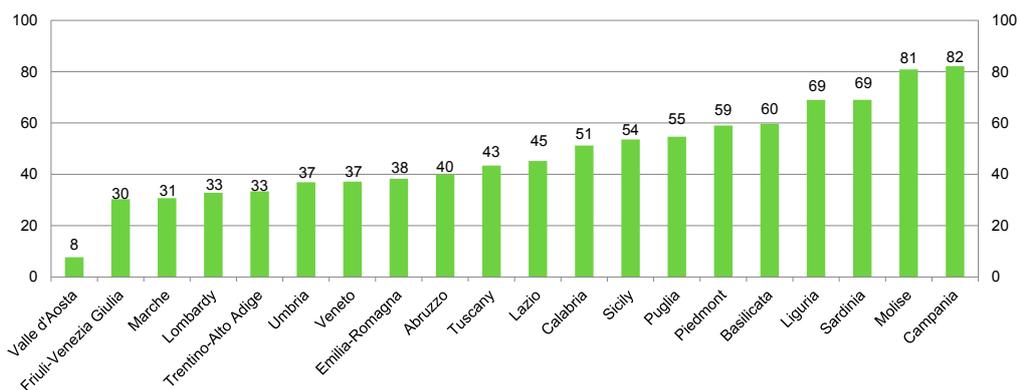
**Matter under dispute by region**  
(complaints per million inhabitants)



Complaints involving loans secured by a pledge of one-fifth of salary account for more than 80 per cent of complaints in Campania and Molise; they account for less than one-third of complaints in Marche and Friuli-Venezia Giulia (Figure 3.14).

Figure 3.14

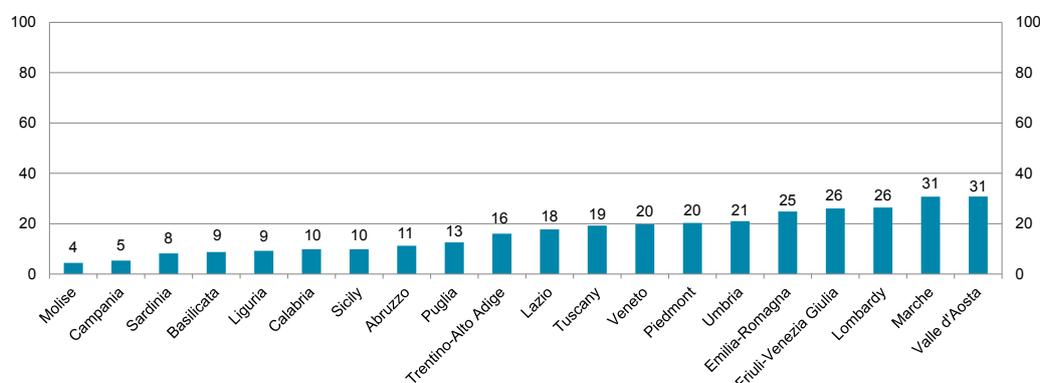
**Loans secured by a pledge of salary: share of complaints by region**  
(per cent)



The incidence of complaints involving electronic payment systems was higher in the Centre and North of Italy, accounting for more than 25 per cent of complaints in Marche, Lombardy and Friuli-Venezia Giulia and no more than 5 per cent in Campania and Molise (Figure 3.15).

Figure 3.15

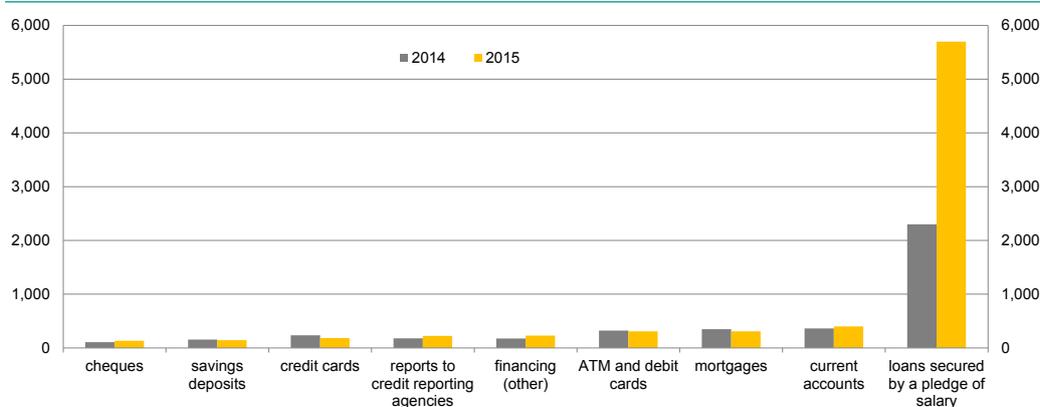
**ATM and credit cards: share of complaints by region**  
(per cent)



