



MAI 2017

**PERSPECTIVES ON THE
TECHNIQUES USED TO MARKET
SPECULATIVE TRADING ON THE
FOREX AND BINARY OPTIONS
MARKETS**



**Risk and Trend
Mapping**

AUTORITÉ
DES MARCHÉS FINANCIERS



THE CONTRASTING PERSPECTIVES OF FRANCE'S FINANCIAL MARKETS AUTHORITY (AUTORITÉ DES MARCHÉS FINANCIERS – AMF) AND OF AIX-MARSEILLE UNIVERSITY (AMU) ON THE TECHNIQUES USED TO MARKET SPECULATIVE TRADING ON THE FOREX AND BINARY OPTIONS MARKETS¹

In its Report for the AMF, the Social psychology laboratory of Aix-Marseille University shows that speculative trading marketing is based on the use of persuasion criteria, such as the credibility of trading companies and their advisers, and on the use of influence techniques (commitment, reciprocity and social proof, etc.).

Use of influence and persuasion techniques in the exchanges between advisers and their customers, who most often are inexperienced and remain so despite so-called training provided by their advisers, lead them to total dependency on their advisers for instructions.

These “advisers” use several techniques, such as commitment and compliance without pressure techniques (i.e. Foot-in-the-door, Door-in-the-face, Bait-and-switch and But-you-are-free) based on social norms (reciprocity and social proof) and on persuasion (source and message characteristics) to encourage their customers to invest gradually, while offering them bonuses or providing them with services during trading phases. Although all these methods are often merely considered nudges², which can be used by those with honourable intentions or for noble causes (education, environment, fraud reduction) as well, they can also be used to serve ill intentions, such as increasing the likelihood that a customer will agree to invest ever more money, especially for recovering the money already invested and lost.

Furthermore, speculative trading ads incorporate the persuasion methods that are found in all advertising environments. The characteristics of the source are manipulated to make it credible, attractive, valued and similar to the target. Credibility is a crucial element, notably because these advertisements target inexperienced people with virtually no knowledge of speculative trading.

Nevertheless, the power of the Internet, sales and communication techniques observed are used to sell high-risk products to the general public. The AMF was the first European regulator to work towards thwarting these practices, and it found its investor pool had sustained considerable harm because of them.

Based on social psychology, this analysis opens up new areas of discussion for the regulator, both at the national and at the European level. Above and beyond being deceptive, the sales practices described in the material provided would become inherently aggressive when used to sell highly speculative products to individuals.

Some of the avenues of discussion that arise from the report can be cited for further study cover how to:

- identify and name such techniques to better prevent and resist influence techniques;
- increase the impact of AMF communication with the general public;
- contribute to the debate over the policy to ban the advertising of these products;

¹ [Report Analysis of techniques used to market speculative trading in forex and binary options with regard to research on compliance without pressure and persuasion techniques, by Lionel Rodrigues and Fabien Girandola \(Aix-Marseille University, LPS\), January 2017](#)

² Nudges are levers (that give “a little help”) to facilitate a behaviour (cf. Nudge. Improving Decisions about Health, Wealth, and Happiness by Richard Thaler and Cass Sunstein, Yale University Press, 2008).

- keep a watchful eye on the use of social proof and the reciprocity rule in advertisements for complex or risky financial products intended for individual investors;
- use the results of academic research to define the criteria specific to aggressive sales techniques, and thus to more easily characterise the unfair nature of certain types of behaviour;
- prohibit certain sales practices such as the bonuses used for selling high-risk products;
- reflect upon the measures relating to gift policies, which create strong incentives, but which run contrary to the customer properly grasping the risks entailed in these products.
- analyse, in light of this research, the tie-ins with advertising, online forms, spoken persuasion by an adviser, the early stages that can lead down a slippery slope if the adviser is ill-intended, and draw conclusions based on the forgoing.

The timing is certainly right with regard to MIFID2 and MIFIR, and in particular with regard to their Product Governance or Product Intervention provisions, to incorporate these contributions from academic research into regulatory work, or even to prohibit certain commercial practices such as bonuses at the European level. They could also turn out to be useful for making a case for facts and grievances in control procedures. At a more holistic level, the discussions that they prompt reiterate how important tighter control of marketing to the local consumer is key for the success of customer protection policies.

INTRODUCTION

Since 2011, the AMF has been focusing its attention on combating offers made to the general public for speculative trading in forex³ and binary options. Use of the internet as a vehicle for direct marketing has considerably increased the impact of these offers on these highly speculative markets. Early on, the AMF believed that these products were not suitable for retail investors and asked lawmakers to introduce the ban on advertising on speculative trading products into law. The Law of 9 December 2016 on transparency, anti-corruption and economic modernisation, known as the "Sapin 2 Law", represents a big step forward in this direction.

Many actions (warnings, prevention, blocking access to websites, etc.) seem to have begun paying off. At the start of 2017, requests sent to the AMF concerning forex and binary options represent 30% of all requests made to the "Épargne Info Service" platform, vs. 40% at the beginning of 2016. The number of requests for mediation regarding these instruments dropped by 25% in 2016. However, these figures still remain too high and it is essential to continue both prevention with the general public and regulatory efforts to curb and eventually eradicate this scourge.

Throughout its combat, the AMF has observed how certain "sales techniques" have contributed to inflicting greater damage. The affected populations are indeed quite varied. All victims seem to have had their weakness preyed on and were drawn into a destructive spiral. The institution wished to supplement its empirical observations with an academic research contribution from the field of social psychology and especially from the school of thought concerning commitment and "compliance without pressure". Since it is now essential to understand and describe the marketing techniques implemented by these trading companies.

The services of Aix-Marseille University's (AMU) Social Psychology Laboratory have been approached because it specialises in social influence as well as in persuasive commitment communication techniques. Fabien Girandola⁴, Professor of social psychology, is responsible for social influence-related issues for the laboratory. He is the author of many works on social influence as well as on techniques of changing opinion and behaviour through persuasion⁵. Lionel Rodrigues⁶, who holds a PhD in social psychology, worked with Mr. Girandola on the report requested by the AMF.

After reviewing the context of this study and the actions taken by the AMF (I), it will be necessary to factor in an interdisciplinary approach to academic research, legal and regulatory texts and empirical observations (II) to better grasp the regulator's thinking on these commercial practices.

³ International market for buying and selling currencies

⁴ Attitudes et comportements : comprendre et changer by Fabien Girandola and Valérie Fointiat, PUG 2016

La dissonance cognitive Quand les actes changent les idées Sous la direction de Valérie Fointiat, Fabien Girandola, Patrick Gosling Année: 2013 Editeur Armand Colin

L'évocation de la liberté améliore-t-elle l'efficacité d'une formation?" by Isabelle Gilletdu même auteur Université de Bourgogne, Daniel Gilibertdu même auteur Université de Lorraine and Fabien Girandola du même auteur Aix-Marseille Université, Les Cahiers Internationaux de Psychologie Sociale 2013/2 (Numéro 98)

Binding communication at the service of organ donations by Robert-Vincent Jouledu même auteur Laboratoire de psychologie sociale and Françoise Bernarddu même auteur Irsic-Crepcom, and Alain Geisslerdu même auteur CHU Hôpital Nord and Fabien Girandola du même auteur Laboratoire SPMS, and Séverine Halimi-Falkowiczdu même auteur Irsic-Crepcom, Revue internationale de psychologie sociale 2010/2 (Tome 23)

Soumission forcée, double soumission forcée et dynamique des représentations sociales by Elise Renarddu même auteur, Christine Bonardidu même auteur, Nicolas Roussiaudu même auteur, Fabien Girandola du même auteur, Revue internationale de psychologie sociale 2007/2 (Tome 20)

⁵ Joule & Beauvois, Petit traité de manipulation à l'usage des honnêtes gens. Presses Universitaires de Grenoble, 2014

⁶ Self-prophecies and cognitive dissonance: Habit, norms and justification of past behaviour by Lionel Rodrigues and Fabien Girandola. North American Journal of Psychology, 2017 (Vol. 19, No. 1, 65-86)

1. STUDY BACKGROUND

Based on different observations that it has made (I.1), the AMF has worked tirelessly to report the danger to retail investors that constitute highly speculative products such as forex trading or binary options, and to curb this scourge (I.2).

It should be noted that at the beginning of 2017, there was a relative decrease in the different warning signs, which has encouraged the AMF to continue this work.

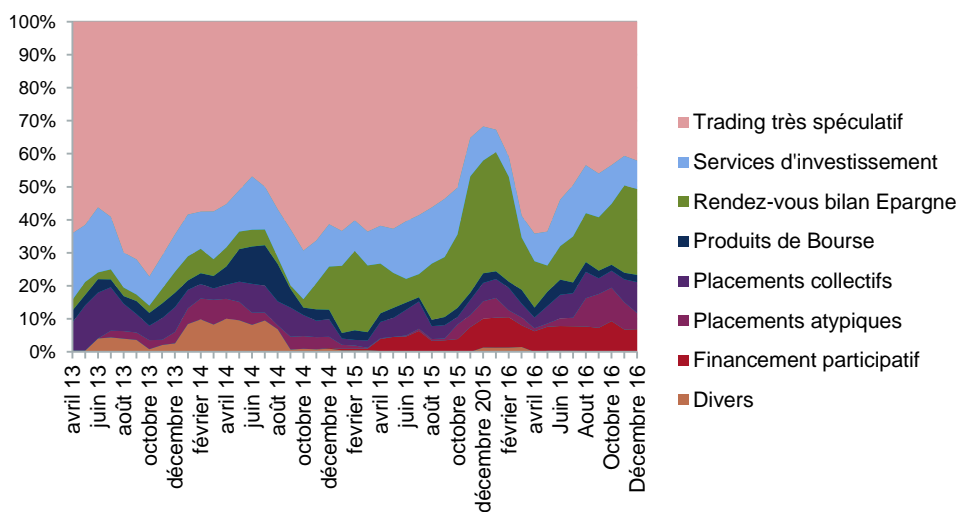
1.1. FINDINGS

1.1.1. Aggressive advertisements targeting the general public

As of 2011, a host of tempting ads could be found online to lure Internet users into becoming traders, especially in the forex market. Often misleading, these advertisements are intended to attract the general public unfamiliar with the financial markets through empty promises of get rich quick schemes.

Repeatedly, the AMF came up with⁷ the same findings: in recent years, more than half of new online ads covered highly speculative products such as CFDs⁸, forex or binary options. As these offers were ubiquitous online, and their impact was quite devastating.

Figure 1: New online ads from 2013 to 2016 for investment products and services



Source: Kantar Média, AMF calculations

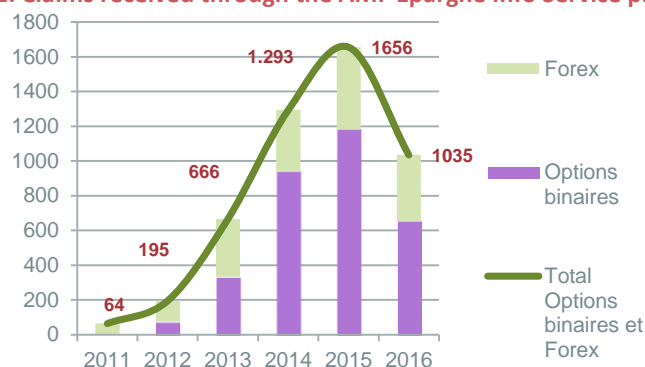
⁷ The AMF continuously monitors investments ads. The media monitored are the press, out-door displays, internet, and mobile telephone apps and social networks.

⁸ CFDs (“contracts for difference”) are financial products that allow one to bet on upturns and downturns in the pricing of underlying financial instruments without ever owning them.

1.1.2. Spike in the number of complaints received by the AMF

In 2013, the AMF saw a surge in complaints from individual investors who sometimes incurred significant losses from these investments. The testimonials received highlighted both how excessively susceptible these investors were to the promises made by these so-called trading advisers and the effectiveness of the methods these advisers used.

