AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

2008 Ombudsman's Report

EDITORIAL

The financial crisis had a profound impact on 2008, leaving investors with questions and concerns.

Their number-one concern was to make sure that their assets were safe and that mechanisms were in place to protect them if custodians or asset managers went bust.

Investors also worried about the make-up and performance of their securities portfolios as the subprime crisis spread and stockmarkets collapsed.

In these troubled times, many investors looked to the regulator to provide them with relevant explanation and to assist them in settling disputes out of court. The number of queries and requests for mediation handled in 2008 (2,212 at 31 December) demonstrates, were further proof needed, just how successful the AMF Ombudsman has been in supporting retail investors and professionals alike.

Mediation helped to avert investor panic by restarting dialogue and maintaining business relations during a crisis of confidence in financial institutions.

The industry also confirmed in 2008 how much it values the mediation procedure, cooperating actively and sparing no effort to swiftly implement procedural improvements suggested by the AMF. The 64% success rate in mediation cases points to a clear understanding of the issues at stake.

The marketing of financial products was a major – and, alas, recurring – issue. Many fund investors complained about receiving inadequate information and advice, which prevented them from taking properly informed investment decisions.

In light of those observations, we could not insist enough on the need for investment services providers to furnish their customers with clear, comprehensive and appropriate information, particularly about risk exposures, and to ensure that products are properly suited to investor needs. Compliance with regulatory provisions, especially those introduced as part of MiFID transposition, and training for customer advisors in bank networks should help to reduce this kind of problem.

Another highlight of 2008 was the push at European level to promote out-of-court dispute settlement procedures, with the European Commission holding a consultation on this issue and consumer collective redress.

We also have to welcome the adoption, on 21 May 2008, of the Directive on Mediation in Civil and Commercial Matters Transposition of this legislation will have to be carefully monitored.

Financial sector mediation is effective, quick and free, protecting the interests of investors and professionals alike and helping to maintain business relations in a calm, strictly confidential setting. It can be sure of a bright future.

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* Important: The following English text is a translation of extracts from the French version of the 2008 annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation.

OMBUDSMAN'S REPORT

A - Ombudsman's Department

1 - Aims

Pursuant to Article L. 621-19 of the Monetary and Financial Code: "The authority is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When necessary, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The submission of a dispute to the Autorité des marchés financiers (AMF) to find an out-of-court settlement implies the suspension of the statute of limitations for civil and administrative proceedings. The statute starts to run again when the AMF declares the mediation to be terminated. The AMF cooperates with foreign authorities in the resolution of cross-border disputes."

The Ombudsman's activity is carried out in the broader context of Europe, based on Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of disputes.

Those principles are independence, transparency, effectiveness (the procedure must be easily accessible, free and quick), legality and liberty (both parties must accept the procedure). Also, the procedure must be adversarial.

A Europe-wide network for out-of-court settlement of consumer disputes was created through a European Council Resolution on 25 May 2000. Under this mechanism, the Commission is informed of all national bodies responsible for out-of-court settlement and mediation that comply with the principles of the 1998 and 2001 Recommendations (on out-of-court bodies involved in the consensual resolution of consumer disputes not covered by the 1998 Recommendation). These bodies can then become full members of the European Consumer Centres Network (ECC-Net).

Alongside ECC-Net, the European Commission set up the Financial Dispute Resolution Network (FIN-NET) in February 2001 as part of the Financial Services Action Plan (FSAP). The AMF Ombudsman is a member of FIN-NET.

Through its activities, the Ombudsman's Department helps the AMF to keep a watchful eye on financial markets and to protect public savings and investment effectively.

The department analyses complaints and mediation requests, striving at all times to provide swift, reliable answers.

When reviewing investor complaints, most of which come from non-professionals, against investment services providers (ISPs) or issuers, the department weighs up the interests of both parties through an objective, adversarial analysis of all factual and legal aspects.

The Ombudsman's Department also takes part in the AMF's education and training activities, contributing to its image and its policy of communicating with the public and professionals.

2 - Organisation

The department has two main roles: consultation and mediation.

- In its consultation role, the department provides retail investors with answers to technical inquiries relating to all aspects of the AMF's activities;

- Requests for mediation come from clients and ISPs/issuers looking for an amicable way to settle a dispute.

In addition, a telephone helpline is open on Tuesday and Thursday afternoons to field urgent queries and answer questions about ongoing cases.

Some matters are outside the AMF's jurisdiction as well as the Ombudsman's scope of activity.

These include queries relating to life insurance contracts, including unit-linked policies. These policies are regulated by insurance legislation, and the AMF has no power to enforce legal compliance or punish infringements. Although the specialised regulators may share related concerns, for example about providing investors with information on the funds underlying insurance investments or about transparent fee structures, this has nothing to do with the way their powers are apportioned.

However, the public may be confused about the way these powers are shared. For example, some investors submitted cases that were framed as complaints about the marketing of unit-linked insurance policies, but that were actually questions about how products worked or were managed. In such cases, the Ombudsman's Department queries the management company in question.

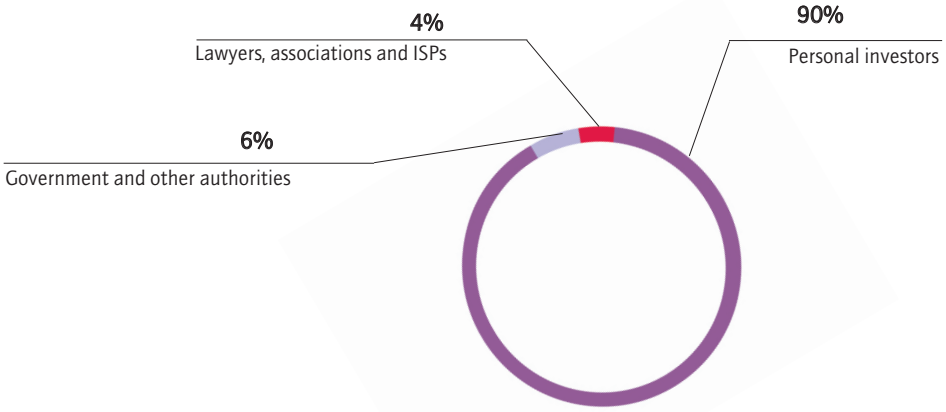
Questions relating purely to banking, such as practical issues concerning deposit accounts, savings passbooks, term deposits or lending, as well as questions relating to the enforcement and interpretation of tax legislation, also fall outside the AMF's scope of activity.

If the department is not competent to deal with a request, it steers complainants toward the organisations that may be able to answer their queries or intervene. It sometimes forwards files directly to save time or transportation costs in the case of very large files.

Most referrals originate from mainland France and its overseas territories. However, in 2008 there was an increase in referrals from outside the country, mainly owing to FIN-NET's increased role in dealing with cross-border financial disputes.

Applications are submitted by post, fax or, following their introduction in spring 2008, online forms

Origin of cases received in 2008



Source : AMF

B - 2008 in figures

1 - New inquiries and mediation requests

A total of 2,307 cases were received in 2008, comprising 1,502 inquiries and 805 requests for mediation.

The annual caseload was therefore up 7% at 31 December 2008 compared with the previous year, when 2,155 cases were received (1,449 inquiries and 706 mediation requests).

These figures do not take account of the backlog in registering cases that resulted from the increased workload. This will be reflected in the 2009 figures.

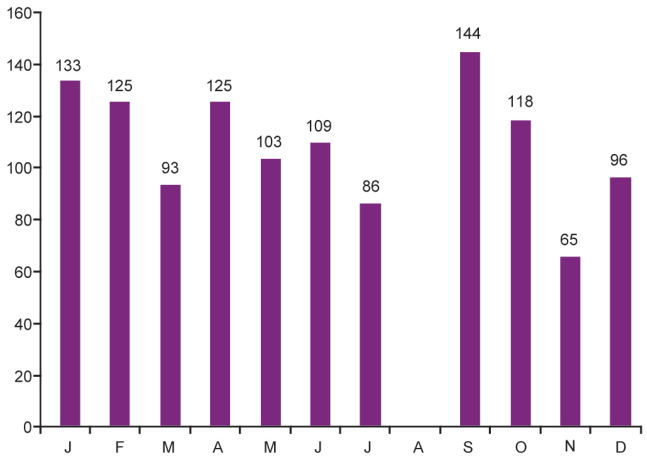
The breakdown between the two categories was slightly changed from 2007, with inquiries making up 65% of the total caseload and mediations 35%, after 67% and 33% respectively in 2007.

These figures testify to the success of the mediation process. They also reflect the confidence of individual investors in the AMF's ability to address their inquiries, as well as growing public awareness about the AMF's role in this area.

The helpline took 1,197 calls, up from 1,143 in 2007.

Telephone inquiries

Between 1 January and 31 December 2008



Source : AMF

2 - Inquiries and mediation cases handled

a) Inquiries handled

As at 31 December 2008	
Number of inquiries handled	1 473
o/w inquiries received within the month	78%
o/w inquiries received more than one month earlier	22%

Source : AMF

Between 1 January and 31 December 2008, 1,473 inquiries were answered, compared with 1,268 in 2007.

A query is closed once the initial question and any subsequent questions or clarification requests have been answered.

Naturally enough, inquiries reflect market developments and changes to the laws and regulations, and are becoming increasingly complex. Also, applicants are becoming more demanding. Although work remains to be done in terms of financial literacy, investors are certainly becoming better acquainted with the workings of financial markets.

In 2008, 78% of inquiries were closed within one month, ensuring that applicants received timely responses to their queries, many of which were of an urgent nature.

As regards the quality of the responses provided, it is gratifying to note that, although inquiries dealt with complex and wide-ranging issues, none of the AMF's response letters, which spanned all areas under its purview, from corporate actions to listing and marketing issues, was challenged, either by the recipients themselves or by third parties in subsequent legal proceedings.

b) Mediation cases handled

As at 31 December 2008	
Number of mediation cases closed	739
o/w cases less than six months old	70%
o/w cases more than six months old	30%

Source : AMF

In all, 739 mediation cases were closed between 1 January and 31 December 2008, compared with 493 in 2007.

A full 70% of these cases were closed within six months.

This six-month period begins when the Ombudsman receives the initial letter of complaint, which is never enough on its own to initiate the actual mediation procedure. When acknowledging the letter, the Ombudsman always asks applicants for additional documents and clarifications, and sends them the Mediation Charter, which explains how their case will be examined.

Cases still open after six months involve files that are more complex or that involve multiple participants, such as an account keeper and an asset management company, or an issuer and a financial intermediary. Mediation meetings with the main parties are often necessary in such situations, which means the case stays open for longer.

Sometimes, the information or documentation requested is hard to obtain for some reason – for example, the events in question occurred a long time ago or the service provider has changed in the meantime.

Of the 739 mediation cases closed in 2008, agreements were reached in 64% of the cases that were considered on their merits.

The success rate for mediation cases is calculated using this base, which in 2008 comprised 556 cases out of the total number of mediation cases closed.

The remainder includes cases whose review was not completed because the complainant abandoned the procedure. Both parties must accept the mediation procedure, and withdrawal is possible at any time.

Out-of-court settlements may take the form of a rectification (i.e. the contested transaction is cancelled), total or partial compensation for loss, or a conciliatory gesture towards the customer.

Regarding cases involving an adversarial process overseen by the Ombudsman, it is especially gratifying to note that more than half of those dealt with in 2008 resulted in an out-of-court settlement. The success rate was therefore maintained at the 2007 level, even though the number of cases handled rose sharply.

Admittedly, "success" is a qualitative factor that should be seen in perspective, firstly because neither of the parties in a mediation procedure can be forced into an agreement and secondly because agreeing to an Ombudsman-led procedure can help improve relations between complainant and respondent, even if no formal agreement is reached. Even so, the success rate shows that the mediation approach is effective.