In 2015, 60 per cent of complaints were filed with the assistance of a professional, up from 41 per cent in 2014. Compared with last year, a larger share of complainants sought professional assistance in filing complaints involving loans secured by a pledge of salary; there was a moderate increase for complaints involving cheques, credit reporting agencies, financing and current accounts (Figure 3.16).

Figure 3.16

**Complaints presented by lawyer or other professional**



In 2015, complainants under the jurisdiction of the Naples panel, especially those in Campania, continued to be most likely to seek the assistance of a professional.

The number of complaints and their increase depend on several factors, among which the prevalence and characteristics of payment systems or the various forms of saving or financing. Indications regarding the use of banking and financial products may be inferred from data in the supervisory reports and Italy's Survey on Household Income and Wealth (SHIW).<sup>2</sup>

<sup>2</sup> 'Household Income and Wealth in 2014', Supplements to the Statistical Bulletin, 64, 2015.

Based on data from the SHIW, about 93 per cent of households had a current account with a bank or with Poste Italiane SpA (BancoPosta) in 2014 (Table 3.2). As regards payment instruments, 75 per cent of households had at least one debit card while only 29 per cent had a credit card. The share of households with a mortgage loan was 11 per cent, while the share with a consumer loan was 9 per cent.

**Table 3.2**

<b>Use of banking and financial instruments among Italian households</b>					
	Households with a consumer loan	Households with a mortgage loan	Credit card	ATM card	Current account with a bank or BancoPosta
North	8.1	13.0	37.0	82.0	96.8
Centre	10.1	12.1	32.6	81.3	96.5
South and Islands	8.8	7.0	16.1	60.8	85.7
Total	8.7	10.9	29.3	75.0	93.2

A comparison of the number of complaints per type of product to the estimated number of transactions in that specific category reveals that, among the main matters under dispute, financing, especially consumer credit, entailed a higher level of litigation. Among payment instruments, complaints concerning credit cards are more frequent than those concerning ATM cards; current accounts present fewer problems.

### *Types of financial intermediaries*

In 2015, there was an increase in the number of complaints against financial intermediaries registered pursuant to former Article 107 of the Consolidated Law on Banking, foreign banks and banks incorporated as limited companies (72, 67 and 24 per cent respectively). In contrast, there was a 48 per cent decrease in the number of complaints against Poste Italiane SpA; complaints against mutual banks also fell, recording a decrease of 13 per cent.

Again in 2015, the largest number of complaints to the ABF were against banks incorporated as limited companies (33 per cent against 32 per cent in 2014); the share of complaints against Article 107 financial intermediaries rose to 32 per cent. The share of complaints against Poste Italiane SpA fell to 9 per cent from 22 per cent in 2014, while the share against foreign banks increased by about 4 percentage points to 14 per cent (Figures 3.17 and 3.18).

The relative importance of the various matters under dispute varied with the type of financial intermediary. Complaints relating to loans secured by a pledge of salary were the most frequent type of complaint filed against Article 106 and Article 107<sup>3</sup> financial intermediaries and foreign banks, accounting for 94 per cent, 89 per cent and 77 per cent respectively of complaints filed against those categories; it was

<sup>3</sup> For financial companies, reference is to those entered in the general register or the special register pursuant to Article 106 and Article 107 of the Consolidated Law on Banking in the version pre-dating the reform of the financial intermediation sector, effective as of 11 July 2015, which provides for the creation of a new single register.

also the most common type of complaint lodged against popolari banks and banks incorporated as limited companies.