Figure 2: Claims received through the AMF Épargne Info Service platform⁹

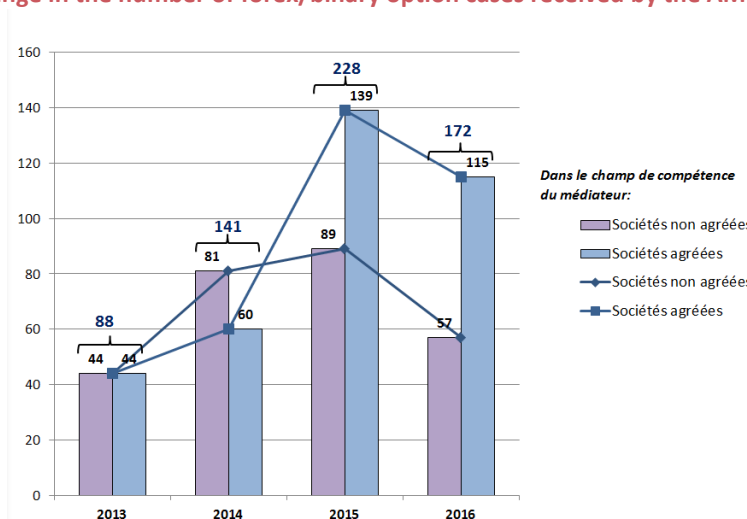


Source: AMF

1.1.3. The AMF's use of mediation

The AMF Ombudsman was also quick to warn about the actions and drives of online trading companies. At its peak in 2015, the AMF Ombudsman received 228 forex/binary option cases vs. 141 in 2014; 88 in 2013 and 58 in 2012. In 2016, it received 172 cases, i.e. a -25% decline vs. 2015. About 85% of admissible mediation requests concerned companies authorised by the regulator of Cyprus, an EU Member State.

Figure 3: Change in the number of forex/binary option cases received by the AMF Ombudsman



Source: AMF

⁹ The AMF's centre for relations with the public and the AMF Epargne Info Service receive different types of requests. "Complaints" are claims in which the plaintiff lodges a complaint about being the victim of non-compliant actions or abuse by a company, a financial intermediary and indicates having suffered damage. The public can also report non-compliant behaviour or problems or ask questions with the areas of competence of the AMF (authorisation of a company; operation of a product, etc.).

1.1.4. A study measured the disparity between promise and reality: 9 out of 10 customers lost money

In 2014, the AMF conducted a study based on data collected from “serious” players in the profession¹⁰. This data covered 15,000 clients over a 4-year period. These results confirmed to the AMF that these products were ill-suited to the general public; it could therefore make the compelling case that uninformed clients should: “Stay away from forex!”



Source: AMF

1.1.5. True life tests showed reprehensible practices

To get a better grasp of the sales practices used by these companies, in 2014 and in 2016 the AMF asked a service provider to open accounts, carry out transactions and try to recover what was left of the money it had deposited¹¹. This tactic is called the “mystery visit”.

The results from the wave of 2014¹² had highlighted compliance with the MIF regulation¹³ aggressive websites with skewed communications, promising tag lines that in no way factored in the risk, customer questionnaires that were not administered¹⁴, aggressive commercial practices (many reminders or follow-up messages, misleading statements), great difficulty for customers to recover the money they had invested. These results showed that the practices of regulated platforms in some European countries (Cyprus) were sometimes comparable to those of websites operating illegally.

The new 2016 wave, which occurred exclusively with regulated companies in Cyprus, shows an improvement. Website home pages are more likely to comply with the regulations and display

¹⁰ [Study of results of individual investor trading in CFDs and in forex in France](#), report, studies & analyses by the AMF, 13 October 2014

¹¹ [The AMF continued its efforts to protect individual investors from the dangers of speculative trading](#), AMF press release - 8 April 2015.

¹² AMF Households Savings Observatory Newsletter - no.12 - April 2015.

¹³ European Directive on Financial Instrument Markets. Entering into force on 1 November 2007, the MiFID defines the framework for doing business in the European market. It governs the conditions for providing investment services and operating regulated markets as well as other trading platforms.

¹⁴ The majority of the offers correspond to the Receipt and Transmission of Order investment service, which requires, prior to any transaction, that its client fills out a questionnaire matching his or her profile (experience and financial knowledge) with the proposed product (in this case the product is highly speculative and thus requires very sound knowledge and experience with the financial markets so the investor is able to fully understand the risks entailed in the transaction).

disclaimers. In most cases, customer questionnaires have been administered. Sales techniques are often less aggressive and the amounts invested (approximately €500) could be recovered. However, there are few disclaimers on web pages. This allows traders and some sales people to circumvent the regulation through their spoken communications with their customers. On several platforms, it is hard for the client to know what he is actually investing in. Training can be used as an incentive to trade. This training also allows the adviser to take the lead and to thereafter advise his client outside any regulatory framework. This most recent wave of mystery visits was made even though the AMF had informed its Cypriot counterpart throughout the year of its serious concerns, calling for due care and serious checks. Meanwhile, a Cypriot operator had been suspended from doing any business in France (Rodeler, whose trademark is "24Option", suspension on 1 August 2016) by the AMF.

1.1.6. A survey was conducted to estimate the extent of the phenomenon

The estimates of the number of trading websites¹⁵ do not take into account the fact French customers are sometimes marketed to directly. To better understand the extent of direct marketing by companies with questionable practices, in 2015 the AMF commissioned a survey on non-standard investment offers, trading offers and possible scams or fraud-related scams¹⁶. The results confirmed that fraud, particularly in online trading, was rampant:

- 28% of the French said they had previously been in contact with or approached by companies offering investments "not sold through banks".
- 5% of the French said they had been "scammed" through these investments, 8 out of 10 of whom believed they were a "victim" because they had not received the payment they were expecting or had not been warned about the risks and had lost their investments.

The Public Prosecutor of Paris corroborated and supplemented these numbers at the press conference held on 31 March 2016¹⁷, stating that total losses for French investors due to internet-based financial fraud could amount to €4 billion over six years.

1.1.7. Illegal operators using authorised websites abroad

The AMF reported that many companies operated without the necessary authorisations to offer their services to the French public. Behind these professional-looking websites lurked scam artists who sought to fleece unsuspecting customers. Thereafter, it is hard and sometimes impossible to prosecute them due to where these companies are located – most often abroad.

On the other hand, some websites have authorisations issued by foreign regulators that apply the minimum requirements. Due to the "European passport", these companies can sell their services throughout Europe, but only the regulator of the country of origin can sanction them, in this case the CySEC.

Entirely run from another country, these websites create the impression of being French. They use web addresses ending in ".fr", the telephone numbers display French area codes and the advisers handling customers are French-speaking.

Due to the number of approved and unapproved companies that use similar business methods, the difference can be quite unclear for the individual investor.

¹⁵ Investment Trends estimated there were approximately 22,000 regular investors in forex and in CFDs in France in 2015. The AFCOSI (French Association of Investment Services Brokers) estimates the number to be 30,000 French CFD investors, Le Revenu, 17/23 February 2017.

¹⁶ [Study conducted on French investment "scams"](#), AMF press release of 27 January 2016.

¹⁷ The press conference held on March 31, 2016 brought together the AMF, the ACPR, the consumer affairs watchdog DGCCRF and the Public Prosecutor's Office, which joined forces to combat financial scams. Press release - 31 March 2016.

1.1.8. The AMF's investigations showed the opacity of trading operators

Faced with the influx of complaints from French investors, the AMF carried out 7 investigations on companies or websites offering forex investment services, including 2 entities regulated by Cyprus, and 5 operating illegally. These investigations are complicated because these fraudulent activities are in fact carried out abroad, often outside the European Union (Israel)¹⁸.

The main findings of these surveys are as follows :

- the organisation implemented by certain entities running the websites is extremely opaque (a surfeit of bank accounts and companies);
- there are links between certain unregulated and regulated companies;
- the companies sometimes belong to groups offering a wide array of services related to online trading (marketing, call centres, software, invoicing, "turnkey" creation of websites, etc.);
- the existence of transactions could not be established, whether for regulated or for non-regulated entities;
- the proposed pricing methodology is difficult to pin down. Two of the three regulated entities reported that the currency data feed came from independent external service providers;
- some aggressive commercial practices used by several regulated entities could amount to illegal direct marketing.

1.2. ACTIONS TAKEN BY THE AMF

The AMF was the first European regulator to fully grasp the scale of the phenomenon and to take steps to prevent it. It has made a strong commitment nationally to protect its investors. It has worked in cooperation with other institutions to lend a hand in this fight such as the ACPR (*Autorité de contrôle prudentiel et de résolution*), the consumer affairs watchdog DGCCRF¹⁹, and the Public Prosecutor's Office. Its president has called on the European bodies, ESMA²⁰ and its counterparts, to act in a determined and concerted manner to fight this epidemic. Internationally, it has worked with the IOSCO²¹ in particular. The actions it has taken are summarised here and thereafter detailed in appendices and in part III.

1.2.1. Prevention through communication and education

Prevention through communication and education became the AMF's favoured approach.

This strategy resulted in AMF warnings and the creation of "black lists" (on the forex market and in conjunction with the ACPR).

In terms of communication, interviews appearing in media outlets, press conferences, Consomag TV campaigns (with an average viewership of 3 million) in partnership with the National Institute of Consumer Affairs (*Institut National de la Consommation* or INC) provided effective means of targeting the general public. The press conference held on 31 March 2016, which brought together the ACPR, the DGCCRF, the AMF and the Paris Public Prosecutor's Office, demonstrated the public commitment of these institutions to combat these illegal practices.

The online educational campaign called "Risk is just a click away", Facebook posts, among others are based on the educational content developed on the AMF and the ABEIS (assurance banque épargne info service²² or the insurance savings bank info service) websites.

¹⁸ Article from the Times of Israel: "Knesset commission finally tackles binary options fraud", 2 January 2017

¹⁹ French Department of Competition, Consumer Affairs and Fraud Prevention

²⁰ European Securities and Markets Authority or ESMA.

²¹ International Organization of Securities Commissions, or IOSCO.

²² ABEIS: single point of entry for the consumer implemented within the framework of the Common Unit, coordination mechanism between the AMF and the ACPR on marketing.

As part of its partnership with the IEF (institut pour l'éducation financière du public or Institute for Public Financial Education), also called "Finance for All", the AMF has rounded out its range of educational content.

When it became aware that speculative trading platforms sponsored the five largest French football clubs, the AMF intervened, with the clubs and the professional football league, and currently these partnerships are no longer active.

1.2.2. Enforcement efforts

The AMF does not have the power to punish illegal operators (the Public Prosecutor's Office) or the operators involved in FPS (the regulator of the service provider's country of origin). Nevertheless, it carried out **inspections and investigations** and sent its findings to the Public Prosecutor's Office. Additionally, the AMF took **legal action**, which resulted in the court-ordered blocking of access of 33 of the most pernicious websites. This had a dissuasive impact as many of the other summoned websites closed up shop on their own initiative.

Lastly, on 1 August 2016, the AMF suspended the provision of investment services in France by a Cypriot operator, Rodeler, which operates under the brand name "24Option" after taking the CySEC to task in accordance with Article 62 of the MiFID²³ due to the service provider's failure to comply with European regulations.

1.2.3. Regulatory policy

With the **ban on advertising** enshrined in the Sapin 2 law promulgated on 9 December 2016, the AMF asked the French Parliament for new legislative powers.

1.2.4. In Europe and internationally

At the European level, the AMF acted to raise awareness within ESMA²⁴ and called for action by the Cypriot regulator. The CySEC has conducted audits on some entities (24 in total) and has levied sanctions in the form of fines or suspensions or even license withdrawals (cf. table in Annex 7).

The AMF's teams are also involved in the ESMA task forces, which are considering possible Product Intervention measures²⁵ that will come into force on 3 January 2018.

At the international level, within the IOSCO, the AMF participates in Standing Committee and brings to bear its vision regarding the marketing of these products.

1.2.5. Institutional cooperation

The AMF has been fostering **partnerships** or exchanges with other institutions to extend its reach. Some of these institutions include the ACPR, the DGCCRF, the Public Prosecutor's Office as well as the ARJEL (the French regulatory authority for online games). As part of its partnership with the AMF, the French Professional Advertising Regulatory Authority (ARPP) published a recommendation in 2014 for monitoring advertising messages in favour of financial and investment products²⁶. It has also recently raised the awareness of advertising middle-men on the new rules of the advertising ban ("Sapin 2" law).

²³ Article 62 of the MiFID makes it possible to prohibit the operation in France of websites approved by the European Union that fail to comply with the applicable laws.

²⁴ European Securities and Markets Authority or ESMA.

²⁵ Product Intervention: MiFID2 measures (i.e. the revised MiFID) allowing authorities to intervene in the event of a threat to the market or to investors; the competent authority can prohibit or restrict the marketing of certain financial instruments.

²⁶ Policy "Advertising of financial and investment products and related services", ARPP, January 28, 2014.