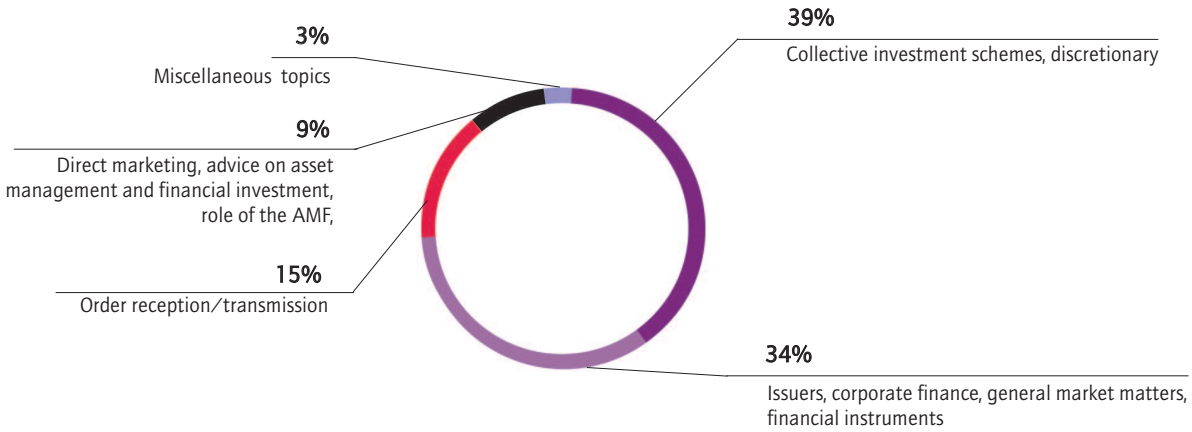
Furthermore, as in 2007, no mediation case was closed because a respondent to a complaint failed to answer the Ombudsman's request for explanations. This goes to show that the industry has embraced this alternative dispute resolution process and considers it to have a positive effect.

C - Cases dealt with by the Ombudsman

The caseload is broken down into ten broad subject areas in the department's database:
- collective investment schemes
- discretionary management
- order transmission/execution
- custody account keeping
- issuers and corporate finance
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, advice on asset management and financial investment
- role of the AMF
- miscellaneous topics

1 - Inquiries and mediation requests by subject area

January to 31 December 2008



Source : AMF

The data for 2008 show how the crisis impacted the department's activity and the type of requests submitted by investors to the Ombudsman.

With the onset of the US mortgage crisis and the resulting collapse in the value of assets backed by these loans, from summer 2007 onwards, investors called and wrote to the Ombudsman's Department with questions about "enhanced cash" funds that were potentially invested in securities backed by subprime loans.

Problems affecting the banking industry in autumn 2008 added a host of new questions to the concerns created by the first liquidity crisis. At the end of the year, many inquiries in connection with the Madoff affair were received.

The rise in the number of inquiries shows that savers are looking to the regulator to help them understand the crisis.

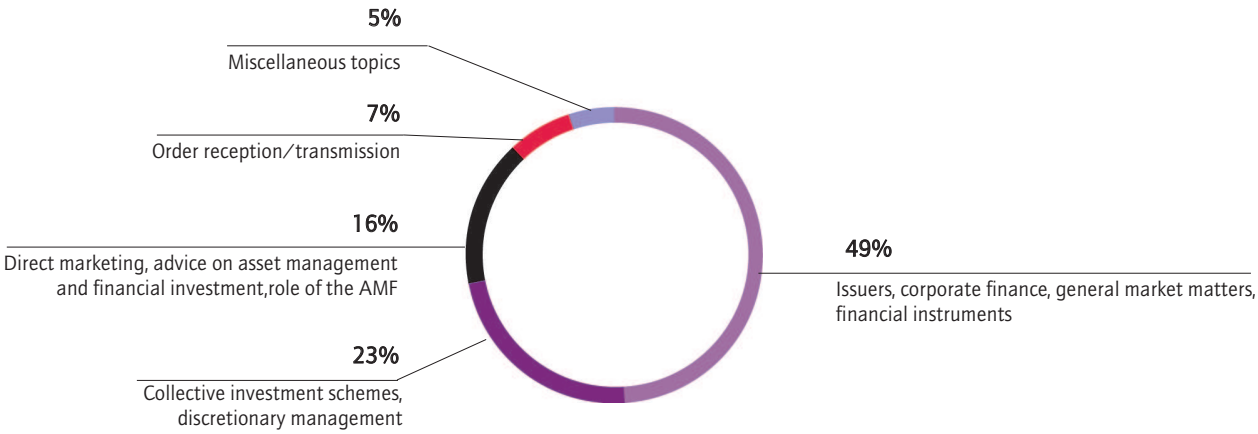
The main issues raised included the following:

- investors wanted to know how their savings would be protected in the event of a bank failure. They were told about the deposit and securities guarantee funds, which cover deposits and financial instruments respectively, up to a maximum of €70,000 per person and per institution.
- the decline in the net asset values of certain funds prompted investors to ask questions about the make-up of their assets. They wanted to know what proportion of toxic assets their portfolios contained and whether these assets were acquired before or after the crisis, since some institutions were suspected of selling toxic assets to funds managed by their subsidiaries.
- investors also asked what would happen to managed portfolios if the management company ran into difficulties. They were reminded about capital requirements and told that protective measures would be activated if authorisation was revoked owing to deficiencies on this score. In such circumstances, the AMF informs the public through the media about the timetable and conditions of the revocation. The company is placed under the control of an AMF-appointed administrator and may carry out only such operations as are strictly necessary to safeguard clients' interests. In the case of common funds (*fonds communs de placement*), the AMF asks the depositary to appoint a different manager.
- the steep decline in some share prices, particularly in the financial sector, and the high volatility of derivative products gave rise to numerous questions and reports of anomalies.
- investors played an active part in the short selling debate. Many letters were received about the measures taken by the AMF in September 2008 to ban "naked" sales and impose transparency obligations for short positions on financial stocks. Investors were told that these moves, which were consistent with those taken by the UK and US authorities, were intended to provide, in an exceptional manner and amid turbulent market conditions, a framework for the short-selling of financial stocks traded on the French market.

The Ombudsman's Department helped to prevent investor panic by tackling these questions as they came in and explaining the responsibilities of different market participants. A mediation procedure was instigated if the request showed that the investor had received insufficient information or advice before investing in a financial product whose value was severely impacted by the financial crisis.

2 - Inquiries by subject area

1 January to 30 December 2008



Source : AMF

Inquiries covered a range of topics, including the following:

a) Corporate finance and market anomalies

- Corporate finance transactions always elicit numerous requests for explanations, particularly concerning price setting methods and the scope of AMF approvals.

  The financial crisis caused a decline in corporate finance transactions in 2008. Accordingly, the Ombudsman's Department saw a steep drop in inquiries on this issue.

  Even so, the department dealt with a number of cases and questions about older transactions, such as ongoing developments surrounding the Eurotunnel offer of exchange.

  In 2007, the department received some 300 requests concerning the Eurotunnel offer of exchange. In 2008, it received a number of inquiries chiefly concerning transactions by Groupe Eurotunnel SA, consisting of the early redemption of bonds redeemable in shares issued as part of the rescue plan reorganisation measures, the issue of subordinated notes redeemable in shares, and the capital increase through the free allocation of equity warrants.

  The department also received a few requests concerning the delisting of TNU (formerly Eurotunnel) units and their transfer to the delisted securities compartment.

- Capital increases

  Investors regularly have questions about capital increases. These often deal with the timetable and implementation procedures, in particular what happens to pre-emptive subscription rights that are not exercised by holders.

  The department has in the past received queries about the fact that some financial intermediaries sell unexercised rights if they fail to receive a timely response from the holder. This practice, which is designed to prevent the holder from sustaining a loss, is possible when the arrangements for these so-called "protective clauses" are stipulated in the corporate action notice and provided shareholders are informed of them sufficiently far in advance.

  In the case of the Natixis capital increase, for example, in addition to the information provided in the corporate action notice issued by the custody account keeper, the securities note approved by the AMF on 3 September 2008 contained detailed provisions concerning the automatic sale of rights, which stipulated the following: "On the final day of the subscription period, namely 18 September 2008, the Banques Populaires and Caisses d'Epargne bank networks will automatically sell the pre-emptive subscription rights of customers who have not made their intentions known. Such a course of action is designed to protect customers' interests and might be taken by other bank networks. Such sales are likely to impact the price of pre-emptive rights. Other bank networks that do not take such action effectively leave customers' unexercised pre-emptive rights to lapse at the end of the subscription period".

Even in this case, the Ombudsman's Department had to draw investors' attention to the procedures of the protective clause. Also, some people who had acquired pre-emptive rights on the market had to be told that their account keeper would not automatically sell their rights unless they had been shareholders before the transaction was launched.

- Further developments in US action

  Vivendi and two of its senior managers agreed to settle a US court action by paying civil penalties and compensation in the total amount of approximately USD 51 million to injured investors. On 7 June 2005, a distribution agent was appointed by the US courts to prepare and implement a plan for distributing the funds to eligible investors. Since information about US compensation was reported in the French media, the Ombudsman's Department received numerous requests from shareholders wishing to know what steps to take to be compensated. The department provided them with the distribution agent's contact details and has heard no word since that time.

- As in previous years, many investors asked the Ombudsman to investigate what they believed to be market anomalies, sometimes claiming price manipulation or insider trading.

  Correspondence of this kind is passed on to the AMF's specialised departments when it contains information requiring further investigation.

  In 2008, the Investigations and Market Surveillance Division thus received 105 complaints from retail investors about allegedly suspicious transactions, along with requests for investigations or appraisals of unusual price movements.

  Many complaints and requests for investigations about unusual price movements concerned stocks traded on the Marché Libre. The investors who submitted these requests were reminded that since the *Marché libre* is not a regulated market within the meaning of Article L. 421-1 of the Monetary and Financial Code, it is not subject to the provisions in the AMF General Regulation on price manipulation and insider trading. Only the regulations concerning the dissemination of false information apply to this market.

b) Malpractice reports

Sometimes investors report suspect direct marketing or investment services practices. This may be because they have been a victim of such practices, because they want additional information before subscribing, or because they want to warn the AMF.

Following reports of malpractice received by the Ombudsman, four news releases were published in 2008 on the AMF website and repeated in the press in order to warn the public. Such reports are dealt with using a rationalised procedure that ensures a meticulous examination of the reported facts and respects the rights of defence of the persons or entities referred to in the report.

In the continuation of a trend observed in 2007, there was a significant increase in the number of requests from investors wishing to know whether persons or companies who contacted them were properly authorised to do so or whether the products offered to them were authorised to be marketed in France.

In such circumstances, whether talking to people over the phone or dealing with inquiries, the Ombudsman's Department always urges investors to be extremely cautious when considering seemingly low-risk high-return investment proposals, particularly in the case of online solicitation.

c) Market making for warrants, certificates and exchange traded funds (ETFs)

As in previous years, many investors complained about market making for warrants and certificates. There were also more questions about ETFs, which are also known as trackers.

In responding to these queries, the Ombudsman's Department often has to remind investors how these products work, telling them about knock out options, valuation issues, and so on. It also points out that Euronext Paris has signed a liquidity provision agreement with a market member.

Investors are also reminded that the commitments of liquidity providers vary depending on quotation groups and the specifics of each individual instrument.

They are informed that the warrant or certificate prospectus usually contains the main points of the liquidity provision agreement, particularly the clauses dealing with situations in which the provider is authorised to temporarily suspend publication of its spread. Such circumstances may arise if the provider no longer has enough securities to meet demand or if it is no longer in a position to reliably value securities, for example if trading in the underlying is halted. Investors wishing more information are generally told to contact the relevant liquidity provider.

In this regard, it is gratifying to note that NYSE Euronext is adding new features to its European warrant and certificate market to enhance transparency and efficiency. Measures include a guarantee to investors that orders will be executed at the best available price, indicators showing the average length of time spent by issuers in the order book, and information about volumes and average spreads on this market, which lists around 10,000 derivative products.

d) Trading halts

Under Article 4404/2 of Book I of the Euronext Rules, the market undertaking may suspend trading in any security in order to prevent or halt disorderly market conditions, either on its own initiative or at the reasoned request of the relevant issuer. It may also suspend trading at the request of a competent authority. These trading halts are published in a Euronext Paris market notice, which describes the origin of and reasons for the halt, the date it takes effect and the conditions in which trading may resume. Failing this, it stipulates that trading has been suspended until further notice. There is no maximum time limit for trading halts.