With regard to mutual banks, the most frequent type of complaint concerned current accounts, while more than 80 per cent of complaints against payment institutions involved credit cards (Table 3.3). The highest number of complaints regarding loans secured by a pledge of salary were against Article 107 financial intermediaries. Half of the complaints pertaining to ATM cards and more than three-fifths of those pertaining to current accounts were against banks incorporated as limited companies.

Figure 3.17

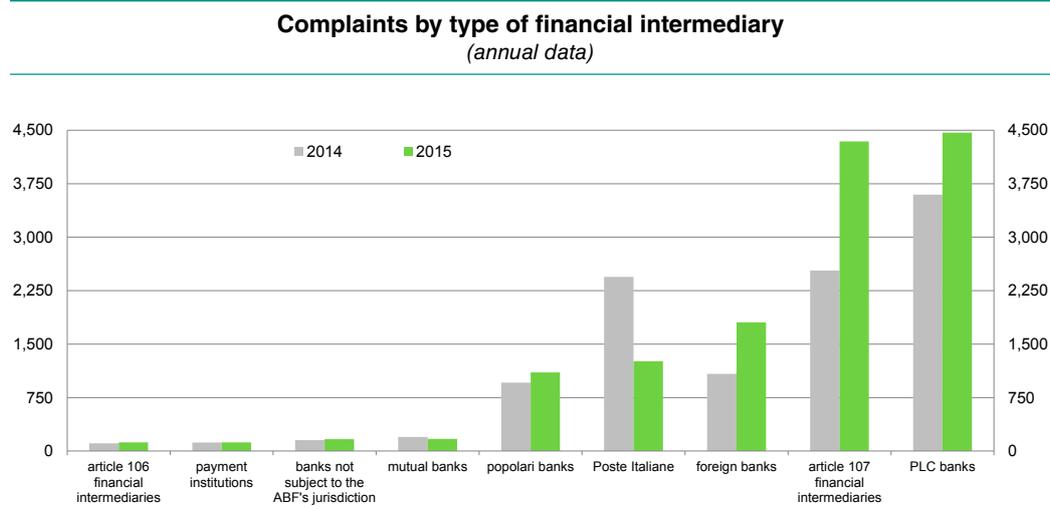


Figure 3.18

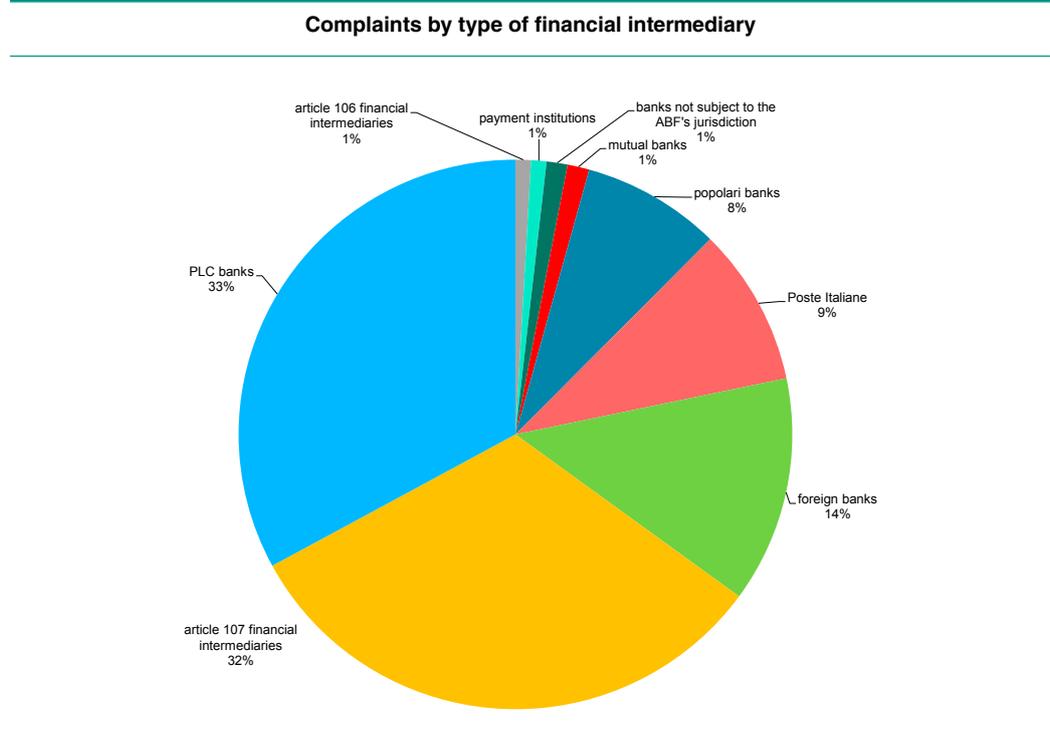


Table 3.3

**Incidence of matters under dispute by type of financial intermediary**  
(per cent)

	Total	PLC banks	Foreign banks	Popolari banks	Mutual banks	Article 107 financial int.	Article 106 financial int.	Payment institutions
Loans secured by pledge of salary	55	31	77	49	–	89	94	–
ATM and debit cards	10	15	3	8	16	–	–	11
Current accounts	7	14	2	15	23	–	1	5