2. CONTRASTING PERSPECTIVES

The aim of this paper is to contextualise the report submitted by the Aix-Marseille University Social Psychology Laboratory to the AMF. We compare the results of the study with the legal and regulatory specific features of complex financial products and by doing so, clarify the AMF's findings with regard to the marketing of these products.

In conjunction with the academics, the method used consists of reproducing (large) excerpts from the report (in italics below), to juxtapose them with the contextual elements provided by the AMF (which can be identified in the form of information boxes). Thereafter, based on this contrast, an analysis of marketing practices is put forward.

The additional analyses below are the AMF's responsibility; their purpose is to further discussion on marketing practices. Their only purpose in this document is to foster discussion on aggressive marketing techniques of high-risk products. They do not constitute a policy and are in no way prescriptive in nature. First and foremost, it should be noted that such products as binary options, CFDs and forex belong to the category of complex products as defined by the European regulator, ESMA, and as such are subject to strict client protection rules.

Content supplied by the AMF

Speculative trading offers (binary options, CFD, forex) are offered to French investors through different types of operators.

A first category includes operators who act illegally because they are not authorised to send or receive orders or give advice²⁷. They thereafter come under the jurisdiction of the courts. Following identification, they are added to the AMF's "black lists".

A second category corresponds to regulated operators in a country in the European Union whose regulator has proven to be undemanding. Until recently, this was the case for the Cypriot regulator, which did not have sufficient resources.

The third group covers regulated operators with the experience and the supervisory resources to ensure relatively high standards.

The documents provided for the analysis fall into categories 1 and 2. They were collected throughout 2016. These descriptions come from investors and promotional communication materials produced by trading companies (advertisements). The descriptions were received from 2014 to 2016 through the AMF Epargne Info Service platform. They consist of Skype® conversations between aggrieved investors and their trading advisers, letters and emails. The testimonials of 24 investors were communicated to the academics, as well as 110 copies of advertisements identified through the AMF's systematic monitoring.

AMU's report focuses on the following :

- social influences;
- review of the materials provided by the AMF.

More specifically, these "contrasting perspectives" provide commentary on the findings regarding marketing techniques for online trading.

²⁷ This constitutes a violation punishable by 3 years of imprisonment and €375,000 fine (Article L. 573-1 of the French Monetary and Financial Code).

2.1. SOCIAL INFLUENCES

Initially, researchers identify and define the mechanisms likely to be involved in the techniques used to market speculative trading in forex and binary options. This analytical framework includes various forms of influence, including commitment and persuasion techniques.

2.1.1. Commitment

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There are several types of influence that may lead an individual to accept a request more readily and persist in an unprofitable course of action. [...]

A strong commitment can be obtained by harnessing several factors²⁸:

- *Freedom: an action that is carried out in a context of freedom tends to be more binding than an action that is carried out under a constraint,*
- *Public: an action that is carried out publicly is more binding than an action that is carried out in private,*
- *Irrevocable: an irrevocable action tends to be more binding than a revocable one,*
- *Explicit: an explicit action is more binding than an ambiguous one,*
- *Repeated: an action that is carried out several times is more binding than an action that is carried out once,*
- *Consequences: an action is more binding if it has serious consequences,*
- *Cost: an action is more binding if it is costly in terms of money, time, energy, etc.,*
- *Reasons: an action is more binding if it cannot be attributed to external reasons (e.g. promise of reward, threat of punishment) and can be attributed to internal reasons (e.g. personal values, personality traits).*

There are several commitment techniques that may lead an individual to agree more readily to follow a particular course of action²⁹.

²⁸ Categorisation of social influences based on the theory of commitment and compliance without pressure (Joule & Beauvois, 2014).

²⁹ Cf. **Analysis of techniques used to market speculative trading in forex and binary options with regard to research on compliance without pressure and persuasion techniques** - Lionel RODRIGUES and Fabien GIRANDOLA (Aix-Marseille Université, LPS), January 2017.

Table 1: Commitment techniques most likely to be used in the marketing of speculative trading in forex and binary options.

Technique	Principle	Examples from materials provided by the AMF
Foot-in-the-door	Ask for a little to get more	A customer is contacted by telephone and asked to invest €250, then, a few days later, asked to add €450.
Door-in-the-face	Obtain a refusal before making a more modest request	During a Skype® call, a trading adviser asks his customer to invest €20,000. The customer refuses because he does not have enough money, so the adviser asks if he could invest €10,000.
But-you-are-free	Evoke freedom when making the request	Expressions used by advisers when talking to customers during a Skype® calls: "it's up to you, I'm not trapping you", "I'm advising you, but I can't take the decision for you", "of course you must do as you see fit", "after all, you're the boss", "but you must make that call".
That's-not-all	Progressively reveal the benefits of purchasing a good or service	During discussions, the adviser urges the customer to invest more to get a 100% bonus, a second bonus if he invests €1,000 more, and so on per €3,000 invested.
Lure and Low-ball	<ul style="list-style-type: none"> - Lure: obtain a decision by presenting false benefits - Low-ball: obtain a decision by hiding the drawbacks 	After agreeing to take part in a VIP trade, the customer notices that the doubled investment (false benefit) has not been recognised.

Finding: regarding the material provided, there is no difference in the commercial approach between the two types of operators, namely operators acting illegally and regulated operators in the European Union and acting in FPS (free provision of services).

Reference point

MiFID³⁰ affirms the primacy of the customer's interest in providing investment services, selling or advising on financial instruments.

Member States shall require investment firms to act in an honest, fair and professional manner in the best interests of their customers when providing investment services to them.

Technique 5 seems likely to conflict with the rule requiring **honest and fair action**.

Techniques 1 and 2 result in a commitment from the customer beyond what he intends to invest, or even beyond his financial capacity. This is an intrinsic feature for using these techniques. It is likely to conflict with the obligation to **serve the customer's best interests**.

Reference point

The MiFID³¹ directive requires investment service providers to disclose information to their customer, in particular the prospective customer, to enable them to reasonably understand the nature of the investment service and the specific type of financial instrument offered, as well as the associated risks, so that customers are able to make informed investment decisions.

Technique 4 makes it possible to present "a good deal" to encourage more trading. This motivation is used here gradually, which compounds its impact. However, highlighting a particularly attractive benefit to the consumer (such as a commercial offer, training etc.), presented as the primary criterion of an investment decision, at the expense of the presentation of the risks related to speculative trading instruments, is likely to contradict the service provider's obligation to assist the customer in making an **informed investment decision**.

For each of these techniques 1, 2, 4 and 5, a case could be made that the adviser "takes the hand", and in fact provides an investment advisory service to his or her customer. If this were the case, the service might fall within the scope of investment advice, which is even more strictly controlled under European legislation.

These 5 techniques are likely to infringe the honest dealings of regulated professionals.

Reference point

Investment advice is defined in MiFID as a personal recommendation. This advice must in some way be based on the adviser's opinion and is not purely informational.

Rules of conduct for providing investment services to customers³²

When providing investment advice or portfolio management services, the investment firm must obtain the necessary information concerning the:

- (i) Knowledge and experience of the customer or prospective investor in relation to the specific type of product or service offered;
- (ii) The customer's financial position and objectives so that the adviser can recommend investment services and financial instruments that are a good fit for him.

The commercial techniques used in 1, 2 and 4 would then be likely to violate this European rule which requires that the adviser factor in the financial situation and the objectives of his customer in order to provide him with suitable advice.

Technique 3 is more difficult to describe in an isolated case, since it gives the appearance of freedom which, in practice, covers up a subtler influencing technique.

³⁰ Article 19 Directive 2004/39/EC of 21/04/2004, transposed in France on 1 November 2007.

³¹ Article 19-3 Directive 2004/39/EC, included in Article 24-5 of MiFID2.

³² Article 19-4 Directive 2004/39/EC.

Reference point

The ESMA³³ states that CFDs and other speculative products are not appropriate for the majority of individual investors and requests that particular attention be paid to ensure that the communication provided to the customer is honest, clear and not misleading. The information must be provided to the individual customer in accordance with its investment strategies and in such a way that his consent is informed, so that he can understand the nature and risk of products he is investing in.

When used in an industry where products are recognised as complex and high-risk, identifying such a commitment technique is likely to attract scrutiny and should raise a red flag for the investor. When used to sell speculative products such as forex, binary options or CFDs, these commitment techniques, show the adviser's intention to "pump" their customers for as much money as possible. These techniques are inherently questionable because *de facto* they lead to providing the customer biased and misleading information. This power is increased when sales people use interactive media such as telephone, chat or video calls.

The Identification of any one of these techniques should lead the individual investor to exercise extreme caution. From a regulatory standpoint, recognising the aggressive and deceptive nature of these methods, when used for the sale of complex and/or risky products, could open a new avenue to better protect investors. In fact, identifying such techniques may constitute an indication of the unfairness of some professional conduct.

2.1.2. Social norms

Report, pages 6&7

Stemming from the customs, traditions and value systems that gradually take shape within a society, social norms make up a framework of rules used to organise individual behaviours. [...]

As regards influence, we propose to define two types of norms used in the sales environment (cf. Cialdini, 2004): the reciprocity rule and social proof.

The reciprocity rule

Individuals tend to try to repay benefits that they receive from someone else. If a person receives a service or a gift, he will feel beholden and will tend to give back quickly and more than he initially received. [...]

Individuals who are sensitive to the reciprocity rule tend to be more easily swayed, for example by marketing offers including a welcome gift. [...]

Social proof

Individuals tend to think and act in line with the thinking and actions of other people. For instance, they will deem behaviour to be appropriate in a particular situation if they see other people adopting it. [...]

³³ Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID, 2016/1165, 11 October 2016.

Table 2: Social norms most likely to be employed in the marketing of speculative trading in forex and binary options.

Social norm	Principle	Examples from materials provided by the AMF
The reciprocity rule	Offer a gift or service	- In advertising: "With XXWEB get: 100% BONUS on your next deposit", "Congratulations, you have won a free e-book! ", "Get €50 towards your first trade". - In a Skype® call, the customer feels beholden towards his adviser, who provides him with "VIP alerts" even though he is not supposed to.
Social proof	Show how others have behaved	In advertising: "More than 1,257,400 people are trading with Anyoption", "This isn't just for other people! You can get in on this too. They've doubled their earnings.", "People are making lots of money by trading binary options", "Thousands are getting rich on OptionWeb".

2.1.3. Persuasion

Report, page 9

According to Woodward and Denton (2014), "Persuasion is the process of preparing and delivering verbal and nonverbal messages to autonomous individuals in order to alter or strengthen their attitudes, beliefs, and behaviours".

The construction of advertising messages is the primary means used in the sales environment to encourage individuals to consume a product or service. [...]

The source of a message possesses various characteristics. [...]:

- *Source credibility may be manipulated by heuristics such as glasses or a white shirt, which could make the source appear to be an expert.*
- *Valued nature of the source: celebrities are often used in advertising because they are popular with the general public and convey a positive image of the product.*
- *Similar: a source that bears similarities to the target (e.g., physical traits, gender, age, opinion) will render a persuasive communication more effective.*

These different principles (social norms and persuasion) are hereafter examined concretely based on the two types of materials sent by the AMF :

- advertising messages ;
- exchanges between customers and trading advisers.

2.2. ANALYSIS OF ADVERTISING MESSAGES

Report

*A message also possesses several characteristics that may make an attempt to persuade more effective (cf. Girandola, 2003). **In the case of advertising messages, our main focus will be on content.***

p.8

***Online advertisements** (advertising banners and direct marketing emails) are often an individual's first contact with the world of trading.*

p.8

*Speculative trading ads incorporate persuasion methods found in all advertising environments. [...], the characteristics of the source are manipulated to make it **credible, attractive, valued and similar to the target.***

p.16

2.2.1. Source of the message

2.2.1.1. Credibility of the source

Report

Credibility is a crucial element, notably because these advertisements target people with little experience and virtually no knowledge of speculative trading. Accordingly, these advertisements incorporate a variety of elements (heuristics, references, etc.) designed to improve the credibility of the trading company, its consultants and its approach.

p. 16

Speculative trading involves complex products that are not suitable for the general public. Consequently, the use of these advertising messages on mainstream websites is fundamentally problematic as it attempts to persuade potential customers who should not be targeted by them.

The use of visuals such as the European flag, the name of the French authorities such as the ACPR, AMF, play on the notion of the European passport, and are practices designed to enhance the source's credibility. This technique is widely used by the FPS (freedom to provide services) operators. It provides false information, since these platforms can actually sell their products to French nationals, even though the national regulators mentioned have no authority over their rules of organisation or good conduct. This flaw in the FPS mechanism is then exploited and used deceptively with the general public.