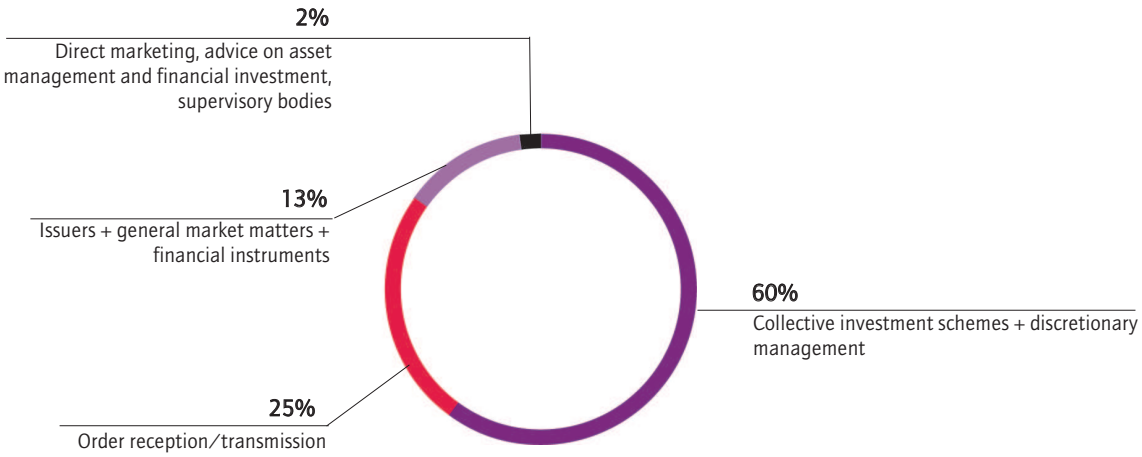
Many retail investors complained that they had received no information following a trading halt or suspension. This is the case when trading is suspended pending a press release from the issuer or when news of court-ordered reorganisation or winding-up proceedings is released belatedly.

Difficulties in this area are exacerbated if the shares are delisted from Euronext Paris's Eurolist but the company is not removed from the Trade and Companies Register. In such cases the holdings cannot be deleted from customer accounts and customers have to pay custody fees to their custodians.

In responding to retail investors, the Ombudsman's Department reiterated the current regulations and, in situations where a court had ordered the company to be reorganised or wound up, provided the necessary information, when available, on contact details for the liquidator who would be able to supply investors with comprehensive information about how matters would proceed.

3 - Mediation cases by subject area

1 January to 30 December 2008



Source : AMF

a) Marketing of financial products

In 2008, the Ombudsman's Department once again received numerous complaints about the marketing of collective investment schemes (CIS) and particularly structured funds, chiefly by bank networks.

- All too often, subscribers once again complained that they had invested in CISs without receiving a simplified prospectus or being warned of the risks associated with the investment. Complainants said that they were unable to take properly informed investment decisions and often followed their advisor's recommendations.

  Cases involving structured funds were especially striking as they revealed that subscribers were unaware of the specific characteristics of these products. Many investors discovered at maturity that this type of fund offered only the capital guarantee, besides entry fees, and that additional returns over and above the guarantee are based on the performance of one or more indices or of a basket of shares. The guarantee, coupled with an attractive name suggesting that the product would earn large returns or was certain to be successful, plus the recommended investment horizon led investors in structured funds to think that they were assured of making gains at maturity.

  In spring 2008, the media reported complaints by clients of a bank involving structured-fund investments, most of which dated to 2001 and 2002. The Ombudsman's Department started receiving inquiries and mediation requests concerning these funds in April 2006, with investors complaining about unfair marketing by overly bullish advisors who backed up their recommendations with misleading advertising literature. Some complaints also focussed on the workings of these products, especially the selection and management of securities in the basket.

  Adding to the ongoing inflow of individual complaints, the department also received correspondence at the end of July 2008 amalgamating numerous individual claims and asking for help in obtaining compensation for injured investors, preferably through an amicable procedure. The department received over 300 requests for mediation in this context, some of which are still being dealt with, meaning that it is too early to draw any conclusions on this matter.

  However, the institution in question cooperated fully, showing that the industry is aware of the advantages of a confidential amicable procedure.

  As regards the marketing of financial products, it is worth noting the analysis of ISP disclosure obligations adopted by the commercial division of the Court of Cassation in a ruling dated 24 June 2008, insofar as this reading could have a major influence on the outcome of current or future legal proceedings and on industry practice.

  In the ruling, the Court of Cassation said that, by virtue of Article 1147 of the Civil Code and Article 33(2) of COB Regulation 89-02 amended by Regulation 98-04, "advertising by anyone proposing a common fund investment to a client must be consistent with the proposed investment and should mention, as appropriate, the least favourable characteristics and risks inherent in options that may accompany the described benefits; where advertising does not meet these requirements, the professional shall not be considered to have satisfied his disclosure obligation if he provides a copy of the notice approved by the Commission des opérations de bourse."

The Court of Cassation has thus made it clear that advertising must be consistent with the proposed investment and forms part of the information that must be provided to investors, just like the prospectus.

- Mediation requests concerning enhanced cash funds.

A bank client wishing to make a short-term risk-free investment placed money in a fund that was described as 90% invested in an extremely safe enhanced cash fund, with the remainder being placed in an absolute return hedge fund. The client was told that, thanks to the risk monitoring model, risks would be kept under control and maximum losses would not exceed 2.5%. Won over by this attractive description, the client invested a sizeable proportion of his assets in this fund. When the value of the investment plunged, he contacted the Ombudsman's Department. After a review of the case based on the duty to provide information and advice at the marketing stage, the institution said that it would sign an agreement to compensate the client.

Within the framework of its cash management activities, a company manager suffered substantial capital losses after investing around €1 million in CISs based on a bespoke document that portrayed the funds in a highly favourable light. While the bank pointed out that the investor was financially literate and familiar with market mechanisms, it acknowledged that the document that served as the basis for the investment referred to past performance and emphasised the notion of returns with low capital risk. It further acknowledged that this representation did not reflect the product's true situation and paid compensation.

In a similar case, based on marketing documentation that described a CIS in a flattering light, a bank client, acting on the recommendation of his advisor, invested in the fund, believing that he was making a safe investment, as the name of the product suggested. Having sustained financial losses, the client turned to the Ombudsman's Department. When questioned about the content of the marketing document, which spoke of "a low-risk approach targeting high returns relative to the money market" but failed to mention the risks linked to the fund's exposure to the performance of a basket of enhanced cash funds, the bank ultimately agreed to cancel the investment.

- The department was contacted in connection with disputes involving investment restrictions for certain funds.

The department was contacted by unitholders of leveraged funds with streamlined investment rules, who wanted to know whether their intermediary was entitled to ask them to redeem their units because they did not meet the eligibility criteria, or to redeem them automatically if they did not redeem the units of their own volition.

These requests highlight the risks of inappropriate marketing of funds with streamlined investment rules. In this instance, it appears that the intermediary, after failing to verify whether investors were eligible to invest in these products during the subscription period, then redeemed units held by unitholders without checking to see if they were eligible.

Investors who lodged complaints either remained invested in the fund if they met the eligibility criteria, or were reimbursed for any capital losses, entry fees and, where applicable, any excess income tax payments.

To prevent such problems from occurring again, appropriate procedures need to be in place when marketing funds that are reserved for certain types of investors.

- The Ombudsman's Department was contacted with requests concerning investments in redeemable subordinated notes.

One couple in their eighties followed the recommendations of their bank, which had contacted them at home, and invested in redeemable subordinated notes with a 12-year maturity, thinking that their capital was protected and could be accessed at any time without penalty. They said that they received no information about the specific details of the investment, particularly concerning the risks of capital loss in the event of early redemption.

On discovering the exact nature of their investment, they asked for the principal to be refunded, which their bank refused to do.

Following the mediation procedure, the complainants secured the sale of all the notes and were reimbursed for the capital losses incurred as a result.

In another case, an investor acting on the recommendations of his financial advisor invested €44,000 in redeemable subordinated notes with a 12-year maturity on behalf of the real estate company that he managed, thinking he would be able to access this money at any time.

It was only a few years later that the investor, seeking to acquire some property in the course of his company's business, was informed of the duration of the investment and told about the risks of capital loss in the event of early redemption. The person in question then asked unsuccessfully for the investment to be cancelled. Following the mediation procedure, an agreement was signed in which the bank paid the total capital loss of €7,100 incurred when the notes were sold.

- The Ombudsman's Department is sometimes contacted in connection with new share placements

The client of one bank invested in newly listed shares. Her goals were to top up her pension and pay for work to her co-owned property. Far from earning capital gains as her financial advisor had hinted, she sustained heavy losses. She referred her case to the Ombudsman's Department, hoping to obtain compensation for a failure to provide information and advice, claiming she had not been given clear, comprehensive and appropriate information about the shares' characteristics and, more specifically, about the risks involved in equity investing. For the sake of maintaining a cordial business relationship, the bank agreed to pay back half the client's capital outlay, without admitting to any fault.

b) Terms and conditions for redemption of units in venture capital funds

In 2008, as in previous years, the Ombudsman's Department received complaints that revealed a lack of understanding about the conditions applicable to the redemption of units in venture capital funds, especially innovation funds.

If an investor were to read only the subscription form, he might think that his assets would be tied up for a maximum of five years. But contractual provisions set out in the fund's information circular and rules may stipulate a longer lock-up. Cases received by the department show that marketers do not always draw attention to the real lock-up period.

Accordingly, investors must be reminded to read both the subscription form, which indicates the requirement to hold units for five years to be eligible for favourable tax treatment, and the provisions governing redemption, which are set out in the fund's information circular and rules.

Other complaints received in 2008 highlighted a discrepancy between the information provided in contractual documents, i.e. the information circular and rules, and the procedures implemented during the execution of redemption orders.

It is crucial for the investor to know the date and, where applicable, the time at which redemption requests will be collected, the net asset value that will be used as a base for executing requests, and the maximum time between execution and the transfer of the sale's proceeds to the customer's account.

If this information is not clearly provided in the contractual documentation, the customer should write to the management company for clarification before issuing redemption instructions.

c) Discretionary management

As in past years, the Ombudsman's Department received requests for mediation in the area of discretionary management, which exposed situations where ISPs had provided inadequate information and advice at any time during the contractual relationship. There are few amicable settlements in this area, because managers are subject to a best-efforts requirement rather than an absolute obligation, and poor returns alone do not constitute mismanagement.

Some requests concerned management fees. Many investors asked about performance fees. Feeling that such commissions should not be paid in the event of losses, they wrote to the Ombudsman, asking for these fees to be reimbursed.

The Ombudsman's Department reminded them that, as the regulations stand, the remuneration paid to the management company may include a variable portion linked to outperformance by the managed portfolio, also called a performance fee.

They were also reminded that the management agreement should contain information about variable management fees and might stipulate that the variable portion was payable on every euro earned, as determined relative to the management objective.

A few requests concerned the obligations of ISPs offering advisory or assisted portfolio services.

This type of service is actually a straightforward order reception/transmission service in which the holder of the portfolio retains full control over investments while receiving regular advice on markets and financial instruments.

In this regard, the terms used in the agreement should be clarified when the document is signed to prevent any ambiguity.

D - Recent developments in mediation

1 - At European level

The Financial Dispute Resolution Network, or FIN-NET[1], aims to assist consumers in finding quick, simple and inexpensive solutions – avoiding legal action where possible – to disputes with financial services providers such as banks, insurance companies and investment firms based in a Member State other than their home State.

At present the network has 50 members. Most are either ombudsmen or heads of "dispute commissions" or "consumer arbitration panels", depending on the country. Members are linked by a memorandum of understanding (MOU) that sets out the procedures for cross-border cooperation and states the basic principles for out-of-court settlement, which are defined in Commission Recommendation 98/257/EC of 30 March 1998.

In December 2008, the AMF Ombudsman was appointed to the FIN-NET steering committee.