Mortgages	5	10	5	9	20	–	2	–
Credit cards	5	5	6	4	2	1	–	82
Financing (other)	3	5	1	1	1	3	2	–
Savings deposits	3	1	–	–	2	–	–	–
Credit reporting agencies	3	4	1	3	4	2	–	–
Cheques	2	3	–	2	8	–	–	–
Consumer credit	1	2	–	–	1	2	–	–
Other	6	10	4	8	23	1	–	2
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

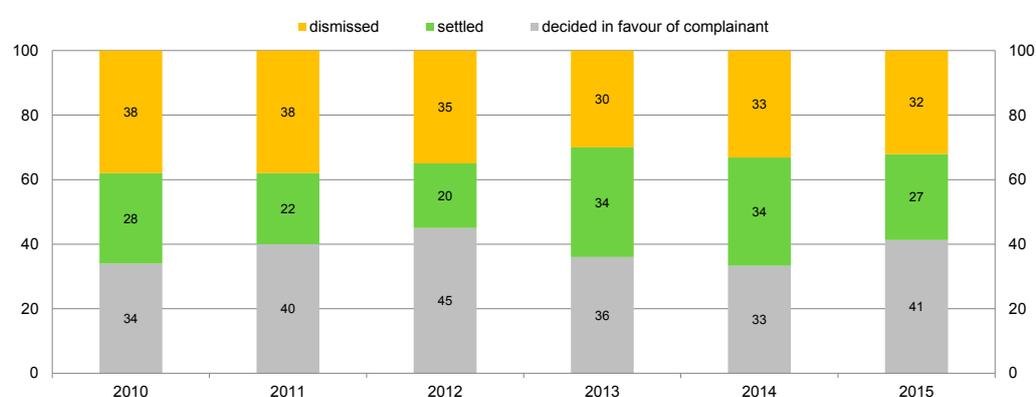
## SUPPLY

### Outcomes

The panels decided an average of 54 complaints per meeting, compared with 48 in 2014. In 68 per cent of the cases the ABF found substantially in favour of the complainant (67 per cent in 2014): in 41 per cent of the cases the panels decided partially or totally in favour of the complainant and in the other 27 per cent the dispute was settled by an agreement between the parties before reaching the decision phase. The panels rejected 32 per cent of the complaints, either because the customer's case was unfounded or not adequately proven, or on procedural grounds (Figure 3.19).