For illegal sites, fraudulent use of the AMF's identity, the AMF's Ombudsman's or AMF employees' identity is a common practice that has led authorities to file a complaint. The FINNET network, a European Ombudsmen network, is also frequently fraudulently used. Simultaneously, fraudulent use of authorisations of legally authorised companies by regulators considered above-board, such as the Financial Conduct Authority (FCA), the British regulatory authority, has been growing. Some Cypriot operators, authorised and granted a certain market power, have also been victims of these practices. Through the use of this technique, which has reached epidemic proportions, and via direct e-mail campaigns relayed through telephone advisers that scammers try to pass off as official bodies appointed to recover lost funds, these operators bilk unwary customers for prepayments to cover costs. This is a twofold "scam".

2.2.1.2. [Appeal and] Valued nature of the source

Report

Some advertisements use famous people, such as Ronaldo, Emmanuel Petit, Claude Makélélé, Mads Mikkelsen or Boris Becker, to promote speculative trading. Stars help to associate a positive and affirming image with trading (3). A message that uses a famous and valued source will be more persuasive.

p.9

*We also noted an intention to associate speculative trading with the sporting world, probably to target a specific population, such as sports bettors, and to associate the **positive aspects of sport** – combativeness, high performance and the like – with trading.*

p. 16

It is this competitive spirit that **sports sponsorship** seems to be looking to capture.

Reference point

Statements made by the AMF Secretary General at the press conference held on 31 March 2016 at the AMF³⁴

Benoit de Juvigny criticised sports sponsorship which he believes "increases the number of sales pitches made to the general public". "We have no legal ground to ask clubs to decline these sponsorship deals". "The Cypriot authorities authorise most of these companies".

Fully aware of the power of this persuasion technique, the AMF has intervened decisively against sports sponsorship. Also aware of this, the French Parliament introduced in Article 76 of the Sapin 2 law the prohibition of patronage for any speculative trading activity.

2.2.1.3. Similarity of the source

Report

*The ads³⁵ contain persuasive information relating to the field of social influence, like the principles of **social proof and the reciprocity rule**. These influence techniques are also frequently seen in advertising. For example, certain speculative trading ads stress that many people have already made large sums of money from trading.*

p. 16

These ads are clearly intended to reach a very wide audience (Facebook banners on full-service websites), and not to individuals who have proven knowledge or experience in the financial markets, as required by the regulations. Here, the social proof is deceptive because the trader's requirement to possess knowledge of and experience in the financial markets is omitted.

2.2.2. Content of the message

Report

Advertising messages are merely the first stage in getting an individual to become familiarised with speculative trading. They promise quick, large gains and help to convey a positive and affirming image of trading. The promise of success is based in particular on elements that help to enhance the credibility of trading companies and their approach, even though their methods involve high-risk investments.

p. 16

³⁴ [Forex, binary options and online financial scams: The AMF, the Paris public prosecutor, consumer affairs watchdog DGCCRF, and the prudential authority ACPR joined forces. Press release - 31 March 2016.](#)

³⁵ From materials provided by the AMF.

Reference point

MiFID II³⁶, Article 24

Appropriate information is communicated to customers or to potential customers in comprehensible form [...] and will enable clients to reasonably understand the nature of the investment service and of the specific type of financial instrument that is being offered, as well as the associated risks, and, consequently, to take informed investment decisions.

The risks related to trading are played down in the ad; whereas, this is a decisive first step for introducing the individual customer to trading.

2.2.2.1. Social proof

Report

Some advertisements offer success stories to help the target to identify with the source of the message. [...] Examples of success stories are provided for a young woman, a young man and a family.

p. 16

Internet banner ads very often show people with whom it is quite easy to identify. For example, these images might be of a young university student who can now afford to pay for his education, someone who is bringing in additional income, or a thirty-year-old who is living comfortably thanks to successful speculative trading. These avatars lead the viewer to believe that trading is easy and that anyone can do it. They feed the general public with misleading information.

Report

Certain advertising messages portray someone else's behaviour as the "right" way to act. The argument put forward by these messages is that many people have already made lots of money from speculative trading.

This kind of argument is extremely effective because individuals tend to follow the actions of others, particularly in areas where they have little knowledge. Use of this technique is not harmful provided the information is correct and verifiable.

p. 13

Reference point

MiFID II, Article 24

All information, including advertising information, sent by the investment company to customers or potential customers shall be accurate, clear and not misleading. Advertising information must be clearly identifiable as such.

The arguments put forward here are false or misleading for customers, as shown in a study conducted by the AMF in late 2014 (over 4 years 9 out of 10 customers lost money); this was confirmed by the AMF's British counterpart, the FCA³⁷, in a study published in early 2017 (over one year, 82% of customers lost money).

Reference point

Speculative trading generally loses money³⁸

In 2014, the AMF collected from authorised operators, representing a very significant portion of the market, data on transactions in CFD and in forex in France. This study is based on the performances of

³⁶ MiFID II, Provisions which seek to guarantee investor protection, general principles and informing customers.

³⁷ Financial Conduct Authority

³⁸ [Study of results of individual investor trading in CFDs and in forex in France](#), report, studies & analyses by the AMF, 13 October 2014

14,799 active individual investors working with authorised service providers, over a four-year period (from 2009 to 2012).

The lessons learned from it confirm the danger of these offers for the general public.

Finding: 89% of customers lost money, and the average loss per customer is approximately €10,900. Accordingly, over this four-year period, 13,224 customers lost a total of €175 million, whilst the remaining 1,575 customers only earned a total of €13.8 million.

The study also highlighted the lack of a novice investor's learning curve over time. In contrast, the most active and regular traders saw their losses grow over time.

In early 2017, the British regulator, the Financial Conduct Authority (FCA), also conducted a study, showing a year-on-year rate of 82% of customers losing money.

Companies that offer online trading services claim to offer investors the opportunity to make highly profitable investments, which were previously reserved for traders only. This myth is fuelled by certain media outlets showing the example of individuals earning a living from trading for just an hour a day. In the minds of many individuals, this would be a quick fix for their money problems, and an easy way to earn income. All this is obviously illusory. It is impossible to make money sustainably by speculating over very short periods because over the very short-term market movements are risky.

Companies that sell online trading lure customers in with the opportunity to become a trader with just a little training or based on a winning trading strategy – another illusion. The job of trader does indeed exist, but the advertisements that lure in unwary investors with the prospect of becoming a trader with only a few days, or even a few hours of training, are misleading. The job of trader is a professional activity linked to international trade. It is a extremely demanding, can only be done in a professional trading environment, and requires advanced training. In particular, a trader must have a strong command of economic mechanisms, statistics and computing. Traders must also be able to juggle highly sophisticated mathematical models, and must be fluent in English.

Reference point³⁹

Études / Formation pour devenir Trader

Le trader a au minimum un bac + 5 complété idéalement par un 3ème cycle en finance et des stages comme assistant trader.

- Diplôme d'école de commerce ou de gestion spécialité finance
- Diplôme d'IEP, spécialité finance,
- Diplôme d'école d'ingénieur avec une formation complémentaire en finance,
- Masters professionnels : banque, finance, gestion, mathématique, statistique, droit ou économie (master techniques financières et bancaires à Dauphine...)
- Mastère spécialisé (MS) en finance.

Report

Individuals tend to think and act in line with the thinking and actions of people who are similar to them. For instance, they will deem behaviour to be appropriate in a particular situation if they see other people adopting such behaviour. [...]

Accordingly, social proof can influence individuals when, in an uncertain situation, they consider another's behaviour as the one to follow.

p.7

Speculative trading promotional communication relies heavily on social proof. Some advertisements put forward the argument that many people have already earned a lot of money from speculative trading. During telephone conversations, it is not uncommon for the adviser to talk about one of his customers who had a windfall, or who have persevered despite their losses and have been able to recover their initial

³⁹ <http://www.cidj.com/article-metier/trader>

investment. This adviser might "mention the example of a customer who opened his account in June with €300 and as of yesterday, had €1,200 in his account."⁴⁰

It is particularly important for the general public to bear in mind that such information is unverifiable and can influence decision-making. Even if this information proved to be true, it would be anecdotal and would therefore constitute an isolated case and is not a general rule. This way of presenting information overlooks the vast majority of cases where investors lose substantial sums.

In 2014 and in order to counter speculative trading offers widely distributed to investors online, the AMF had called for a ban on digital advertising for the riskiest forex, binary options and CFDs. The AMF welcomes that this policy has become law by being written into the law of 9 December 2017 on transparency, anti-corruption and economic modernisation, known as the Sapin 2 law. This law has provided the AMF and the DGCCRF with the legal tools to prohibit advertisements for the riskiest trading products.

This ban applies to direct or indirect electronic advertising that may affect individual investors and involve financial contracts considered speculative and risky, such as binary options, CFDs (contract for difference) and forex contracts.

All investment service providers that offer these contracts, as well as all advertising chain operators (media and ad space buyers, advertising media or advertising managers, ad broadcasters, etc.) are now concerned. These provisions are now included in the French Monetary and Financial Code and in the French Consumer Code (Annex 8).

2.2.2.2. The reciprocity rule

Report

Offering a gift is another extremely effective source of influence that is widely used in sales. Based on the reciprocity principle, someone who receives a gift will feel beholden and tend to agree to a request more readily in order to return the favour.

Offering a gift is another effective way to influence behaviour (cf. Cialdini, 2003). Many ads draw people's attention by telling them that they have won something (training, money, etc.), increasing the probability that the person will click on the ad or make contact with the trading company.

p. 15

Awarding bonuses in euros – a sort of subsidy – is quite common in online speculative trading. This very significant financial gift (several thousand euros), is contingent upon growing trading volume 30 or 40 times higher than the first payment, which the customer failed to grasp initially. This is but a mere illusion. AMU researchers have confirmed the effectiveness of this commercial practice which is in total contradiction with the principles of taking into consideration the customer's interests. The bonuses often announced are there only to facilitate the contact and then encourage the customer to make an initial investment, and the AMF has noted that the "bonus" is a practice that is systematically used.

ESMA has highlighted many poor practices relating to bonuses and it concluded most insightfully that national supervisors must prohibit this practice.

Reference point

ESMA Q&A⁴¹

"It has been observed in this sector of the market that firms may offer trading benefits to attract and encourage retail clients to speculate in CFDs or other speculative products. For example, "bonuses" may

⁴⁰ Verbatim results from online tests conducted on forex sites and binary options in 2016 by the AMF

⁴¹ Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID, 2016/1165, 11 October 2016.

be promoted as an introductory offer to new retail clients, or as a reward for existing retail clients that invest a certain sum of money with the firm. Given the complex and speculative nature of the products, it is especially important for NCAs to consider the use of trading benefits by firms offering CFDs and other speculative products to retail clients, in order to ensure that the MiFID obligation to act honestly, fairly and professionally and in the best interests of clients (Article 19(1) of MiFID) is met.

Especially in light of the above poor practices observed in this market sector, ESMA is of the opinion that it is unlikely that a firm offering bonuses that are designed to incentivise retail clients to trade in complex speculative products such as CFDs, binary options and rolling spot forex could demonstrate to its NCA that it is acting honestly, fairly and professionally and in the best interests of its retail clients, taking into account that the nature of the products means that they are not appropriate for a majority of retail clients. NCAs should therefore monitor that the practice of offering such bonuses is avoided in relation to these products.”

For the sake of prevention, the AMF has extended monitoring to all the advantages that could be offered jointly when selling speculative trading products (services, training books, free transactions or trades, information and advice presented as VIP), as training.

Reference point

Arguments used in advertising

The AMF analyses the advertisements and in particular the selling points used in the messages.

In 2016, almost one out of two trading advertisements particularly emphasised a main selling point.

In 30% of these ads, the theme of trader training is put forward ("become a trader"). 25% of them lure in investors with the possibility of quick and easy money; 16% of them offer lower prices. The other selling point used: a bonus (9%), the ease (5%) or even financial security (5%).

The power of the "training" selling point has guided the AMF in its policy concerning the advertising ban to incorporate this approach which it considers a trading incentive.

Reference point

AMF Policy: Advertising ban

Advertisements that value "an element that is particularly attractive to the non-professional customers (lure of profit, commercial offerings, training, tools, political and economic events that facilitate "making good deals" or any other form of incentive to trade) and which refer "directly to a web page offering financial contracts "whose advertising is banned or leads "to a contact form or any other type of tool aimed at putting the customer in contact with a ISP offering this type of contract ".