The network meets regularly, following an agenda that is chiefly given over to legal developments in European financial services, the development of out-of-court systems of redress, cooperation by members and new, complex or recurring disputes. FIN-NET members are also consulted individually by the European Commission when it carries out studies.

In 2008, FIN-NET members worked hard to raise awareness among Member States about the need to create and promote alternative dispute resolution systems in all financial sectors. The goal is to provide investors with a way to reach amicable solutions in national and cross-border disputes that would not usually reach the courts because of the time and expense involved.

FIN-NET also looked at how members deal with mediation requests for which they do not have territorial jurisdiction. Out-of-court dispute settlement organisations cover providers of financial services that operate within and from the country in which the organisation is based.

When a request is submitted over which they do not have jurisdiction, some FIN-NET members, including the AMF Ombudsman, tell the complainant to contact the competent body directly, providing full information about the organisation and, if necessary, its procedures. Some members even help the applicant to translate the complaint, if he or she is unable to formulate the request in the appropriate language or in English. The goal of FIN-NET is to ensure that complainants would at least be able to express their complaints in the language of the agreement or the language in which they customarily deal with the financial services provider. Many members do however allow other languages to be used.

FIN-NET members were also asked to provide comments on the European Commission's draft consultation on alternative dispute resolution systems. They thus got the opportunity to adjust and clarify some of the questions included in the consultation before the document was released.

They considered the impact of the financial crisis on their activity. All of them received many questions concerning loans, deposit guarantee funds and large bank failures. In their view, investors had not panicked and seemed reassured by the presence of the guarantee funds and the fact that several countries had increased the maximum amount covered to €100,000.

They responded to numerous studies and consultations, including:

- a study on European consumer assistance networks;
- a study on the impact on the conclusion of cross-border financial service contracts between professionals and consumers of Directive 2002/65 concerning the distance marketing of consumer financial services;
- a consultation document on developing a harmonised methodology for classifying and reporting consumer complaints across the European Union;
- a consultation on alternative dispute resolution in financial services.

1 The website of the European Commission provides more information about FIN-NET and member systems: http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.

2 - At domestic level

a) Ongoing work within the Club of Public Service Ombudsmen

The AMF Ombudsman has been part of the Club of Public Service Ombudsmen since February 2007.

Set up in April 2002, this informal group is designed to provide a forum for sharing ideas about practices, fostering debate and proposals, and promoting mediation in France as well as at European level, since some of the members also belong to FIN-NET.

On 20 October 2008, the club organised a meeting at the French Finance Ministry to consider the challenges and prospects created by the European Directive of 21 May 2008 on mediation in civil and commercial matters. The event was attended by players from the world of mediation and included participants from the courts and from public and private organisations.

The club has undertaken a series of initiatives that seek to build on the work done during the negotiation stage to ensure that the new directive is appropriately transposed.

b) Promoting awareness about the AMF Ombudsman

One of the objectives of the Better Regulation approach is to raise awareness about the AMF Ombudsman.

The aim is to ensure that all investors enjoy the same protection and to provide them and professionals with a way to find an amicable solution to their disputes.

In 2008, various measures were taken to tell professionals and the public about the Ombudsman:

- meetings were held to present the activities of the Ombudsman to the French Asset Management Association (AFG), whose members were given the opportunity to learn about the mediation process and the types of issues tackled by the department;
- in addition to these meetings with industry, the Ombudsman's Department is in regular contact with talking partners at financial institutions, including investment services compliance officers, compliance and internal control officers and customer managers. These exchanges are an opportunity to talk about individual cases affecting institutions, but also set the stage for constructive discussions on recurring issues, regulatory reforms and possible avenues for improvement;
- the department continued its cooperation with the Financial Sector Consultative Committee as part of efforts to prepare an opinion on the marketing of financial products;
- the Ombudsman took part in discussions organised by the working group set up by the French employers' federation, MEDEF, on alternative approaches to settling consumer disputes;
- the Ombudsman answered investor questions live online, was interviewed on radio and spoke about the procedures, objectives and results of her work on investor protection in a host of articles in the business press;

Three online complaint forms were introduced on 16 April 2008 to make it easier to submit complaints and to speed up processing. The forms, which have proved successful, cover mediation, inquiries, and provision of information.

3 - Outlook

Act 2008-3 of 3 January 2008 on promoting competition for the benefit of consumers extended the scope of banking mediation to savings products in 2008. This did not lead to a decline in requests sent to the AMF Ombudsman, nor did it affect the outstanding coordination between the parties that play a role in this area. Every effort must be made to ensure that coordination is maintained at this high level.

It is vital to make investors more aware of all their out-of-court settlement options. For this, efforts must be continued to promote mediation. While the Banking Mediation Committee told credit institutions about the reform, the message needs to be conveyed to other investment participants and should include information about the AMF's role in mediation.

This will ensure that all investors receive comprehensive information. Arrangements for these disclosures should written into account agreements and should also appear in transaction slips and statements.

Transposition of the Directive on mediation in civil and commercial matters will surely help in promoting mediation. The provisions of the new legislation apply to cross-border disputes, but Member States may also apply them to "internal mediation processes".

The Ombudsman will also monitor action taken by the public authorities on the proposal by the working group on the decriminalisation of business law to develop alternative dispute resolution mechanisms in business and finance.

Furthermore, on the question of the marketing of financial products, the AMF Ombudsman's Department will pay close attention to the choices that come out of the Report by the Taskforce on the Organisation and Operation of Oversight for Financial Activities in France, which was prepared by Mr Deletré in January 2009.

The report points out that "the AMF is the only one of the three supervisory authorities to have created an Ombudsman's Department". It reviews the department's legal underpinnings and the latest figures on its activity. The report also states that if the scope of the AMF's activities were to be changed, thought should also be given to the jurisdiction of its Ombudsman's Department.

Appendix I

Commission Recommendation

(of 30 March 1998)

COMMISSION RECOMMENDATION of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (*) (Text with EEA relevance) (98/257/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155 thereof,

Whereas the Council, in its conclusions approved by the Consumer Affairs Council of 25 November 1996, emphasised the need to boost consumer confidence in the functioning of the internal market and consumers' scope for taking full advantage of the possibilities offered by the internal market, including the possibility for consumers to settle disputes in an efficient and appropriate manner through out-of-court or other comparable procedures;

Whereas the European Parliament, in its resolution of 14 November 1996 (1), stressed the need for such procedures to meet minimum criteria guaranteeing the impartiality of the body, the efficiency of the procedure and the publicising and transparency of proceedings and called on the Commission to draft proposals on this matter;

Whereas most consumer disputes, by their nature, are characterised by a disproportion between the economic value at stake and the cost of its judicial settlement; whereas the difficulties that court procedures may involve may, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;

Whereas the 'Green Paper on the access of consumers to justice and the settlement of consumer disputes in the single market` (2) was the subject of wide-ranging consultations whose results have confirmed the urgent need for Community action with a view to improving the current situation;

Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes - provided certain essential principles are respected - have had good results, both for consumers and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

Whereas one of the conclusions of the Green Paper concerned the adoption of a Commission recommendation with a view to improving the functioning of the ombudsman systems responsible for handling consumer disputes;

Whereas the need for such a recommendation was stressed during the consultations on the Green Paper and was confirmed during the consultation on the 'Action Plan` communication (3) by a very large majority of the parties concerned;

Whereas this recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent;

Whereas the decisions taken by out-of-court bodies may be binding on the parties, may be mere recommendations or may constitute settlement proposals which have to be accepted by the parties; whereas for the purposes of this recommendation these various cases are covered by the term 'decision;

Whereas the decision-making body's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes;

Whereas a body can only be impartial if, in exercising its functions, it is not subject to pressures that might sway its decision; whereas, therefore, its independence must be guaranteed without this implying the need for guarantees that are as strict as those designed to ensure the independence of judges in the judicial system;

(*) A communication on the out-of-court settlement of consumer disputes was adopted by the Commission on 30 March 1998. This communication, which includes this recommendation and the European consumer complaint form, is available on the Internet (http://europa.eu.int/comm/dg24).

(1) European Parliament resolution on the Commission communication 'Action plan on consumer access to justice and the settlement of consumer disputes in the internal market` of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 275).

(2) COM(93) 576 final of 16 November 1993.

(3) Action Plan on consumer access to justice and the settlement of consumer disputes in the internal market, COM(96) 13 final of 14 February 1996.

Whereas, when the decision is taken by an individual, the decision-maker's impartiality can only be assured if he can demonstrate that he possesses the necessary independence and qualifications and works in an environment which allows him to decide on an autonomous basis; whereas this requires the person to be granted a mandate of sufficient duration, in the course of which he cannot be relieved of his duties without just cause;

Whereas, when the decision is taken by a group, equal participation of representatives of consumers and professionals is an appropriate way of ensuring this independence;

Whereas, in order to ensure that the persons concerned receive the information they need, the transparency of the procedure and of the activities of the bodies responsible for resolving the disputes must be guaranteed; whereas the absence of transparency may adversely affect the rights of the parties and cause misgivings as to out-of-court procedures for resolving consumer disputes;

Whereas certain interests of the parties can only be safeguarded if the procedure allows them to express their viewpoints before the competent body and to acquaint themselves with the facts presented by the opposing party and, where applicable, the experts' statements; whereas this does not necessarily necessitate oral hearings of the parties;

Whereas out-of-court procedures are designed to facilitate consumer access to justice; whereas, therefore, if they are to be effective, they must remedy certain problems associated with court procedures, such as high fees, long delays and cumbersome procedures;

Whereas, in order to enhance the effectiveness and equity of the procedure, the competent body must play an active role which allows it to take into consideration any element useful in resolving the dispute; whereas this active role is all the more important when, in the framework of out-of-court procedures, the parties in many cases do not have the benefit of legal advice;

Whereas the out-of-court bodies may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct; whereas, however, this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts;

Whereas the parties are entitled to be informed of the decisions handed down and of grounds for these decisions; whereas the grounds for decisions are a prerequisite for transparency and the parties' confidence in the operation of out-of-court procedures;

Whereas in accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right that knows no exceptions; whereas since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State; whereas out-of-court procedures cannot be designed to replace court procedures; whereas, therefore, use of the out-of-court alternative may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised;

Whereas in some cases, and independently of the subject and value of the dispute, the parties and in particular the consumer, as the party who is regarded as economically weaker and less experienced in legal matters than the other party to the contract, may require the legal advice of a third party to defend and protect their rights more effectively;

Whereas, in order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards; whereas the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative; whereas, to ensure standardised information and to simplify the transmission of these data, a standard information form will be made available to the Member States;

Whereas, finally, the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 129a of the Treaty, a high level of consumer protection; whereas it does not go beyond what is necessary to ensure the smooth operation of out-of-court procedures; whereas it is therefore consistent with the principle of subsidiarity,

RECOMMENDS

that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes respect the following principles:

I. Principle of independence

The independence of the decision-making body is ensured in order to guarantee the impartiality of its actions. When the decision is taken by an individual, this independence is in particular guaranteed by the following measures:

- the person appointed possesses the abilities, experience and competence, particularly in the field of law, required to carry out his function,
- the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause,
- if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

II. Principle of transparency

Appropriate measures are taken to ensure the transparency of the procedure. These include:

1) provision of the following information, in writing or any other suitable form, to any persons requesting it:

- a precise description of the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute,
- the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure,
- the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure,
- the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.),
- the decision-making arrangements within the body,
- the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional or on both parties. If the decision is binding, the penalties to be imposed in the event of non-compliance shall be stated, as shall the means of obtaining redress available to the losing party.

2) Publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified.

III. Adversarial principle

The procedure to be followed allows all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements.

IV. Principle of effectiveness

The effectiveness of the procedure is ensured through measures guaranteeing:

- that the consumer has access to the procedure without being obliged to use a legal representative,
- that the procedure is free of charges or of moderate costs,
- that only short periods elapse between the referral of a matter and the decision,
- that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

V. Principle of legality

The decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross-border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

All decisions are communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

VI. Principle of liberty

The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

VII. Principle of representation

The procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

THIS RECOMMENDATION is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

Done at Brussels, 30 March 1998.