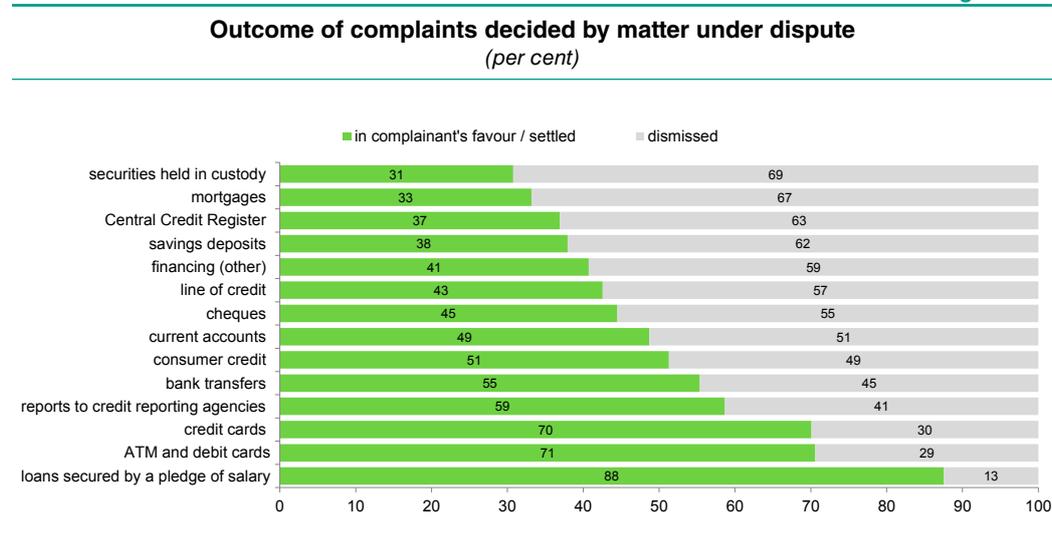
Figure 3.19

**Outcome of complaints**  
(per cent)



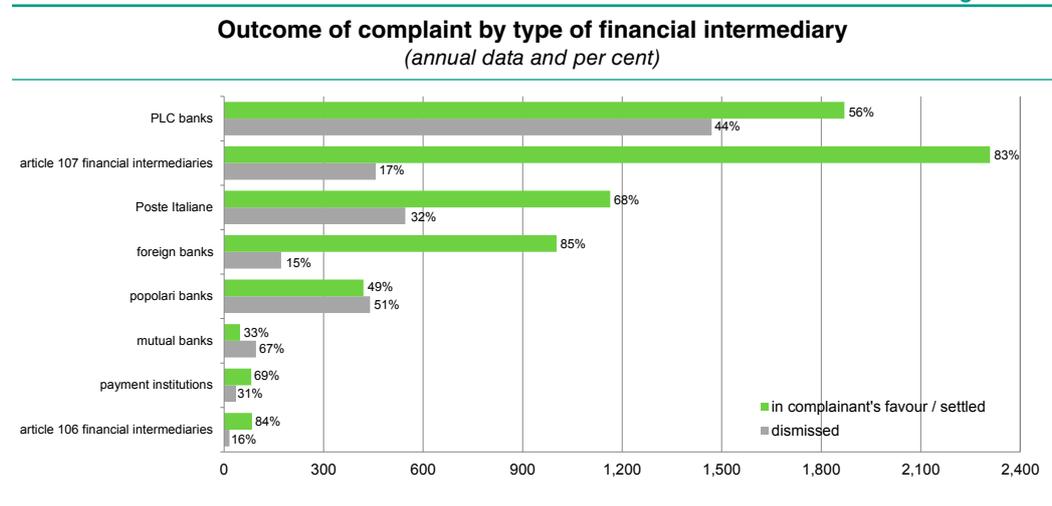
Outcomes differed significantly depending on the matter under dispute: the percentage of cases decided in favour of the complainant or settled was lower for mortgages and securities deposits and extremely high for credit cards, loans secured by a pledge of salary and debit cards (Figure 3.20).

Figure 3.20



Outcomes differed also depending on the type of financial intermediary. Mutual banks had the lowest rate of adverse outcomes (38 per cent); Article 106 and Article 107 financial intermediaries had the highest (Figure 3.21).

Figure 3.21



The share of cases decided in favour of the complainant, settled by the parties or dismissed also differed greatly between individual financial intermediaries and banking groups (Figure 3.22).

An analysis of the outcomes of complaints according to panel and type of complainant (consumer and non-consumer) shows that in all three panels the percentage of substantially positive outcomes (decisions in favour of the complainant

and settlements before decision) is higher for consumers. The difference reflects the higher incidence of disputes involving loans secured by a pledge of salary and debit cards, complaints that have higher success rates (Figure 3.23).