Both in terms of the use of social proof and the reciprocity rule, the study confirms that advertising for speculative and risky products is inappropriate. The very mechanisms of the advertising are in conflict with the need for service providers to work only with individual investors who possess at least a bare minimum of knowledge of and experience in the financial markets so they can understand the risks involved.

The highly incentivising gift policy (bonus or other) counteracts reasonable apprehension about the nature of the product and the risk by the customer and goes against the primacy of the client's interest.

The combination of (1) advertising, (2) online forms, (3) contact with an adviser, can constitute a lethal cocktail that leads the investor to his financial doom.

2.3. ANALYSIS OF EXCHANGES BETWEEN CUSTOMERS AND TRADING ADVISERS

Researchers showed that "advertising messages are merely the first stage in getting an individual to become familiarised with speculative trading".

Very often, the prospect fills out an information request form after seeing an advertisement for a tempting offer. These forms may look innocuous enough, but as soon as they are returned, the trap is set.

Thereafter, a follow-up call is made or a follow-up text message is sent. In the vast majority of testimonials collected the teleconsultant's insistence is perceived as a form of harassment.

Report

We identified several forms of influence used by trading advisers when dealing with customers (likeability and credibility of the adviser, commitment techniques, reciprocity rule). These techniques enable advisers to increase the probability that their customers will agree to their request, which generally involves investing more money on the financial markets. p.16

Adviser credibility and the trading strategy

Several forms of influence were identified in exchanges between customers and their advisers. We find that the marketing of speculative trading is largely based on the credibility of advisers and their trading strategies. Advisers are presented as experts using tried and tested strategies. The aim is to build the customer's confidence and encourage him to believe that speculative trading is a simple and effective way to make money.

p. 19

Likeability of the adviser

The adviser is often very friendly and pleasant towards the customer ("The people who work on these platforms are careful, friendly and extraordinarily courteous"). Likeability may be regarded as a persuasive attribute.

We have noted a relationship that sometimes grows quite close between the adviser and his customer. They talk to each other in familiar terms, giving each other nicknames and joking together ("amigo", "I'm not your customer I'm your brother", "be a pal", "my friend", "I had a really good relationship with my adviser"). The adviser's likeability helps to forge a relationship of trust with the customer.

This kind of situation can result in a loss of professionalism and reduce the perception of risk associated with the investments. Moreover, through his emotional involvement, the customer may comply more readily with the adviser's demands, notably when these involve investing additional sums of money.

p. 17

During trading phases, advisers are always very friendly and pleasant, which encourages customers to lower their guard and accept their requests more readily. As a rule, customers are also often inexperienced despite the training provided by their adviser, and become totally dependent on instructions from their adviser as to what, when and where to invest. Despite this, advisers remind their customers that they are responsible for their own portfolios and for any losses. They also try to reassure their customers in the event of losses and play down the situation to lessen its importance and the perceived risk.

We also noted use of several commitment techniques (Foot-in-the-door, Door-in-the-face, Bait-and-switch, But-you-are-free), as well as the reciprocity rule. Advisers encourage their customers to invest in stages by offering bonuses or services during the trading phases. These methods are designed to increase the likelihood that a customer will agree to keep on investing more money, particularly to recover the sums already invested.

*This tendency to continue with an unprofitable course of action is characterised by the **escalating commitment** concept. The wish to recover the lost money becomes the main motivation for reinvesting. Advisers position themselves strategically here, telling customers who have lost their investment that the only way to get it back is by making a new investment.*

These trading companies may be regarded as dishonest in the sense that they do not take into consideration the interests and stable financial position of their customers and seek at all costs to encourage their customers to keep on investing more and more money.

p. 19

The trap closes once the user makes contact for the first time with a trading consultant.
We identified a number of commitment techniques in exchanges between customers and their advisers, which encourage customers to continue with a course of action that is not profitable for them.

The business of investment service provider (ISP) is strictly regulated. It is subject to the European obligations of honesty, fairness and professionalism. Maintaining a respectful distance guarantees a certain professionalism so the ISP can warn the customer and may have to refuse to provide a service when the customer does not have the necessary financial knowledge or experience (e.g. If the customer doesn't know how to receive or send orders). The ISP must also refuse to give a recommendation or provide a service when the customer has not been given background information and the financial objectives, in order for the ISP to be able to make a recommendation suited to the customer's circumstances.

In this situation, the adviser's closeness and chumminess with the customer, used as an influence technique, runs counter to actual professionalism.

Reference point

If the customer or prospective customer chooses not to provide the requested information or if the information provided shows that the customers' knowledge and experience of the market are insufficient, the investment firm must warn the customer or prospective customer that it cannot determine based on this decision, whether the product or service is a good fit for him⁴².

Using the customer's freedom as an argument contravenes the regulation to commit him to continue his investments and not to step back and carefully consider the riskiness of the product.

The researchers have summarised their findings as follows :

The findings show that marketing of speculative trading is based on the use of persuasion criteria, including the credibility of trading companies and their advisers, and on the use of influence techniques, such as commitment, reciprocity and social proof. These techniques are likely to increase the probability that customers will agree to continue investing more money in a project. In addition, we have identified a commitment escalation process that may lead investors to persist in an unprofitable course of action. Advisers encourage their clients to invest fresh sums of money to recover the losses incurred.

The fact that these service providers are using techniques that lead to a commitment escalation, which may lead their customers to continue with a course of action that is not profitable for them, raises an issue when they are subject to a European regulation known to any regulated professional, who proclaims the primacy of his customer's interest.

Regulated service providers know the regulations. If they used such means, they could not ignore that they were to use/ adopt such practices they could but know they are acting contrary to the primacy of the interest of their customers. If done deliberately, this action would provide an indication they are acting unfairly. These techniques could then be recognised as manipulative and meet to the definition of the French Consumer Code specific to aggressive⁴³ commercial techniques (see Annex 8).

These techniques significantly alter the consumer's freedom of choice or conduct, due to undue influence and/or harassment, which can lead to the "trap". They are characterised by the pressure exerted on the consumer in to make him give in or steer his choices⁴⁴. Hence such techniques should be prohibited. For ISPs doing business in France, they would be liable for up to two years of imprisonment and a fine of up to €300,000.

⁴² MiFID2, Article 19.

⁴³ Directive 2005/29/EC of 11 May 2005 Article 8 Aggressive commercial practices A commercial practice is deemed to be aggressive if, in its factual context, given all its characteristics and circumstances, it alters or is likely to significantly alter, due to harassment, coercion, including the use of physical force, or undue influence, the freedom of choice or conduct of the average consumer with respect to a product, and, consequently leads or is likely to lead the consumer to make a commercial decision that he would not have taken otherwise.

⁴⁴ DGCCRF website, Publication Aggressive commercial techniques, 08/12/2016.

Through its academic contributions, social psychology provides leads that could ease the qualification process of these unfair or misleading practices by identifying and defining them.

The DGCCRF has recently used social psychology research in support of its argument on the existence of deceptive marketing practices⁴⁵. The consumer affairs watchdog believes that "there are situational mechanisms that push individuals to make irrational, incoherent and sub-optimal choices despite the conscious goals that the customer has set for himself."⁴⁶ These academic research results were in particular highlighted in certain DGCCRF⁴⁷ surveys concerning the prices posted, given that "the change in the analysis framework leads [the consumer] to make foreseeable errors"⁴⁸. It points out that the tools based on the discoveries of behavioural economics research are not, in and of themselves, unfair. As practised in certain Anglo-Saxon countries, "nudges" can be used for serving the general interest and may turn out to be genuinely beneficial. On the other hand, the DGCCRF states that "nudges can be considered unfair if they attempt to change the consumer's perception of an offer, or attempt to influence the customer's behaviour to his detriment or to that of a competitor who prohibits such practices" [...]. It cites and uses research based on behavioural finance in the body of its audit reports.

The DGCCRF's application of this research in analysing marketing practices is done contextually on a given market (industry, specific geographical area, domestic consumers). Characterising such practices requires close monitoring that takes into account the specific features of investors' culture, their financial education and the practices of the operators in this jurisdiction. Thanks to monitoring and emergent claims, cases of abuse can be quickly identified. The aggrieved or anxious consumer contacts the institution that is closest to them geographically and culturally, and in particular the institution that speaks the consumer's mother tongue. Similarly, supervising marketing must be done **as locally as possible**.

These findings confirm how advisers for these trading companies can use influence techniques effectively to the detriment of their customers.

We have also learned some important lessons from these findings. Therefore, it is not only the "beliefs" of the persons to whom the services are directly marketed, or their gullibility that is in question, but rather the way these advisers assert their credibility.

More than a lapse of customer vigilance, the trap that is set is linked to the adviser's ability to make his customer dependent on him.

The skilful use of gradual commitment techniques, the reciprocity rule, combined with a genuine understanding of social relations (advisers are friendly, pleasant and know how to gain the customer's trust, at least initially) is likely to lead the customer into a **commitment escalation process**. Thereafter, it is easier to explain people's incomprehensible behaviour of, who in many cases, end up pouring all their savings and those of their families, into these investments. They do not necessarily have poor judgement, but rather are victims of manipulation. The regular use of one of these techniques, their effectiveness, and the resulting escalation, demonstrate that this is not the work of just a few isolated individuals.

The use of such techniques to sell complex products through regulated entities is subject to European professional rules that require honesty, fairness and professionalism. When doing their jobs, the customer's interests must take precedence, whereas the said use of these techniques may be akin to aggressive sales techniques, which are prohibited under European law,⁴⁹ and is transposed into consumer

⁴⁵ Meeting held on 24 February 2017 between the AMF and the DGCCRF.

⁴⁶ DGCCRF note: "The background on our online controls", for a contextualised presentation of the contributions of behavioural economics to magistrates.

⁴⁷ Le Parisien 23/02/2017: False promotions: heavy fines for e-commerce stars/DGCCRF sanctions: €2.4 million fine for the big names of the Web, of which Amazon paid €1 million.

⁴⁸ DGCCRF note: "The background on our online controls", for a contextualised presentation of the contributions of behavioural economics to magistrates.

⁴⁹ Directive 2005/29/EC of 11 May 2005.

law. Concerning operators acting illegally, they have only had a single agenda: to rope in an investor, who should have never been guided to this type of product, which is quite simply a scam.

The use of influence techniques such as commitment techniques, or techniques based on the reciprocity rule or social proof, persuasion techniques based on the source's credibility, attractiveness or likeness, to market high-risk complex products to the general public is likely to violate regulations and to structurally taint an individual investor's consent. As such, these techniques could be classified as unfair.

Traps have been laid for the individual investor, who must deal with the complex investment universe. Concerned with protecting the customer's interest, European laws have created a robust legal framework that helps guide us in our thinking about the manipulative and therefore aggressive nature of these techniques.

The scientific field of social psychology should open up new perspectives in terms of regulation. Furthermore it should feed broader **policy discussion**. The AMU report has already informed work on the policy of banning certain advertising, and has led to a broader understanding of the lure of these ads and the get rich schemes they present.

In terms of enforcement efforts, it could help provide clues on the unfairness of certain practices of operators subject to professional obligations of fairness.

With regard to FSP service providers, this reading grid in contrast to European legislation on the financial and consumer markets provides additional arguments that can shed light on practices that act against the customer's interests, and may even do so aggressively.

It can also be used for **European discussion** on marketing practices.

Regulation MIFIR 600-2014, which will enter into force on 3 January 2018, will make it possible, in accordance with Articles 40 and 42, for national regulators or the European regulator to prohibit certain products, as well as certain marketing methods. Such practices might therefore be targeted. Their characterisation through social psychology academic research would facilitate defining criteria to identify them. Such practices' robustness would make it possible to implement such measures and would guarantee their effectiveness.

The contributions of social psychology should be taken into account in the various duties performed by the AMF as domestic regulator and watchdog agency, but also in European policy discussion circles with regard to implementing the MIFID2 and to developing future regulations.

CONCLUSION

Very early on, the AMF sounded the alarm about the growth of speculative trading with individual investors.

Before identifying the problem, other regulators joined the AMF, such as the Belgian FSMA, as the Belgians too were victims of the same abnormal or even criminal practices.

Through its president, it joined forces with the ESMA to raise this issue at the European level, increase awareness and to involve the regulator primarily concerned, i.e. CySEC, as well as other European regulators to take action.

This work led the Cypriot regulator to perform a certain number of controls, to impose fines and suspensions as well as withdraw authorisations.