For the Commission

Emma BONINO

Member of the Commission

Appendix II

Monetary and Financial Code

(Legislative Part)

Article L. 621-19

(Act 2003-706 of 1 August 2003, Article 1, Article 17, Article 46 V 1° Official Journal of 2 August 2003)

(Order No2005-429 of 6 May 2005 Article 82 Official Journal of 7 May 2005)

(Act 2005-811 of 20 July 2005 Article 1 I Official Journal of 21 July 2005)

(Act 2005-1564 of 15 December 2005 Article 17 Official Journal of 16 December 2005)

(Order No 2007-544 of 12 April 2007 Article 5 Official Journal of 13 April 2007, effective 1 November 2007)

The [Authority] is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The limitation period in civil and administrative proceedings shall cease to run when a dispute is referred to the Autorité des marchés financiers for out-of-court resolution. It shall resume once again when the Autorité des marchés financiers has declared that the mediation procedure is terminated.

The Autorité des marchés financiers cooperates with its foreign counterparts with a view to out-of-court resolution of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to holders of financial instruments and the public, the financial instruments markets and the status of investment service providers. Each year, it draws up a report to the President of the Republic and Parliament which is published in the Official Journal of the French Republic.

The chairman of the [Autorité des marchés financiers] is heard, when they so request, by the Finance Committees of the two assemblies and may ask to be heard by them.

Appendix III

Mediation Charter

In application of Article L. 621-19 of the Monetary and Financial Code, the Autorité des marchés financiers is authorised to receive claims relating to matters that fall within its jurisdiction from any interested party, and to deal with them appropriately. When relevant, it proposes an out-of-court settlement of the disputes brought to its attention, via conciliation or mediation.

The submission of a dispute to the Autorité des marchés financiers to find an out-of-court settlement, implies the suspension of the statute of limitations for civil and administrative proceedings. It starts to run again when the Autorité des marchés financiers declares the mediation as ended.

The Autorité des marchés financiers cooperates with foreign stockmarket regulators in the resolution of cross-border disputes.

Contacting the Ombudsman

The Ombudsman may be contacted by any person or legal entity, involved in a dispute of an individual nature falling within the Autorité des marchés financiers jurisdiction, only if no legal action or AMF investigation, regarding the same facts, is in progress.

The mediation procedure is free of charge.

Prior action

A claim may only be brought to the attention of the Ombudsman when a prior action has been taken against the investment services provider or issuer, and your complaint has remained unanswered or has been rejected either totally or partially.

The mediation process

The necessary means to carry out mediation in a neutral, impartial and independent manner are registered in the budget of the Autorité des marchés financiers.

The Ombudsman may only undertake the mediation procedure with the consent of both parties.

In principle, mediation lasts three months from the time when all useful evidence has been supplied to the Ombudsman by the parties.

The mediation procedure is a contradictory procedure. It is carried out in writing, but the Ombudsman may decide to hear the parties separately or together.

The Ombudsman and the parties are bound by the strictest obligations of confidentiality.

Legal action

Both parties retain the right to bring the dispute in front of the courts at any time. The submission of the dispute to the courts brings the intervention of the Ombudsman to an end.

On this assumption, any exchange that has taken place during the mediation procedure may not be used or submitted to the courts.

End of the mediation procedure

The mediation procedure ends either by an out-of-court settlement, or by the statement of a persistent disagreement, the withdrawal of one of the parties, or by the start of legal action relating to the dispute.

Whatever the outcome of the procedure, the Ombudsman informs the parties, in writing, of the end of his intervention.

Annual report

The Ombudsman presents an annual report to the Board of the Autorité des marchés financiers, in which his activities are reviewed. This report is published.

Appendix IV

Thank you letters

Dear Madam,

Thank you for your letter, of which I enclose a copy.

I am also enclosing a duplicate of the letter sent by XXXXXXXXX on 21 January because it does not specify whether you received a copy, as you had requested.

I wish to thank you for your effective efforts.

Quite simply, I was forced to solicit your good offices in order to obtain a reply (which was instructive though obviously technical) from XXXXXXXXX after six months' of fruitless attempts to reach them by phone.

In general, and as you are doubtless unfortunately aware, it is often difficult to maintain harmonious relations with banks. Because they have the time and the money, many of them can afford to be offhand in their dealings with clients, even those like me who have the good fortune never to be overdrawn – quite the contrary – whenever we dare hold them to account or ask for explanations, sometimes citing laws or regulations, which seems to infuriate them enormously.

Without belabouring the point I feel that, despite the plethora of statutes, it is too often necessary to dig one's heels in and be prepared to waste time. More than ever before, the lone citizen, who is usually unfamiliar with the maze of legislation, feels defenceless.

Long may the AMF, who knows the situation better than anyone, continue to stand up for the weak against the powerful. And I hope it will make itself better known to the general public, though this will demand resources, which are surely inadequate.

Since this is still the festive season, I wish both the AMF and you personally every success in these endeavours for the New Year, despite the prevailing uncertainty.

Yours truly

Dear Madam,

The purpose of this brief message is to inform you that XXXXXXX has just sent us the settlement for the last swap fixing. In principle, therefore, our relations with this client are getting back to normal.

I wish to thank you for having accepted at such short notice to arrange and conduct our last meeting which in principle, should allow us to reach an out-of-court settlement to the dispute.

Best regards

Madam,

I wish to confirm that after several months of discussions, XXXXXX Bank finally admitted that it had made "an error" when preparing the subscription form and had failed to provide us with any information. We have now received full repayment.

I would like to thank the AMF for the part it played, through your involvement, in allowing a modest citizen to stand up successfully to a major banking group.

Dear Ms Guidoni,

I am writing to inform you that I received your letter of the 11th and that I won my claim against my bank, XXXXXXXX, which repaid me the sum of 25,053.04 euros, with no expenses, on 1 August.

The refund was undoubtely due to your intervention on 29 July.

All my thanks

Yours truly

Dear Madam,

In response to your letter of 2 July, I wish to confirm that the credit transfer, of which XXXXXXXXX informed you, has been made.

XXXXXXXXXX refunded the expenses it had wrongly charged by restoring the number of employee savings fund shares allotted to me when I paid in my profit sharing bonus in November 2004. The case is therefore closed.

Thank you for your effective mediation.

Yours faithfully

Appendix V

Public service Ombudsmen's Charter

(extracts)

The Ombudsmen who signed this charter on 16 September 2004 all share the same conception of service to citizens, customers and users, a conception based on attentiveness, dialogue and out-of-court dispute resolution […].

Institutional mediation is an "alternative dispute resolution" mechanism. Like contractual mediation, it can be used in an effort to avoid legal action and resolve specific individual disputes between natural or legal persons and institutions or companies. The procedure is free of charge, quick and freely accessible, both directly and indirectly […]. The purpose of mediation is to improve service quality and user satisfaction […].

Institutional Ombudsmen not only play a key role in resolving disputes between institutions and users; they also have a preventive role and expedite change in institutions or companies […].

Public service Ombudsmen ensure first and foremost that the law is respected, and they rely on the intrinsic values of mediation. These are the desire to facilitate the search for out-of-court resolution of disputes; fairness (the ombudsmen can issue fairness recommendations, since a rule or practice that is suitable for the vast majority of users may prove unworkable for an individual case); impartiality relative to the complainant, company or government department; compliance with the adversarial principle; transparency; and confidentiality […].

Public service Ombudsmen also have an overall view of the problems that have been identified, enabling them to better detect an institution's shortcomings and to propose changes […].

The special status of institutional ombudsmen ensures they will be impartial in the dispute settlement process. They are independent from the organisational structures of institutions and companies […].

Because the Ombudsman's function is personalised and located at the heart of the institution, he or she can narrow the gap between citizens and institutions […], thereby putting the parties on an equal footing to establish a balanced dialogue […].

The signatories to the charter at end-2006 are the Ombudsmen of the following:

-Caisse des dépôts et consignations

-Eléctricité de France

-the national education system

-the insurance sector

-France 2, France 3

-France Télévision (programming)

-Gaz de France

-La Poste

-Paris municipal authorities

-Ministry of the Economy, Finance and Industry

-Paris mass transit authority (RATP)

-French Railways (SNCF)

-Mutualité sociale agricole (MSA)

-Autorité des marchés financiers (AMF).

Appendix VI

DIRECTIVES

DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2008

on certain aspects of mediation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To that end, the Community has to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The principle of access to justice is fundamental and, with a view to facilitating better access to justice, the European Council at its meeting in Tampere on 15 and 16 October 1999 called for alternative, extra-judicial procedures to be created by the Member States.

(3) In May 2000 the Council adopted Conclusions on alternative methods of settling disputes under civil and commercial law, stating that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice.

(4) In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law, taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation.

(5) The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. This Directive should contribute to the proper functioning of the internal market, in particular as concerns the availability of mediation services.

(6) Mediation can provide a cost-effective and quick extra-judicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

(7) In order to promote further the use of mediation and ensure that parties having recourse to mediation can rely on a predictable legal framework, it is necessary to introduce framework legislation addressing, in particular, key aspects of civil procedure.

(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

(9) This Directive should not in any way prevent the use of modern communication technologies in the mediation process.

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[1] OJ C 286, 17.11.2005, p. 1.

[2] Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 129). Council Common Position of 28 February 2008 (not yet published in the Official Journal) and Position of the European Parliament of 23 April 2008 (not yet published in the Official Journal).

(10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.

(11) This Directive should not apply to pre-contractual negotiations or to processes of an adjudicatory nature such as certain judicial conciliation schemes, consumer complaint schemes, arbitration and expert determination or to processes administered by persons or bodies issuing a formal recommendation, whether or not it be legally binding as to the resolution of the dispute.

(12) This Directive should apply to cases where a court refers parties to mediation or in which national law prescribes mediation. Furthermore, in so far as a judge may act as a mediator under national law, this Directive should also apply to mediation conducted by a judge who is not responsible for any judicial proceedings relating to the matter or matters in dispute. This Directive should not, however, extend to attempts made by the court or judge seised to settle a dispute in the context of judicial proceedings concerning the dispute in question or to cases in which the court or judge seised requests assistance or advice from a competent person.

(13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. However, it should be possible under national law for the courts to set time-limits for a mediation process. Moreover, the courts should be able to draw the parties' attention to the possibility of mediation whenever this is appropriate.

(14) Nothing in this Directive should prejudice national legislation making the use of mediation compulsory or subject to incentives or sanctions provided that such legislation does not prevent parties from exercising their right of access to the judicial system. Nor should anything in this Directive prejudice existing self-regulating mediation systems in so far as these deal with aspects which are not covered by this Directive.

(15) In order to provide legal certainty, this Directive should indicate which date should be relevant for determining whether or not a dispute which the parties attempt to settle through mediation is a cross-border dispute. In the absence of a written agreement, the parties should be deemed to agree to use mediation at the point in time when they take specific action to start the mediation process.

(16) To ensure the necessary mutual trust with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation, Member States should encourage, by any means they consider appropriate, the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services.

(17) Member States should define such mechanisms, which may include having recourse to market-based solutions, and should not be required to provide any funding in that respect. The mechanisms should aim at preserving the flexibility of the mediation process and the autonomy of the parties, and at ensuring that mediation is conducted in an effective, impartial and competent way. Mediators should be made aware of the existence of the European Code of Conduct for Mediators which should also be made available to the general public on the Internet.

(18) In the field of consumer protection, the Commission has adopted a Recommendation [1] establishing minimum quality criteria which out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. Any mediators or organisations coming within the scope of that Recommendation should be encouraged to respect its principles. In order to facilitate the dissemination of information concerning such bodies, the Commission should set up a database of out-of-court schemes which Member States consider as respecting the principles of that Recommendation.

(19) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties. Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement. This could be the case if the obligation specified in the agreement was by its nature unenforceable.

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[1] Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56).

(20) The content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognised and declared enforceable in the other Member States in accordance with applicable Community or national law. This could, for example, be on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]) or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ([2]).