Figure 3.22

**Percentage of complaints decided in favour of complainant or settled by the parties**  
(annual data and per cent)

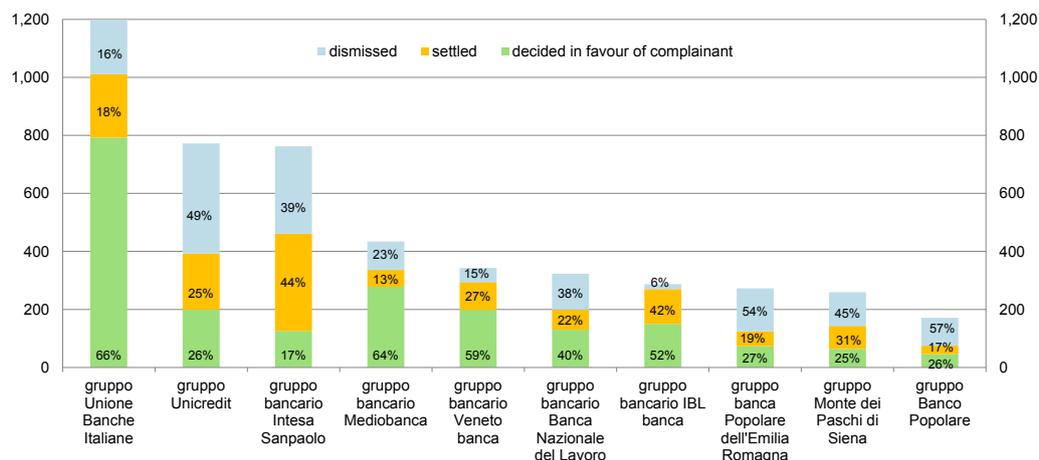
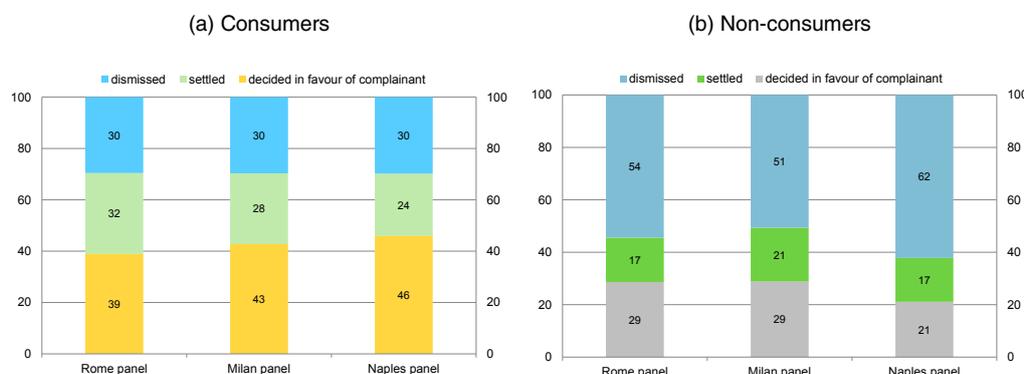


Figure 3.23

**Outcome of complaint by type of complainant and panel**  
(per cent)



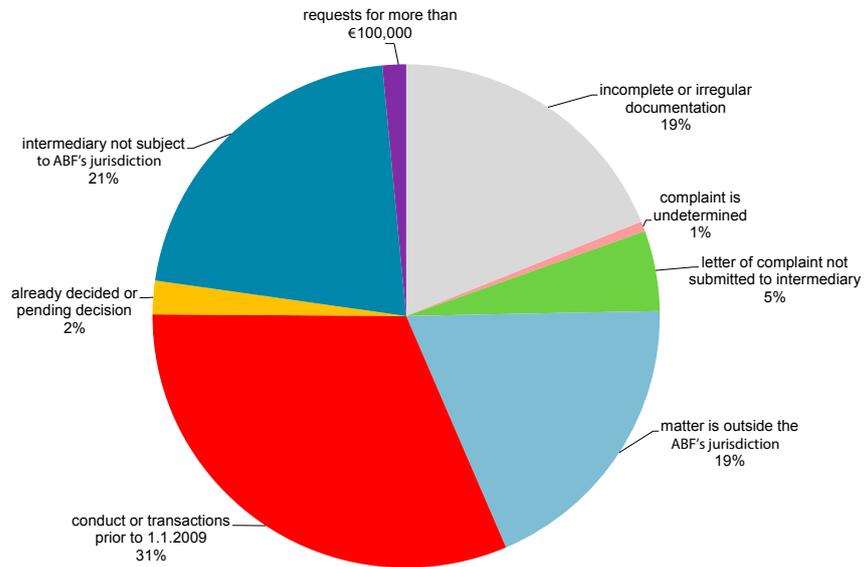
In 2015, 3.4 per cent of the complaints submitted were rejected as inadmissible, down from 4.4 per cent in 2014; of these, 33 per cent were rejected because the conduct or transaction occurred prior to 1 January 2009 (21 per cent in 2014; Figure 3.24).