The AMF has fully taken account of its responsibilities within the European framework by advocating and obtaining a ban on advertising these products via the Sapin 2 law, by suspending the marketing on French territory of the offer of "a Cypriot⁵⁰ operator and demanding the blocking of access to illegal websites. All these actions and measures required considerable effort and revealed how useful it is to maintain them to protect French investors from the greed of certain scammers or heavy-handed operators dealing in forex and binary options.

Going forward, and in order to be better equipped to deal with such practices, the following may be quite helpful :

- Educating French investors about the pitfalls of high finance is key. The AMF has been working alongside the national agency called the National Financial Education Strategy (*Stratégie Nationale d'Education financière*) precisely for this purpose.
- Monitoring what is sold on the French market is of paramount importance (monitoring advertising, operational oversight with powerful monitoring systems, Epargne Info Service centre, advertising monitoring center and studies on investment and savings).
- Prevention through alerts and public information is an effective response tool.
- Education is essential. On the ground, the AMF is extremely active for its key investor populations (the AMF website, grassroots actions, the AMF Facebook page, partnerships with the French National Consumer Institute for Financial Education or Finance for all, etc.). It is developing new tools such as mobile apps (Finquiz - in progress), and in 2017, it will be able to communicate directly with investors through its multichannel platform (investor database project).
- The report by AMU researchers opens new educational perspectives for the AMF, so it can protect investors even better.

Nevertheless, there is another important area that should not be overlooked – European regulations. They provide a protective framework for consumers and for investors, who, through speculative trading, have revealed very damaging flaws concerning our investor pool.

It is therefore now essential to seek, by any means, the most effective control for marketing, which must demonstrate its ability to identify and quickly and deftly circumscribe these aggressive sales practices or those that might arise going forward.

Failure to do so might breed distrust of the financial markets in a Europe that could be accused of perpetuating mechanisms fraught with risk. This in turn could lead to further rejection of the financial world by our fellow European citizens, who may also reject financing the economy or their future financial needs, such as retirement schemes.

⁵⁰ Rodeler, AMF press release - 31 July 2016.

Annex 1 : AMU report - Analysis of techniques used to market speculative trading in forex and binary options with regard to research on compliance without pressure and persuasion techniques, January 2017

The purpose of this report, which was prepared for France's financial markets authority (Autorité des Marchés Financiers – AMF), is to identify social influence techniques (commitment and persuasion) used to market speculative trading in forex and binary options and to provide recommendations to raise public awareness, so investors can protect themselves against these aggressive marketing techniques.

We began by identifying and defining the commitment and persuasion techniques likely to be used to market speculative trading. We then conducted a qualitative analysis (content analysis) of material provided by the AMF (26 documents in all, comprising some 450 pages) and made up of advertisements, emails, complaints, testimonials and Skype® conversations between injured investors (mainly individuals who knew nothing about speculative trading and who had lost their entire investment) and their trading adviser.

The findings show that marketing of speculative trading is based on the use of persuasion criteria, including the credibility of trading companies and their advisers, and on the use of influence techniques, such as commitment, reciprocity and social proof. These techniques are likely to increase the probability that customers will agree to continue investing more money in a project. In addition, we have identified a commitment escalation process that may lead investors to persist in an unprofitable course of action. Advisers encourage their clients to invest fresh sums of money to recover the losses incurred.

The report is available on the AMF website in the "[Scientific Working Papers](#)" series.

Annex 2 : AMF Households Savings Observatory Newsletter - October 2014

Numéro 10 - Octobre 2014



La LETTRE de l'Observatoire de l'épargne de l'AMF

SOMMAIRE : p. 2-3 Forex : les particuliers perdants p. 4 Forex : l'AMF agit

Édito

L'AMF se mobilise contre les dangers du Forex

Les publicités alléchantes incitant les internautes à devenir « trader », en particulier sur le marché des changes (le Forex), sont nombreuses sur internet. Souvent trompeuses, elles attirent un grand public peu familiarisé avec les marchés financiers mais séduisent par des promesses irréalistes de gains rapides et importants. Les conséquences sont préoccupantes pour le régulateur : nous constatons ces dernières années une envolée des réclamations émanant de particuliers qui se sont risqués à ces investissements, souvent avec des pertes d'argent, qui sont parfois considérables.

L'AMF a donc souhaité pouvoir évaluer précisément les performances des investissements réalisés par les particuliers. Elle a mené une étude auprès de prestataires agréés proposant du *trading* sur le marché des changes ainsi que du *trading* de CFD¹. Les enseignements, édifiants, viennent confirmer le danger de cette activité pour le grand public. Ainsi, entre 2009 et 2012, 90 % des clients ont été perdants sur ces marchés. Par ailleurs, les apprentis *traders* qui ont « persévéré » n'ont fait qu'aggraver leurs pertes au fil du temps.

Si cette étude porte sur des acteurs régulés, les offres pour *trader* sur internet émanent aussi de nombreuses sociétés qui ne disposent quant à elles d'aucune autorisation et exercent en toute illégalité. Parmi ces sociétés, certaines cachent des escroqueries, sous le couvert de sites attractifs, semblant sérieux et professionnels. En réalité, l'argent misé par les particuliers est tout simplement détourné et les recours extrêmement limités.

Tous ces éléments sont autant de constats qui justifient pleinement notre mobilisation.

Si l'AMF conduit des contrôles et des enquêtes auprès de certaines sociétés, ces démarches sont rendues ardues lorsque ces prestataires, comme c'est souvent le cas, sont localisés à l'étranger. De plus, elles n'interviennent qu'une fois les préjudices subis.

Nous avons par ailleurs obtenu très récemment du Tribunal de grande instance de Paris, avec l'appui du Parquet, de faire bloquer certains sites internet proposant des services d'investissement sans agrément.

Enfin, nous agissons aux côtés de l'ARPP (Autorité de régulation professionnelle de la publicité), et son jury de déontologie publicitaire, pour mieux encadrer les publicités sur le *trading*.

Nous en sommes convaincus : pour protéger les particuliers des agissements de sociétés peu scrupuleuses, la prévention reste l'arme la plus efficace. C'est pourquoi l'AMF lance une campagne de communication sur internet pour sensibiliser les internautes aux dangers du Forex (lire ci-dessous).



Benoît de Juvigny,
Secrétaire général de l'Autorité des marchés financiers

¹) Contract for Difference.

Annex 3 : AMF Households Savings Observatory Newsletter - April 2015

La Lettre de l'Observatoire de l'épargne de l'AMF n°10

Numéro 12 - avril 2015



La LETTRE de l'Observatoire de l'épargne de l'AMF

Édito

SOMMAIRE : p. 2-3 Les pratiques douteuses des sites internet de trading p. 4 Actualités

L'AMF s'engage pour limiter les publicités sur le trading spéculatif visant le grand public



Benoît de Juvigny
Secrétaire général de l'AMF

De nombreuses publicités sur internet attirent le grand public vers le Forex ou les options binaires en faisant miroiter des gains faramineux et faciles.

En 2014, l'AMF a observé une forte hausse des réclamations liées à ces offres de trading. Parallèlement, nous avons constaté que 89 % des clients ayant investi sur le Forex ou via des CFD entre 2009 et 2012 avaient subi des pertes financières, parfois très conséquentes.

Afin d'avoir la connaissance la plus concrète des pratiques de commercialisation des sociétés proposant ce type de trading, nous avons demandé à un prestataire d'ouvrir des

comptes, d'effectuer des opérations, puis d'essayer de récupérer ce qu'il restait de l'argent déposé.

Les résultats confirment que les particuliers qui s'essayaient au trading sont victimes de pratiques répréhensibles et subissent des approches commerciales peu scrupuleuses (lire en pages 2 et 3).

Devant ces constats, l'AMF agit. Par nos mises en garde et nos actions pédagogiques, nous conseillons clairement aux épargnants d'éviter le Forex ou les options binaires.

Au-delà de ces initiatives, nous œuvrons pour limiter concrètement les agissements de ces sociétés de trading. En septembre 2014, l'AMF a ainsi obtenu du juge du Tribunal de grande instance de Paris le blocage de plusieurs sites internet opérant sans agrément.

Enfin, nous avons proposé qu'une disposition législative donne à l'AMF la capacité juridique d'interdire la publicité sur ce type de produit extrêmement risqué.

Nos équipes restent mobilisées pour mettre fin aux mauvaises pratiques de certains sites et limiter le nombre des victimes du trading en ligne. ■

(1) Lire la Lettre de l'Observatoire de l'épargne de l'AMF n°10 publiée en octobre 2014.

Annex 4 : The AMF, the Paris public prosecutor, consumer affairs watchdog DGCCRF, and the prudential authority ACPR have joined forces⁵¹

On 31 March 2016, the AMF/Paris public prosecutor's office/DGCCRF/ACPR held a joint press conference on financial scams, which was widely reported by the French press; it helped better warn the general public and it raised the awareness of lawmakers about the need to stamp out this outbreak.

La vérité sur...

les dérives du trading en ligne

De plus en plus d'internautes sont victimes d'arnaques sur le marché des changes. Via des sites souvent pilotés en sous-main depuis Israël.

UN FLÉAU EN PLEIN ESSOR

4 milliards d'euros de préjudice estimé en cinq ans.

50 enquêtes judiciaires en cours à Paris.

1656 réclamations de particuliers auprès de l'AMF en 2015 (64 en 2010)

SOURCES : PARQUET DE PARIS ET AMF



Le jeu dangereux du foot français

Pas moins de cinq clubs ont signé des partenariats avec des sites de trading. L'OGC Nice s'est associé avec Interactive Option, détenu par Pegase Capital. Cette société chypriote proposait aux déçus du livret A un « plan B » à 12% reposant sur les options binaires. De quoi lui valoir un signalement de l'AMF fin 2015 et même une suspension de licence de la CySEC; depuis, l'OGC Nice nous assure avoir rompu les liens. Deux autres sites sanctionnés en 2015 par l'autorité chypriote, EZTrader et 24Option, sponsorisent, eux, l'AS Monaco et l'Olympique Lyonnais.

« Voilà avec qui nos clubs s'associent », peste Benoît de Juvigny, le numéro deux de l'AMF, qui pointe aussi les cas du PSG (OptionWeb) et de l'AS Saint-Etienne (Investing Area).

24Option, sponsor maillot de l'Olympique Lyonnais en 2015. Le site a été sanctionné par l'autorité chypriote l'an passé.

Source: Challenges, 4 May 2016

LE DECRYPTAGE

LES ARNAQUES FINANCIERES SUR INTERNET, UN HOLD-UP A 4,5 MILLIARDS D'EUROS

Source: La Tribune, 1 April 2016

Arnaques financières sur Internet : les particuliers ont perdu 4,5 milliards d'euros

Les sites frauduleux d'investissement faisant miroiter des gains mirifiques explosent. Les autorités s'alarment.

Source: Le Figaro, 1 April 2016

⁵¹ [Forex, binary options and online financial scams: The AMF, the Paris public prosecutor, consumer affairs watchdog DGCCRF, and the prudential authority ACPR have joined forces](#)

Annex 5 : AMF prevention actions

The AMF's prevention actions have become on-going, such as media interviews, press conferences, warnings, blacklists, Consomag campaigns on television as part of its partnership with the National Institute of Consumer Research (*Institut National de la Consommation* or INC), various educational campaigns on its website, and in the Epargne Info Service section, as well as on the Assurance Banque Epargne Info Service section, which it runs with the ACPR, within the framework of the Common Unit (www.abeis.fr). Significant amounts of content, notably videos and tutorials, investor and general public alert investors about the dangers of forex and online trading. They provide them with practical tips for detecting scams and for checking the authorisation of companies offering online trading.



AMF warnings

Via its warnings, and the publication of a blacklist of illegal sites⁵², the AMF has clearly and strongly advised investors not to put their money into forex or binary options.

In December 2010, the AMF warned against the resurgence of aggressive online advertising campaigns concerning forex trading, and mentioned the strong commercial pressures exerted through multiple e-mailings, telephone follow-up calls, etc.

The AMF regularly updates its "black lists" of unauthorised websites offering forex investments.

The aim of informing the public thus is to put investors on their guard about potential scams.