(21) Regulation (EC) No 2201/2003 specifically provides that, in order to be enforceable in another Member State, agreements between the parties have to be enforceable in the Member State in which they were concluded. Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.

(22) This Directive should not affect the rules in the Member States concerning enforcement of agreements resulting from mediation.

(23) Confidentiality in the mediation process is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration.

(24) In order to encourage the parties to use mediation, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods. Provisions on limitation and prescription periods in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by this Directive.

([1]) OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

([2]) OJ L 338, 23.12.2003, p. 1. Regulation as amended by Regulation (EC) No 2116/2004 (OJ L 367, 14.12.2004, p. 1).

(25) Member States should encourage the provision of information to the general public on how to contact mediators and organisations providing mediation services. They should also encourage legal practitioners to inform their clients of the possibility of mediation.

(26) In accordance with point 34 of the Interinstitutional agreement on better law-making ([3]), Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(27) This Directive seeks to promote the fundamental rights, and takes into account the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

(28) Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive.

(30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

([3]) OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

3. In this Directive, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Cross-border disputes

1. For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

(a) the parties agree to use mediation after the dispute has arisen;

(b) mediation is ordered by a court;

(c) an obligation to use mediation arises under national law; or

(d) for the purposes of Article 5 an invitation is made to the parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

(a) 'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

(b) 'Mediator' means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

Article 4

Ensuring the quality of mediation

1. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organisations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services.

2. Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

Article 5

Recourse to mediation

1. A court before which an action is brought may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available.

2. This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Article 6

Enforceability of agreements resulting from mediation

1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

3. Member States shall inform the Commission of the courts or other authorities competent to receive requests in accordance with paragraphs 1 and 2.

4. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with paragraph 1.

Article 7

Confidentiality of mediation

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Article 8

Effect of mediation on limitation and prescription periods

1. Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Member States are party.

Article 9

Information for the general public

Member States shall encourage, by any means which they consider appropriate, the availability to the general public, in particular on the Internet, of information on how to contact mediators and organisations providing mediation services.

Article 10

Information on competent courts and authorities

The Commission shall make publicly available, by any appropriate means, information on the competent courts or authorities communicated by the Member States pursuant to Article 6(3).

Article 11

Review

Not later than 21 May 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. The report shall consider the development of mediation throughout the European Union and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to adapt this Directive.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2008.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. LENARČIČ

Madeleine GUIDONI

After graduating from Ecole Nationale de la Magistrature in Bordeaux, Madeleine Guidoni joined the Paris courts to begin a career in economics and finance.

She subsequently joined the French competition authority as a rapporteur and later a deputy general rapporteur. Ms. Guidoni then moved to the Economic and Financial subdivison of the Criminal Affairs and Pardons Directorate of the Justice Ministry, where she was in charge of the serious financial crimes sector (corruption, embezzlement, public contract fraud, interference).

She was appointed legal advisor to the newly formed Conseil des marchés financiers (CMF), with special responsibility for implementing and monitoring sanction procedures.

The CMF merged with the Commission des opérations de bourse (COB) to form the Autorité des marchés financiers (AMF) in 2003 and Ms. Guidoni was appointed AMF Ombudsman in April 2004.

EDITORIAL

The financial crisis had a profound impact on 2008, leaving investors with questions and concerns.

Their number-one concern was to make sure that their assets were safe and that mechanisms were in place to protect them if custodians or asset managers went bust.

Investors also worried about the make-up and performance of their securities portfolios as the subprime crisis spread and stockmarkets collapsed.

In these troubled times, many investors looked to the regulator to provide them with relevant explanation and to assist them in settling disputes out of court. The number of queries and requests for mediation handled in 2008 (2,212 at 31 December) demonstrates, were further proof needed, just how successful the AMF Ombudsman has been in supporting retail investors and professionals alike.

Mediation helped to avert investor panic by restarting dialogue and maintaining business relations during a crisis of confidence in financial institutions.

The industry also confirmed in 2008 how much it values the mediation procedure, cooperating actively and sparing no effort to swiftly implement procedural improvements suggested by the AMF. The 64% success rate in mediation cases points to a clear understanding of the issues at stake.

The marketing of financial products was a major – and, alas, recurring – issue. Many fund investors complained about receiving inadequate information and advice, which prevented them from taking properly informed investment decisions.

In light of those observations, we could not insist enough on the need for investment services providers to furnish their customers with clear, comprehensive and appropriate information, particularly about risk exposures, and to ensure that products are properly suited to investor needs. Compliance with regulatory provisions, especially those introduced as part of MiFID transposition, and training for customer advisors in bank networks should help to reduce this kind of problem.

Another highlight of 2008 was the push at European level to promote out-of-court dispute settlement procedures, with the European Commission holding a consultation on this issue and consumer collective redress.

We also have to welcome the adoption, on 21 May 2008, of the Directive on Mediation in Civil and Commercial Matters Transposition of this legislation will have to be carefully monitored.

Financial sector mediation is effective, quick and free, protecting the interests of investors and professionals alike and helping to maintain business relations in a calm, strictly confidential setting. It can be sure of a bright future.

Contents *

* Important: The following English text is a translation of the French version of the 2008 Ombudsman's report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation.

OMBUDSMAN'S REPORT

A - Ombudsman's Department

1 - Aims

Pursuant to Article L. 621-19 of the Monetary and Financial Code: "The authority is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When necessary, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The submission of a dispute to the Autorité des marchés financiers (AMF) to find an out-of-court settlement implies the suspension of the statute of limitations for civil and administrative proceedings. The statute starts to run again when the AMF declares the mediation to be terminated. The AMF cooperates with foreign authorities in the resolution of cross-border disputes."

The Ombudsman's activity is carried out in the broader context of Europe, based on Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of disputes.

Those principles are independence, transparency, effectiveness (the procedure must be easily accessible, free and quick), legality and liberty (both parties must accept the procedure). Also, the procedure must be adversarial.

A Europe-wide network for out-of-court settlement of consumer disputes was created through a European Council Resolution on 25 May 2000. Under this mechanism, the Commission is informed of all national bodies responsible for out-of-court settlement and mediation that comply with the principles of the 1998 and 2001 Recommendations (on out-of-court bodies involved in the consensual resolution of consumer disputes not covered by the 1998 Recommendation). These bodies can then become full members of the European Consumer Centres Network (ECC-Net).

Alongside ECC-Net, the European Commission set up the Financial Dispute Resolution Network (FIN-NET) in February 2001 as part of the Financial Services Action Plan (FSAP). The AMF Ombudsman is a member of FIN-NET.

Through its activities, the Ombudsman's Department helps the AMF to keep a watchful eye on financial markets and to protect public savings and investment effectively.

The department analyses complaints and mediation requests, striving at all times to provide swift, reliable answers.

When reviewing investor complaints, most of which come from non-professionals, against investment services providers (ISPs) or issuers, the department weighs up the interests of both parties through an objective, adversarial analysis of all factual and legal aspects.

The Ombudsman's Department also takes part in the AMF's education and training activities, contributing to its image and its policy of communicating with the public and professionals.

2 - Organisation

The department has two main roles: consultation and mediation.

- In its consultation role, the department provides retail investors with answers to technical inquiries relating to all aspects of the AMF's activities;

- Requests for mediation come from clients and ISPs/issuers looking for an amicable way to settle a dispute.

In addition, a telephone helpline is open on Tuesday and Thursday afternoons to field urgent queries and answer questions about ongoing cases.

Some matters are outside the AMF's jurisdiction as well as the Ombudsman's scope of activity.

These include queries relating to life insurance contracts, including unit-linked policies. These policies are regulated by insurance legislation, and the AMF has no power to enforce legal compliance or punish infringements. Although the specialised regulators may share related concerns, for example about providing investors with information on the funds underlying insurance investments or about transparent fee structures, this has nothing to do with the way their powers are apportioned.

However, the public may be confused about the way these powers are shared. For example, some investors submitted cases that were framed as complaints about the marketing of unit-linked insurance policies, but that were actually questions about how products worked or were managed. In such cases, the Ombudsman's Department queries the management company in question.

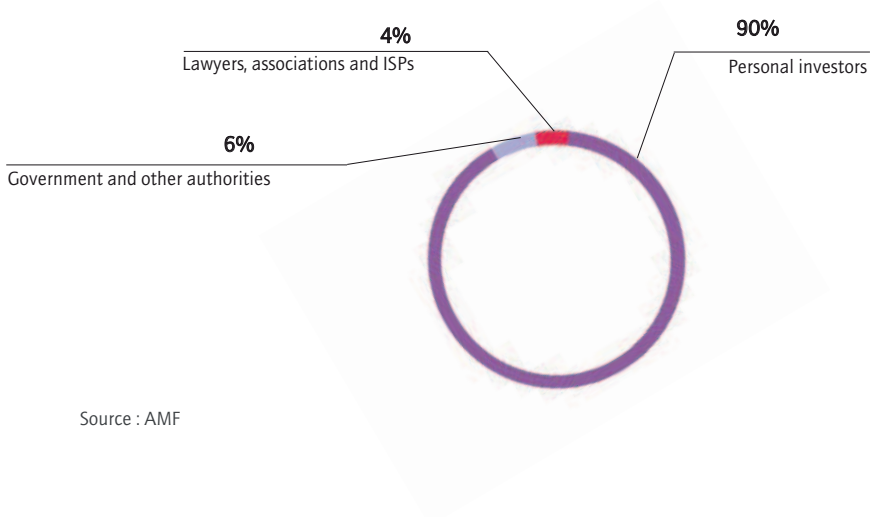
Questions relating purely to banking, such as practical issues concerning deposit accounts, savings passbooks, term deposits or lending, as well as questions relating to the enforcement and interpretation of tax legislation, also fall outside the AMF's scope of activity.

If the department is not competent to deal with a request, it steers complainants toward the organisations that may be able to answer their queries or intervene. It sometimes forwards files directly to save time or transportation costs in the case of very large files.

Most referrals originate from mainland France and its overseas territories. However, in 2008 there was an increase in referrals from outside the country, mainly owing to FIN-NET's increased role in dealing with cross-border financial disputes.

Applications are submitted by post, fax or, following their introduction in spring 2008, online forms

Origin of cases received in 2008



Source : AMF

B - 2008 in figures

1 - New inquiries and mediation requests

A total of 2,307 cases were received in 2008, comprising 1,502 inquiries and 805 requests for mediation.

The annual caseload was therefore up 7% at 31 December 2008 compared with the previous year, when 2,155 cases were received (1,449 inquiries and 706 mediation requests).

These figures do not take account of the backlog in registering cases that resulted from the increased workload. This will be reflected in the 2009 figures.

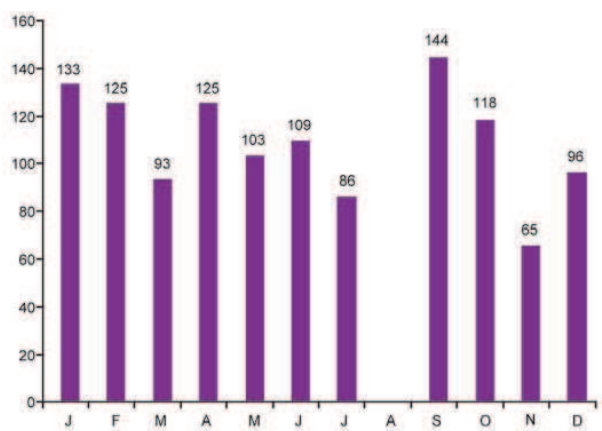
The breakdown between the two categories was slightly changed from 2007, with inquiries making up 65% of the total caseload and mediations 35%, after 67% and 33% respectively in 2007.

These figures testify to the success of the mediation process. They also reflect the confidence of individual investors in the AMF's ability to address their inquiries, as well as growing public awareness about the AMF's role in this area.

The helpline took 1,197 calls, up from 1,143 in 2007.

Telephone inquiries

Between 1 January and 31 December 2008



Source : AMF

2 - Inquiries and mediation cases handled

a) Inquiries handled

As at 31 December 2008	
Number of inquiries handled	1 473
o/w inquiries received within the month	78%
o/w inquiries received more than one month earlier	22%

Source : AMF

Between 1 January and 31 December 2008, 1,473 inquiries were answered, compared with 1,268 in 2007.