In 2015, the rate of non-compliance was below 1 per cent.

In conclusion, it is interesting to compare ABF proceedings with data on civil mediations.

Figure 3.24

**Grounds for deeming complaint inadmissible**

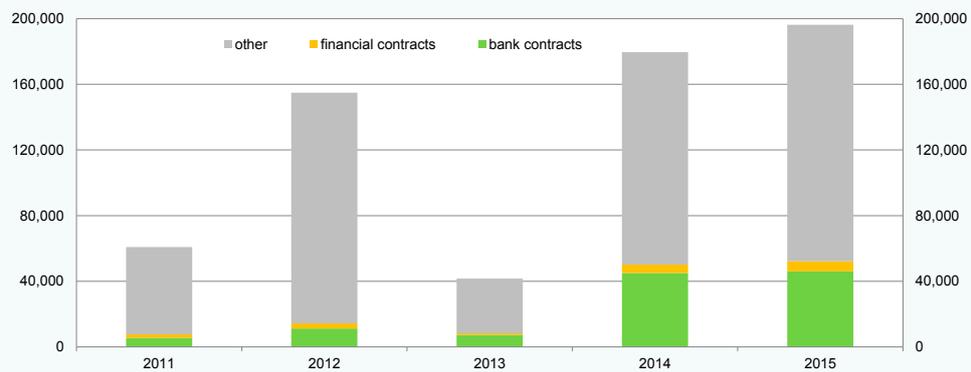


**A COMPARISON WITH CIVIL MEDIATION**

In 2015, the number of proceedings before mediators registered with the Ministry of Justice increased by 9 per cent overall; there was a 4 per cent increase in proceedings involving banking and financial matters, relating to both bank and financial contracts (2 and 17 per cent respectively; Figure A).

Figure A

**Civil mediation  
(annual data)**



Source: Based on data from the Ministry of Justice.

In 53 per cent of the cases, one of the parties failed to participate in the mediation; the share increases to 57 per cent for bank contracts and 66 per cent

for financial contracts. The absence of one of the parties makes it impossible to reach an agreement, resulting in a negative outcome of the mediation. In cases in which both parties participated, the mediation resulted in an agreement in 23 per cent of the cases; for bank and financial contracts, an agreement was reached in 7 and 12 per cent of the cases.

In 2015 the average economic value of a mediation case was €138,000, (median value of €20,000); the average value was €125,000 for mediation cases involving a bank contract and €175,000 for those involving a financial contract (median €50,000 and €22,000 respectively).

As a result of the constant increase in workload, the timeframe for deciding on a complaint increased to 300 days, excluding complaints that were settled by the parties or withdrawn by the complainant, remaining well above the time allotted by the ABF Provisions (105 days plus an additional 30 days to notify the parties of the decision). The average term for the conclusion of a proceeding under the ADR Directive was 245 days.<sup>4</sup>

#### **DATA ON THE FIRST FOUR MONTHS OF 2016**

In the first four months of 2016 the number of complaints submitted to the Ombudsman increased by 56 per cent over the year-earlier period. All three panels registered a sharp increase: 73 per cent in the Naples panel, 54 per cent in the Milan panel and 40 per cent in the Rome panel. The increase was principally due to complaints involving a loan secured by a pledge of salary, which rose by 121 per cent; there was an increase of 23 per cent in complaints concerning mortgages. The share of consumer complainants continued to grow (95 per cent) as did the share of complaints represented by a professional (64 per cent).

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<sup>4</sup> The Directive provides that the ADR entity has 90 days from its receipt of the completed complaint file to render and transmit its ruling to the parties.