The screenshot shows the AMF website's 'Mises en garde' (Warnings) page. The page is structured as follows:

- Header:** Includes the AMF logo, 'Info SERVICE' (Assurance, Banque, Epargne), and a search bar with the text 'Recherche' and 'Recherche avancée'.
- Navigation:** A dark blue bar with links for 'ABE INFO SERVICE', 'ASSURANCE', 'BANQUE', 'EPARGNE ET PLACEMENTS', 'VOS QUESTIONS', 'ACTUALITÉS ET ALERTES', and 'FAQ'.
- Breadcrumbs:** 'Accueil > Epargne et placements > Mises en garde'.
- Left Sidebar:** A vertical menu with categories: 'EPARGNE ET PLACEMENTS', 'AVANT D'INVESTIR', 'PLACEMENTS', 'MISES EN GARDE' (highlighted), 'Trading en ligne : les risques, les arnaques, les recours', 'Placements à hauts risques', 'Comment éviter les pièges ?', 'Détecter une arnaque', 'Alertes', 'RÉCLAMATIONS', 'INFORMATIONS PRATIQUES', and 'BOITE À OUTILS'.
- Main Content Area:**
 - Section Header:** 'Mises en garde' with a sub-header: 'Comment détecter une arnaque à l'investissement ? Tout savoir sur le trading en ligne ...'.
 - TRADING EN LIGNE : LES RISQUES, LES ARNAQUES, LES RECOURS >**

Le trading en ligne est un service d'investissement financier proposé sur internet. De nombreux sites spécialisés proposent aux épargnants d'investir sur les marchés financiers, notamment sur le Forex, les actions ou les matières premières, via des produits financiers risqués,...
 - PLACEMENTS À HAUTS RISQUES >**

Quels sont-ils ? Comment les éviter ?
 - COMMENT ÉVITER LES PIÈGES ? >**

Les éléments qui doivent vous alerter !
 - DÉTECTER UNE ARNAQUE >**

Quels sont les signes pour détecter une arnaque ? Comment les éviter ?
 - ALERTES >**

Retrouvez ici les alertes produites par l'Autorité des marchés financiers (AMF) dès lors qu'est constatée une offre de produits contraire aux lois et règlements.

⁵² [The AMF's black lists](#)

The educational campaign: “Risk is just a click away”⁵³

In October 2014, the AMF launched a digital campaign designed to catch the attention of internet users via ad inserts that use the same codes and promises as advertisers touting the merits of online trading. A “pop-in” grabbed the user’s attention with the offbeat character of the ad tag line and directed this user to the AMF website where the content was designed to help investors better understand the risks related to forex trading with the following resources: an educational video with hand drawn animation, testimonial, computer graphics, glossary, and FAQ.

Autres infos & guides pratiques

Vidéos & outils

> Le médiateur de l'AMF

> Mises en garde

> Contacter Epargne Info Service

Imprimer
▶ l'article complet

Télécharger
▶ l'article complet en PDF

LES PRIX SONT FIXÉS DIRECTEMENT PAR LES INTERMÉDIAIRES PROFESSIONNELS (LES BANQUES, LES ÉTABLISSEMENTS FINANCIERS, ETC.).

Sur le Forex et les CFD, l'AMF a réalisé une étude dont les résultats sont édifiants : de 2009 à 2012, sur un échantillon de 15 000 investisseurs, 9 clients sur 10 y ont perdu de l'argent. La perte moyenne a été de 10 900 € par client.

Les options binaires

Les options binaires permettent de spéculer sur une très courte durée (quelques minutes, quelques heures...) sur l'évolution d'un titre (une action, une monnaie, un indice boursier, etc.) avec deux résultats possibles : la hausse ou la baisse de ce titre.

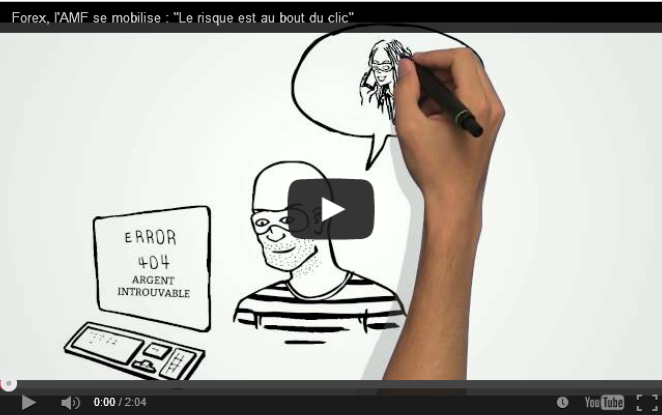
Si le « trader » a bien anticipé cette évolution, il perçoit un gain déterminé à l'avance (par exemple 75 euros pour une mise de 100 euros) ; à l'inverse, s'il se trompe, il perd l'intégralité de sa mise de départ à l'expiration de l'option binaire (100 euros dans notre exemple).

Le risque de l'escroquerie

De nombreux sites internet proposent du trading sur le Forex ou via des options binaires sans bénéficier d'aucune autorisation. Il s'agit très souvent d'escroqueries : l'argent est détourné et, dans ce cas, les recours très limités en raison de la localisation, souvent à l'étranger, de ces prestataires illégaux.

C'est la raison pour laquelle l'AMF publie et met à jour régulièrement la liste des sites internet non autorisés à proposer le Forex et les options binaires.

Forex, l'AMF se mobilise : "Le risque est au bout du clic"



Le meilleur conseil de prudence : évitez le Forex et les options binaires

Pour les particuliers, compte tenu du risque lié à cet instrument et de la présence de prestataires peu sérieux, voire exerçant illégalement leurs activités, la plus sage des décisions est d'éviter de spéculer sur le Forex et les options binaires.

The AMF used this opportunity to communicate the results of its study on the material results of trading on individual investors.

⁵³ [The AMF warns of the dangers of forex market trading for individual investors](#)

Consomag videos broadcast on the France Télévisions channel

The AMF and the National Institute for Consumer Research (*Institut national de la consommation* or INC) teamed up to warn the public about online trading. In 2014, the AMF and the INC also created “forex and binary options: beware of high-risk trading!”⁵⁴ and more recently in 2016 and in January 2017 on the regional channels, online trading: don’t believe the hype about easy money”⁵⁵. The Consomag programmes were seen by an average French viewership of 3 million.

Vidéos & outils Vidéos

Trading sur internet : ne croyez pas au gain facile

Publié le 13 décembre 2016

Les particuliers doivent se méfier des propositions de trading en ligne sur les sites de Forex et d'options binaires. Leurs promesses de gains faciles et rapides cachent souvent des arnaques. Cette nouvelle vidéo Consomag vous explique pourquoi c'est dangereux.

Certains sites de Forex et options binaires disposant d'autorisations délivrées par des régulateurs étrangers peu exigeants ont des pratiques douteuses. Quant à ceux qui proposent du trading sur le Forex et options binaires sans autorisation, ce sont de véritables escroqueries.

Méfiez-vous aussi des faux cabinets d'avocats ou de personnes soi-disant mandatées par une autorité offrant de vous faire rembourser des pertes que vous avez déjà subies. Il s'agit en réalité d'une seconde arnaque.

Le meilleur conseil de prudence, c'est donc d'éviter le Forex et les options binaires.

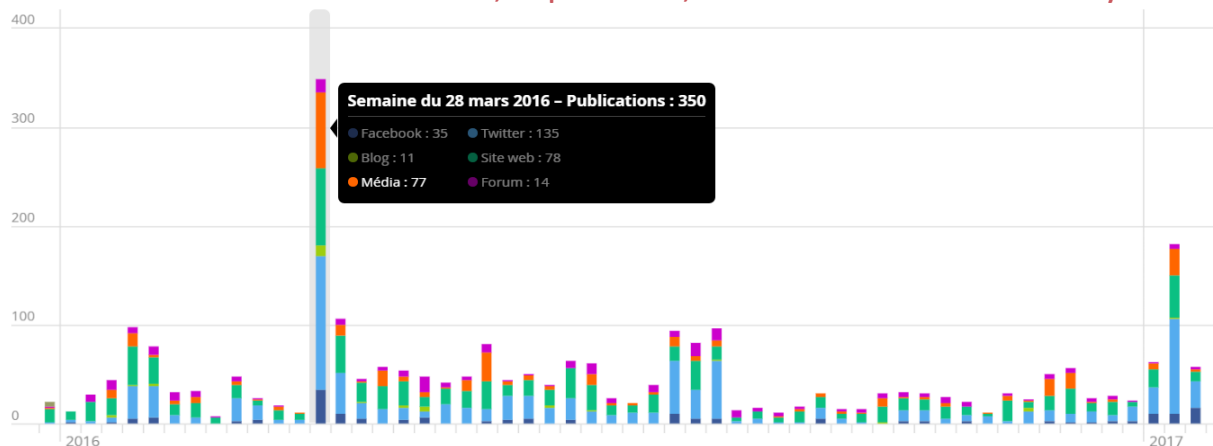


⁵⁴ [Forex and binary options: beware of high-risk trading!](#)

⁵⁵ [Online trading: don't believe the hype about easy money](#)

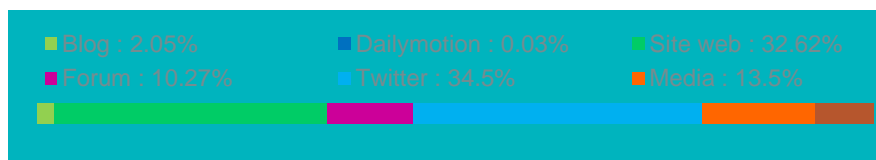
Annex 6 : The impact of AMF communications on online trading, forex and binary options in 2016

Number of results calculated based on 2,993 publications, from 28 December 2015 to 5 February 2017



Out of a total of 2,993 results:

- Approximately 32% were relayed via websites
- Approximately 13% were relayed via the media
- Approximately 42% were relayed via Twitter and Facebook, 10% commented on via Forums and 2% via blogs.



The estimated number of internet users exposed to the publications: 1.14 million.

AMF Facebook page posts

Since the launch of the AMF's Facebook page in February 2015, it has posted 12 warnings of online trading offers. In total, these posts have "reached" 506,289 people.



Facebook post of 27 January 2017

Annex 7 : The AMF's legal and regulatory actions

To have these reprehensible practices stopped, the AMF took action on several fronts.

Investigations and controls of unauthorised operators

The AMF's investigations focused on protecting and informing investors. The controls conducted are intended to monitor regulated operators to ensure that they comply with their professional obligations, in particular with regard to good conduct. When a control reveals a crime or a violation, as is the case with the marketing of unlawful financial products constituting criminal violations (e.g. fraud), the AMF sends this information to the Public Prosecutor's Office.

Since 2009, the AMF has carried out controls on operators active in France. However, it could not sanction them all because the audit missions did not have jurisdiction over FSPs.

Since 2013, in response to the influx of complaints by French investors, the AMF has also conducted several surveys of companies or websites offering forex investment services. It carried out investigations on 7 entities, including 2 entities regulated by Cyprus; the 5 others were licences revoked.

These investigations were complicated by the fact that all business is done abroad, often outside the European Union. It revealed the great opacity of the organisations implemented by the entities managing trading websites, whether for regulated or for non-regulated entities.

Action within the ESMA

The AMF worked alongside ESMA (European regulators) to promote more stringent supervisory practices by other regulators.

In particular, the large number of complaints and requests from private individuals focusing on websites authorised by the Cypriot regulator led the AMF to pressure the CySEC to meet its obligations and to sanction the companies with questionable commercial practices.

The AMF has kept up this pressure on its Cypriot counterpart.

As of 20/02/2017, the sanctions imposed on investment service providers (ISPs) regulated by the CySEC have been undergoing review by the ESMA

Company name	Business name	Penalty	Decision date
The first 9 ISPs			
Banc de Binary	Banc de Binary	€350,000 for settlement procedure	18/01/2016
Depaho Ltd	FXGM	€233,000 fine	12/10/2015
Iron FX Ltd	Iron FX	€335,000 for settlement procedure	02/11/2015 and 18/11/2015
Ouroboros Derivatives Trading	Anyoption	€235,000 fine	18/01/2016
Pegase Capital Ltd	Interactive option	€300,000 fine followed by suspension of authorisation	29/02/2016
Reliantco Investments Ltd	UFXmarkets	€123,000 fine	29/09/2015
Rodeler Ltd	24 Option	€156,000 fine	12/10/2015

Safecap Investments Ltd	Topoption	€168,000 fine	02/07/2015
WGM Services Ltd	EZ trader	€340,000 fine	21/09/2015
Thematic controls			
B.O. Financials	Optionfair/ Cedex / 33option / P-options	€138,000 fine	06/06/2016
BD Swiss Holding	BD Swiss	€5,000 fine €150,000 fine	14/12/2015 19/12/2016
Colmex Pro	Colmex Pro (no website in French)	€100,000 fine	28/11/2016
Etoro (Europe)	Etoro	Nothing to report	
ICFD Ltd (formerly iFOREX (Cyprus))	Iforex	Nothing to report	
Lionsman Capital Markets	Option web / NessFx	Nothing to report	
Novox Capital	Optionbit / FtvTrade / OptionStarsGlobal / Optionstars / STX Markets / ZoomTraderGlobal / RoyalPip	€175,000 fine	05/12/2016
Optionrally Financial	Optionrally	€138,000 fine	05/09/2016
PFX Financial Professionals	Fxfinpro / Fxfinpro capital / Finpro investments	1-month authorisation suspension	24/11/2016
Plus 500CY	Plus 500	Nothing to report	
Priorfx Ltd	Prior Fx (no website in French)	Nothing to report	
SpotOption Exchange	Spotoption (Fournisseur de plateformes d'options binaires)	€10,000 fine	14/12/2015
Trading Point of Financial Instruments	XM		
Windsor Brokers	Winbro (no website in French)	Nothing to report	
XFR Financials	Xtrade	€225,000 fine	26/09/2016

Blocking unauthorised websites

The AMF has also requested that the courts block access for French Internet users to certain websites providing services without the necessary authorisations. The hearings provided an opportunity to officially notify these companies to shut down their websites (web hosts, operators and service providers running the websites).