A query is closed once the initial question and any subsequent questions or clarification requests have been answered.

Naturally enough, inquiries reflect market developments and changes to the laws and regulations, and are becoming increasingly complex. Also, applicants are becoming more demanding. Although work remains to be done in terms of financial literacy, investors are certainly becoming better acquainted with the workings of financial markets.

In 2008, 78% of inquiries were closed within one month, ensuring that applicants received timely responses to their queries, many of which were of an urgent nature.

As regards the quality of the responses provided, it is gratifying to note that, although inquiries dealt with complex and wide-ranging issues, none of the AMF's response letters, which spanned all areas under its purview, from corporate actions to listing and marketing issues, was challenged, either by the recipients themselves or by third parties in subsequent legal proceedings.

b) Mediation cases handled

As at 31 December 2008	
Number of mediation cases closed	739
o/w cases less than six months old	70%
o/w cases more than six months old	30%

Source : AMF

In all, 739 mediation cases were closed between 1 January and 31 December 2008, compared with 493 in 2007.

A full 70% of these cases were closed within six months.

This six-month period begins when the Ombudsman receives the initial letter of complaint, which is never enough on its own to initiate the actual mediation procedure. When acknowledging the letter, the Ombudsman always asks applicants for additional documents and clarifications, and sends them the Mediation Charter, which explains how their case will be examined.

Cases still open after six months involve files that are more complex or that involve multiple participants, such as an account keeper and an asset management company, or an issuer and a financial intermediary. Mediation meetings with the main parties are often necessary in such situations, which means the case stays open for longer.

Sometimes, the information or documentation requested is hard to obtain for some reason – for example, the events in question occurred a long time ago or the service provider has changed in the meantime.

Of the 739 mediation cases closed in 2008, agreements were reached in 64% of the cases that were considered on their merits.

The success rate for mediation cases is calculated using this base, which in 2008 comprised 556 cases out of the total number of mediation cases closed.

The remainder includes cases whose review was not completed because the complainant abandoned the procedure. Both parties must accept the mediation procedure, and withdrawal is possible at any time.

Out-of-court settlements may take the form of a rectification (i.e. the contested transaction is cancelled), total or partial compensation for loss, or a conciliatory gesture towards the customer.

Regarding cases involving an adversarial process overseen by the Ombudsman, it is especially gratifying to note that more than half of those dealt with in 2008 resulted in an out-of-court settlement. The success rate was therefore maintained at the 2007 level, even though the number of cases handled rose sharply.

Admittedly, "success" is a qualitative factor that should be seen in perspective, firstly because neither of the parties in a mediation procedure can be forced into an agreement and secondly because agreeing to an Ombudsman-led procedure can help improve relations between complainant and respondent, even if no formal agreement is reached. Even so, the success rate shows that the mediation approach is effective.

Furthermore, as in 2007, no mediation case was closed because a respondent to a complaint failed to answer the Ombudsman's request for explanations. This goes to show that the industry has embraced this alternative dispute resolution process and considers it to have a positive effect.

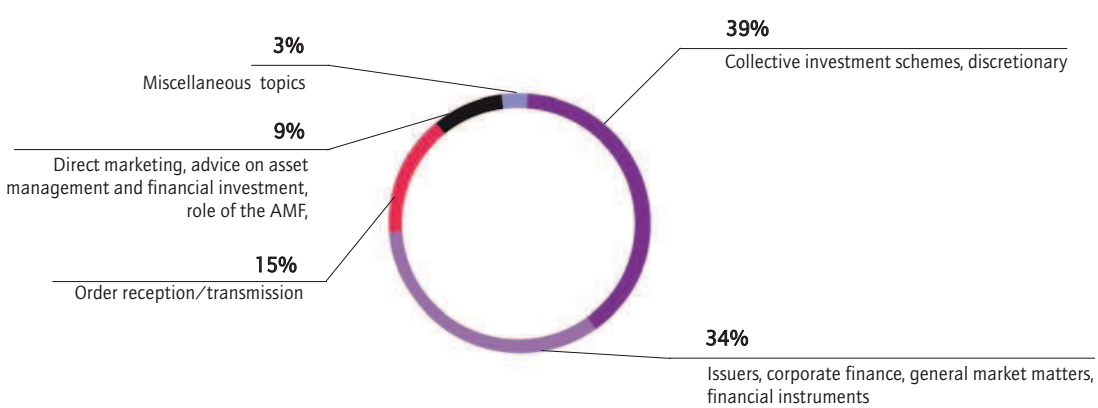
C - Cases dealt with by the Ombudsman

The caseload is broken down into ten broad subject areas in the department's database:

- collective investment schemes
- discretionary management
- order transmission/execution
- custody account keeping
- issuers and corporate finance
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, advice on asset management and financial investment
- role of the AMF
- miscellaneous topics

1 - Inquiries and mediation requests by subject area

January to 31 December 2008



Source : AMF

The data for 2008 show how the crisis impacted the department's activity and the type of requests submitted by investors to the Ombudsman.

With the onset of the US mortgage crisis and the resulting collapse in the value of assets backed by these loans, from summer 2007 onwards, investors called and wrote to the Ombudsman's Department with questions about "enhanced cash" funds that were potentially invested in securities backed by subprime loans.

Problems affecting the banking industry in autumn 2008 added a host of new questions to the concerns created by the first liquidity crisis. At the end of the year, many inquiries in connection with the Madoff affair were received.

The rise in the number of inquiries shows that savers are looking to the regulator to help them understand the crisis.

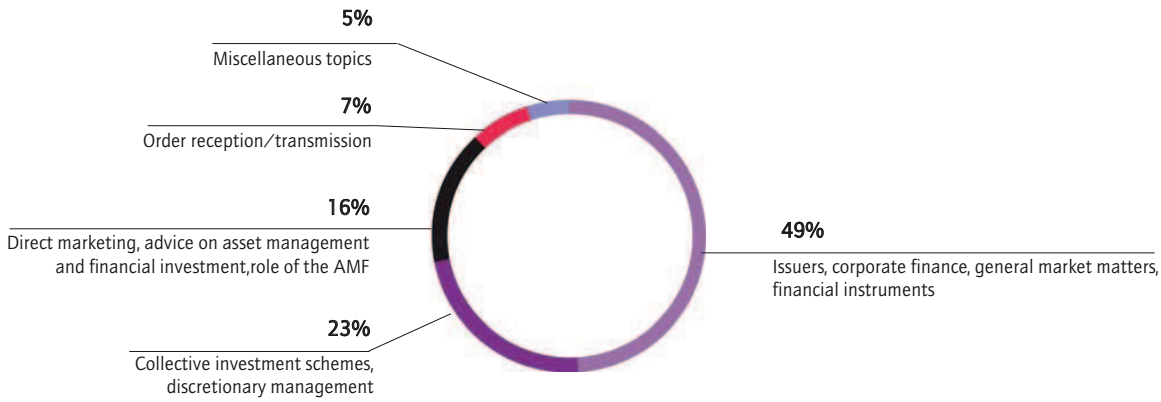
The main issues raised included the following:

- investors wanted to know how their savings would be protected in the event of a bank failure. They were told about the deposit and securities guarantee funds, which cover deposits and financial instruments respectively, up to a maximum of €70,000 per person and per institution.
- the decline in the net asset values of certain funds prompted investors to ask questions about the make-up of their assets. They wanted to know what proportion of toxic assets their portfolios contained and whether these assets were acquired before or after the crisis, since some institutions were suspected of selling toxic assets to funds managed by their subsidiaries.
- investors also asked what would happen to managed portfolios if the management company ran into difficulties. They were reminded about capital requirements and told that protective measures would be activated if authorisation was revoked owing to deficiencies on this score. In such circumstances, the AMF informs the public through the media about the timetable and conditions of the revocation. The company is placed under the control of an AMF-appointed administrator and may carry out only such operations as are strictly necessary to safeguard clients' interests. In the case of common funds (*fonds communs de placement*), the AMF asks the depositary to appoint a different manager.
- the steep decline in some share prices, particularly in the financial sector, and the high volatility of derivative products gave rise to numerous questions and reports of anomalies.
- investors played an active part in the short selling debate. Many letters were received about the measures taken by the AMF in September 2008 to ban "naked" sales and impose transparency obligations for short positions on financial stocks. Investors were told that these moves, which were consistent with those taken by the UK and US authorities, were intended to provide, in an exceptional manner and amid turbulent market conditions, a framework for the short-selling of financial stocks traded on the French market.

The Ombudsman's Department helped to prevent investor panic by tackling these questions as they came in and explaining the responsibilities of different market participants. A mediation procedure was instigated if the request showed that the investor had received insufficient information or advice before investing in a financial product whose value was severely impacted by the financial crisis.

2 - Inquiries by subject area

1 January to 30 December 2008



Source : AMF

Inquiries covered a range of topics, including the following:

a) Corporate finance and market anomalies

- Corporate finance transactions always elicit numerous requests for explanations, particularly concerning price setting methods and the scope of AMF approvals.

  The financial crisis caused a decline in corporate finance transactions in 2008. Accordingly, the Ombudsman's Department saw a steep drop in inquiries on this issue.

  Even so, the department dealt with a number of cases and questions about older transactions, such as ongoing developments surrounding the Eurotunnel offer of exchange.

  In 2007, the department received some 300 requests concerning the Eurotunnel offer of exchange. In 2008, it received a number of inquiries chiefly concerning transactions by Groupe Eurotunnel SA, consisting of the early redemption of bonds redeemable in shares issued as part of the rescue plan reorganisation measures, the issue of subordinated notes redeemable in shares, and the capital increase through the free allocation of equity warrants.

  The department also received a few requests concerning the delisting of TNU (formerly Eurotunnel) units and their transfer to the delisted securities compartment.

- Capital increases

  Investors regularly have questions about capital increases. These often deal with the timetable and implementation procedures, in particular what happens to pre-emptive subscription rights that are not exercised by holders.

  The department has in the past received queries about the fact that some financial intermediaries sell unexercised rights if they fail to receive a timely response from the holder. This practice, which is designed to prevent the holder from sustaining a loss, is possible when the arrangements for these so-called "protective clauses" are stipulated in the corporate action notice and provided shareholders are informed of them sufficiently far in advance.

  In the case of the Natixis capital increase, for example, in addition to the information provided in the corporate action notice issued by the custody account keeper, the securities note approved by the AMF on 3 September 2008 contained detailed provisions concerning the automatic sale of rights, which stipulated the following: "On the final day of the subscription period, namely 18 September 2008, the Banques Populaires and Caisses d'Epargne bank networks will automatically sell the pre-emptive subscription rights of customers who have not made their intentions known. Such a course of action is designed to protect customers' interests and might be taken by other bank networks. Such sales are likely to impact the price of pre-emptive rights. Other bank networks that do not take such action effectively leave customers' unexercised pre-emptive rights to lapse at the end of the subscription period".

Even in this case, the Ombudsman's Department had to draw investors' attention to the procedures of the protective clause. Also, some people who had acquired pre-emptive rights on the market had to be told that their account keeper would not automatically sell their rights unless they had been shareholders before the transaction was launched.

- Further developments in US action

  Vivendi and two of its senior managers agreed to settle a US court action by paying civil penalties and compensation in the total amount of approximately USD 51 million to injured investors. On 7 June 2005, a distribution agent was appointed by the US courts to prepare and implement a plan for distributing the funds to eligible investors. Since information about US compensation was reported in the French media, the Ombudsman's Department received numerous requests from shareholders wishing to know what steps to take to be compensated. The department provided them with the distribution agent's contact details and has heard no word since that time.

- As in previous years, many investors asked the Ombudsman to investigate what they believed to be market anomalies, sometimes claiming price manipulation or insider trading.

  Correspondence of this kind is passed on to the AMF's specialised departments when it contains information requiring further investigation.

  In 2008, the Investigations and Market Surveillance Division thus received 105 complaints from retail investors about allegedly suspicious transactions, along with requests for investigations or appraisals of unusual price movements.