On September 15, 2014, the High Court of Paris issued a court-ordered injunction to block access to such websites. Since the beginning of 2016, 33 sites have been blocked by court-order. In parallel, a significant number of summonsed websites have closed down before their hearings.

Advertising ban

Fully Aware of the extent of misleading trading ads, especially for online trading (see above), the AMF has been an early mover to limit these ads.

Unregulated trading operators (advertisers) are by definition almost impossible to get to comply with the advertising rules of good conduct because the AMF does not have the judicial powers to take legal action against them.

Partnership with the ARPP since 2011

In May 2011, the AMF and the ARPP (*Autorité de Régulation Professionnelle de la Publicité* or the professional advertising regulatory authorities) signed an agreement to tighten regulations on advertising financial products. Both authorities have implemented a policy that oversees advertisements for complex investments and more specifically ads for forex and binary options. In January 2012, the ARPP's ethics panel described banner ads put out by two companies as "not in compliance with its ethical principles". In 2014, the supervisory framework for new advertising was shored up⁵⁶ and ARPP, in partnership with the AMF, alerted industry professionals about financial advertising regulations. The INC, an active member of the Advertising Ethics Council, a body associated with the ARPP, lent its support to this policy.

However, all the expected results in terms of online advertising regulations have not been attained because the large online advertising agencies are not ARPP members or have not wanted to become members of this organisation.

The different operators in this advertising chain seem to be unable to control whether advertising is appropriate for its audience.

Noting that the root of the problem (unscrupulous operators disseminating advertisements) is due to the Internet's power to disseminate tempting offers to the general public, since 2014, the AMF has been committed to finding a solution to limit advertising for speculative trading targeting the general public. It has therefore called for measures to ban advertising for these risky and toxic products. The AMF therefore welcomes the law on transparency, anti-corruption and economic modernisation, known as the Sapin 2 law, adopted in December 2016, which has provided the AMF and the DGCCRF with legal tools to ban advertisements for the riskiest trading products⁵⁷.

Banning advertising of the riskiest products

This provision constitutes a major step forward to protect investors because it introduces the ban on promotional communications for highly speculative and risky contracts.

This ban applies to direct or indirect electronic advertising that may affect individual investors and involve financial contracts considered speculative and risky, such as binary options, CFDs (contract for difference) and forex contracts.

All investment service providers offering these contracts, as well as all advertising chain operators (media and ad space buyers, advertising media or advertising managers, ad broadcasters, etc.) are concerned.

Furthermore, the Sapin 2 law provides for a new procedure for lodging a complaint with the urgent applications judge, which will allow the AMF to have illegal trading websites shut down more quickly and directly with operators, web hosts and internet service providers (in the past, it took much longer to get the courts to block illegal websites as there was no established procedure).

Under the aegis of the ARPP and in association with the DGCCRF, on 24 January 2017 the AMF organised a day to raise awareness about the main advertising agencies.

⁵⁶ [The supervisory framework for advertising financial and investment products further strengthened by a new ARPP recommendation](#)

⁵⁷ [A major investor protection milestone](#)

Activation of Article 62 of the AIFM directive

In parallel with the advertising ban, the AMF is continuing its efforts to combat fraudulent or deceptive commercial practices. The AMF does not have the authority to ensure that foreign service providers doing business in France comply with the regulations governing rules of conduct, but Article 62 of MiFID provides a mechanism whereby the host Member State may take appropriate measures to protect investors within its country when a service provider is doing business in a way that is clearly harming investor interests.

The vast majority of regulated entities that publish these misleading advertisements operate from abroad (Cyprus). Within the framework of the European Union, the AMF used its power of injunction with CySEC to request that it better supervise and intervene in the entities in question. In the absence of sufficient corrective measures, the AMF suspended the business activity in France of the service provider operating the 24Options platform.

Rodeler banned from doing business in France

Despite its efforts with CySEC, on 1 August 2016, the AMF decided to activate Article 62 of the MiFID, and suspended operations of the 24Option website, which belongs to Roedeler, a service provider authorised by Cyprus to do business in France after noting its particularly harmful actions and non-compliance with French legislation. The AMF forced 24Option to take down its advertisements⁵⁸.

Forex/binary options mystery visits

Due to the constant stream of questions raised about the commercial practices of companies authorised in Cyprus – particularly in view of the large number of complaints – the AMF restarted paying mystery visits to forex and binary options websites in 2016. The objective was to get an updated view of the situation of Cypriot websites and to assess their overall development since 2014.

This test made it possible to measure some progress due to the pressure AMF applied, particularly on the Cypriot regulator. Consequently, the information displayed on the websites appears to have been toned down.

However, aside from the homepage, it is hard to find any information about risks, especially in adviser statements that circumvent customer knowledge obligations. Similarly, essential pieces of information about the customer's consent or his understanding of the risks involved are non-existent. On many platforms, the customer has no way of knowing how much he is betting, the leverage applied and the potential gains and losses. **This most recent wave of visits confirms the importance of regulators and investors keeping an extremely watchful eye.**

⁵⁸ [The Autorité des Marchés Financiers \(AMF\) bans Rodeler Limited \("24option"\) from providing financial services in France](#)

Annex 8 : European directive 2005/29/EC of 11 May 2005

Directive 2005/29/EC of 11 May 2005 on unfair commercial practices is a **full harmonisation directive** that does not leave Member States any margin of appreciation for transposing the measures it contains. It was transposed by the Act of 3 January 2008 to develop competition to better serve consumers (Chatel Act). And it has been incorporated into the French Consumer Code. Unfair commercial practices have been defined in Article L121-1 and a new framework relating to deceptive commercial practices has been implemented (Articles L121-1 to L121-7), thereby creating the violation relating to aggressive commercial practices (L.122-11 to L.122-15).

The economic modernisation law of 4 August 2008 supplemented and clarified this transposition.

Unfair commercial practices

Misleading and aggressive commercial practices fall under the umbrella of unfair commercial practices. **And these practices are prohibited.**

Directive 2005/29/EC, Article 5

Unfair commercial practices are prohibited.

A commercial practice is unfair if :

it runs contrary to the requirements of professional diligence

and

alters, or is likely to **materially alter the economic behaviour**, with respect to the product, of the average consumer for whom it is intended, or the average member of the group when a commercial practice is targeted at a particular group of consumers.

Transposition in the French Consumer Code

Article L120-1

Unfair commercial practices are prohibited. A commercial practice is unfair if it is contrary to the requirements of professional diligence and it alters or is likely to materially alter the economic behaviour of the consumer who is reasonably well-informed and reasonably observant as well as circumspect with regard to a good or service.

The following two criteria are used to assess whether a commercial practice is unfair :

- Breach of the professional diligence requirements
- Substantial alteration of the consumer's economic behavior

Professional diligence means "the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity." Directive 2005/29/EC of 11 May 2005 Article 2 h)

Substantial alteration of the consumer's economic behaviour is to substantially undermine the consumer's ability to make an informed decision to induce him to make a commercial decision which he would not otherwise have taken.

In the field of speculative trading, the offer deals with highly risky and complex speculative products. For the purposes of speculative trading, the **average consumer** must be understood as an individual with the necessary knowledge of and experience in the financial markets to invest in the risky products of binary options such as forex and CFDs. As a matter of fact, the consumers targeted by this advertising do not correspond to this target.

Because of the current legislation and in the absence of a ban on these products, the industry professional must demonstrate professional diligence which is regulated and falls within the remit of MIF2. Compliance with professional obligations is thus well defined: "**the primacy of the client's interest**" must be respected. The financial market professional must behave **honestly, fairly and professionally**.

As such, **he must not take any action that would result in a substantial alteration of the consumer's economic behaviour**.

Deceptive marketing practices

Deceptive marketing practices are unfair. They are prohibited.

Directive 2005/29/EC of 11 May 2005

Directive 2005/29/EC, Article 6

Misleading actions

1. A commercial practice shall be regarded as **misleading** if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise:

- a) the existence or type of the product
- b) the main characteristics of the product, such as its availability, **benefits, risks** that it entails, its performance, composition, or **the results that may be expected from its use**.

[...]

A commercial practice is also deemed to be misleading if, in its factual context, given all its characteristics and circumstances, it leads or is likely to lead the average consumer to take a commercial **decision that he would not have taken otherwise**, and it involves:

- a) any marketing activity concerning a product, [...]
- b) failure by the trader to comply with commitments contained in a code of good conduct to which he is bound [...]

Directive 2005/29/EC, Article 7

Misleading omissions

A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, **it omits material information that the average consumer needs, according to the context, to take an informed transactional decision** and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

A commercial practice is also considered to be a misleading omission when, in view of the aspects referred to in paragraph 1, a professional **conceals substantial information referred to in said paragraph or provides the customer with information that is unclear, unintelligible, ambiguous or otherwise, or when the professional does not indicate his true commercial intention** since this is not already apparent based on the context and where, in either case, the average consumer is thus led or is likely to be led to take a transactional decision that he would not have taken otherwise.

[...]

The directive of 11 May 2005 states that the professional is to act in good faith and must be competent. Said professional must take into account the consumer's lack of knowledge.

He must be diligent professionally and take into account the interests of his client. He must not alter the consumer's behaviour by omitting critical information – e.g. about risk – or by being deliberately ambiguous.

For the purposes of characterising a misleading commercial practice, it can be shown that the professional has knowingly leveraged the effects of behavioural bias. The DGCCRF has used this analysis in its reports **to make a case against certain commercial practices**.

French Consumer Code, Article L121-1

A commercial practice is misleading if in the following circumstances, it:

1° Creates **confusion** with another good or service, a brand, trade name, or other distinguishing mark of a competitor;

2° Is based on false allegations, indications or presentations or those **likely to mislead** about one or more of the following:

a) The existence, availability or **type of the good or service**;

b) The essential features of the good or service, such as: its substantial qualities, composition, accessories, origin, quantity, method and date of manufacture, conditions of use and suitability for use, properties and **expected results from use**, as well as the results and main characteristics of the tests and checks carried out on the good or service;

[...]

e) **The scope of the advertiser's commitments**, the type, process or reason for the sale or performance of services;

[...]

Aggressive commercial practices

Aggressive commercial practices are by nature unfair and **prohibited**. They are defined as follows in the legislation.

Directive 2005/29/EC, Article 8

Aggressive commercial practices

A commercial practice is deemed aggressive if, in its factual context, taking account of all its features and circumstances, **it alters or is likely to significantly alter, as a result of harassment, coercion**, including use of physical or **undue influence**, the **freedom of choice or conduct** of the average consumer in respect of a product and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Article 9 Use of harassment, coercion or undue influence

In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

a) its timing, location, **nature and persistence**;

b) the use of threatening or abusive language or behaviour;

c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

- d) any onerous or disproportionate **non-contractual barriers** imposed by the trader where a consumer **wishes to exercise rights under the contract**, including rights to terminate a contract or to switch to another product or another trader;
- e) any threat to take any action that cannot legally be taken.

These practices are punishable by imprisonment and pecuniary penalties.

French Consumer Code, Article L122-11

A commercial practice is aggressive when, through repeated and insistent solicitations or the use of physical or moral constraint:

- 1° It alters or is likely to significantly alter the freedom of choice of a consumer;
- 2° It vitiates or is likely to vitiate the consent of a consumer;
- 3° It hinders the exercise of the contractual rights of a consumer.