  Many complaints and requests for investigations about unusual price movements concerned stocks traded on the Marché Libre. The investors who submitted these requests were reminded that since the *Marché libre* is not a regulated market within the meaning of Article L. 421-1 of the Monetary and Financial Code, it is not subject to the provisions in the AMF General Regulation on price manipulation and insider trading. Only the regulations concerning the dissemination of false information apply to this market.

b) Malpractice reports

Sometimes investors report suspect direct marketing or investment services practices. This may be because they have been a victim of such practices, because they want additional information before subscribing, or because they want to warn the AMF.

Following reports of malpractice received by the Ombudsman, four news releases were published in 2008 on the AMF website and repeated in the press in order to warn the public. Such reports are dealt with using a rationalised procedure that ensures a meticulous examination of the reported facts and respects the rights of defence of the persons or entities referred to in the report.

In the continuation of a trend observed in 2007, there was a significant increase in the number of requests from investors wishing to know whether persons or companies who contacted them were properly authorised to do so or whether the products offered to them were authorised to be marketed in France.

In such circumstances, whether talking to people over the phone or dealing with inquiries, the Ombudsman's Department always urges investors to be extremely cautious when considering seemingly low-risk high-return investment proposals, particularly in the case of online solicitation.

c) Market making for warrants, certificates and exchange traded funds (ETFs)

As in previous years, many investors complained about market making for warrants and certificates. There were also more questions about ETFs, which are also known as trackers.

In responding to these queries, the Ombudsman's Department often has to remind investors how these products work, telling them about knock out options, valuation issues, and so on. It also points out that Euronext Paris has signed a liquidity provision agreement with a market member.

Investors are also reminded that the commitments of liquidity providers vary depending on quotation groups and the specifics of each individual instrument.

They are informed that the warrant or certificate prospectus usually contains the main points of the liquidity provision agreement, particularly the clauses dealing with situations in which the provider is authorised to temporarily suspend publication of its spread. Such circumstances may arise if the provider no longer has enough securities to meet demand or if it is no longer in a position to reliably value securities, for example if trading in the underlying is halted. Investors wishing more information are generally told to contact the relevant liquidity provider.

In this regard, it is gratifying to note that NYSE Euronext is adding new features to its European warrant and certificate market to enhance transparency and efficiency. Measures include a guarantee to investors that orders will be executed at the best available price, indicators showing the average length of time spent by issuers in the order book, and information about volumes and average spreads on this market, which lists around 10,000 derivative products.

d) Trading halts

Under Article 4404/2 of Book I of the Euronext Rules, the market undertaking may suspend trading in any security in order to prevent or halt disorderly market conditions, either on its own initiative or at the reasoned request of the relevant issuer. It may also suspend trading at the request of a competent authority. These trading halts are published in a Euronext Paris market notice, which describes the origin of and reasons for the halt, the date it takes effect and the conditions in which trading may resume. Failing this, it stipulates that trading has been suspended until further notice. There is no maximum time limit for trading halts.

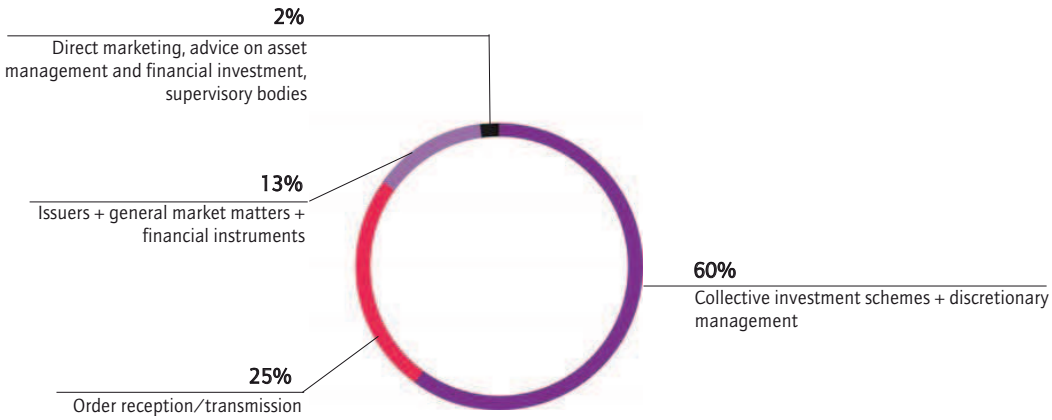
Many retail investors complained that they had received no information following a trading halt or suspension. This is the case when trading is suspended pending a press release from the issuer or when news of court-ordered reorganisation or winding-up proceedings is released belatedly.

Difficulties in this area are exacerbated if the shares are delisted from Euronext Paris's Eurolist but the company is not removed from the Trade and Companies Register. In such cases the holdings cannot be deleted from customer accounts and customers have to pay custody fees to their custodians.

In responding to retail investors, the Ombudsman's Department reiterated the current regulations and, in situations where a court had ordered the company to be reorganised or wound up, provided the necessary information, when available, on contact details for the liquidator who would be able to supply investors with comprehensive information about how matters would proceed.

3 - Mediation cases by subject area

1 January to 30 December 2008



Source : AMF

a) Marketing of financial products

In 2008, the Ombudsman's Department once again received numerous complaints about the marketing of collective investment schemes (CIS) and particularly structured funds, chiefly by bank networks.

- All too often, subscribers once again complained that they had invested in CISs without receiving a simplified prospectus or being warned of the risks associated with the investment. Complainants said that they were unable to take properly informed investment decisions and often followed their advisor's recommendations.

  Cases involving structured funds were especially striking as they revealed that subscribers were unaware of the specific characteristics of these products. Many investors discovered at maturity that this type of fund offered only the capital guarantee, besides entry fees, and that additional returns over and above the guarantee are based on the performance of one or more indices or of a basket of shares. The guarantee, coupled with an attractive name suggesting that the product would earn large returns or was certain to be successful, plus the recommended investment horizon led investors in structured funds to think that they were assured of making gains at maturity.

  In spring 2008, the media reported complaints by clients of a bank involving structured-fund investments, most of which dated to 2001 and 2002. The Ombudsman's Department started receiving inquiries and mediation requests concerning these funds in April 2006, with investors complaining about unfair marketing by overly bullish advisors who backed up their recommendations with misleading advertising literature. Some complaints also focussed on the workings of these products, especially the selection and management of securities in the basket.

  Adding to the ongoing inflow of individual complaints, the department also received correspondence at the end of July 2008 amalgamating numerous individual claims and asking for help in obtaining compensation for injured investors, preferably through an amicable procedure. The department received over 300 requests for mediation in this context, some of which are still being dealt with, meaning that it is too early to draw any conclusions on this matter.

  However, the institution in question cooperated fully, showing that the industry is aware of the advantages of a confidential amicable procedure.

  As regards the marketing of financial products, it is worth noting the analysis of ISP disclosure obligations adopted by the commercial division of the Court of Cassation in a ruling dated 24 June 2008, insofar as this reading could have a major influence on the outcome of current or future legal proceedings and on industry practice.

  In the ruling, the Court of Cassation said that, by virtue of Article 1147 of the Civil Code and Article 33(2) of COB Regulation 89-02 amended by Regulation 98-04, "advertising by anyone proposing a common fund investment to a client must be consistent with the proposed investment and should mention, as appropriate, the least favourable characteristics and risks inherent in options that may accompany the described benefits; where advertising does not meet these requirements, the professional shall not be considered to have satisfied his disclosure obligation if he provides a copy of the notice approved by the Commission des opérations de bourse."

The Court of Cassation has thus made it clear that advertising must be consistent with the proposed investment and forms part of the information that must be provided to investors, just like the prospectus.

- Mediation requests concerning enhanced cash funds.

A bank client wishing to make a short-term risk-free investment placed money in a fund that was described as 90% invested in an extremely safe enhanced cash fund, with the remainder being placed in an absolute return hedge fund. The client was told that, thanks to the risk monitoring model, risks would be kept under control and maximum losses would not exceed 2.5%. Won over by this attractive description, the client invested a sizeable proportion of his assets in this fund. When the value of the investment plunged, he contacted the Ombudsman's Department. After a review of the case based on the duty to provide information and advice at the marketing stage, the institution said that it would sign an agreement to compensate the client.

Within the framework of its cash management activities, a company manager suffered substantial capital losses after investing around €1 million in CISs based on a bespoke document that portrayed the funds in a highly favourable light. While the bank pointed out that the investor was financially literate and familiar with market mechanisms, it acknowledged that the document that served as the basis for the investment referred to past performance and emphasised the notion of returns with low capital risk. It further acknowledged that this representation did not reflect the product's true situation and paid compensation.

In a similar case, based on marketing documentation that described a CIS in a flattering light, a bank client, acting on the recommendation of his advisor, invested in the fund, believing that he was making a safe investment, as the name of the product suggested. Having sustained financial losses, the client turned to the Ombudsman's Department. When questioned about the content of the marketing document, which spoke of "a low-risk approach targeting high returns relative to the money market" but failed to mention the risks linked to the fund's exposure to the performance of a basket of enhanced cash funds, the bank ultimately agreed to cancel the investment.

- The department was contacted in connection with disputes involving investment restrictions for certain funds.

The department was contacted by unitholders of leveraged funds with streamlined investment rules, who wanted to know whether their intermediary was entitled to ask them to redeem their units because they did not meet the eligibility criteria, or to redeem them automatically if they did not redeem the units of their own volition.

These requests highlight the risks of inappropriate marketing of funds with streamlined investment rules. In this instance, it appears that the intermediary, after failing to verify whether investors were eligible to invest in these products during the subscription period, then redeemed units held by unitholders without checking to see if they were eligible.

Investors who lodged complaints either remained invested in the fund if they met the eligibility criteria, or were reimbursed for any capital losses, entry fees and, where applicable, any excess income tax payments.

To prevent such problems from occurring again, appropriate procedures need to be in place when marketing funds that are reserved for certain types of investors.

- The Ombudsman's Department was contacted with requests concerning investments in redeemable subordinated notes.

One couple in their eighties followed the recommendations of their bank, which had contacted them at home, and invested in redeemable subordinated notes with a 12-year maturity, thinking that their capital was protected and could be accessed at any time without penalty. They said that they received no information about the specific details of the investment, particularly concerning the risks of capital loss in the event of early redemption.

On discovering the exact nature of their investment, they asked for the principal to be refunded, which their bank refused to do.

Following the mediation procedure, the complainants secured the sale of all the notes and were reimbursed for the capital losses incurred as a result.

In another case, an investor acting on the recommendations of his financial advisor invested €44,000 in redeemable subordinated notes with a 12-year maturity on behalf of the real estate company that he managed, thinking he would be able to access this money at any time.

It was only a few years later that the investor, seeking to acquire some property in the course of his company's business, was informed of the duration of the investment and told about the risks of capital loss in the event of early redemption. The person in question then asked unsuccessfully for the investment to be cancelled. Following the mediation procedure, an agreement was signed in which the bank paid the total capital loss of €7,100 incurred when the notes were sold.

- The Ombudsman's Department is sometimes contacted in connection with new share placements

The client of one bank invested in newly listed shares. Her goals were to top up her pension and pay for work to her co-owned property. Far from earning capital gains as her financial advisor had hinted, she sustained heavy losses. She referred her case to the Ombudsman's Department, hoping to obtain compensation for a failure to provide information and advice, claiming she had not been given clear, comprehensive and appropriate information about the shares' characteristics and, more specifically, about the risks involved in equity investing. For the sake of maintaining a cordial business relationship, the bank agreed to pay back half the client's capital outlay, without admitting to any fault.

b) Terms and conditions for redemption of units in venture capital funds

In 2008, as in previous years, the Ombudsman's Department received complaints that revealed a lack of understanding about the conditions applicable to the redemption of units in venture capital funds, especially innovation funds.

If an investor were to read only the subscription form, he might think that his assets would be tied up for a maximum of five years. But contractual provisions set out in the fund's information circular and rules may stipulate a longer lock-up. Cases received by the department show that marketers do not always draw attention to the real lock-up period.

Accordingly, investors must be reminded to read both the subscription form, which indicates the requirement to hold units for five years to be eligible for favourable tax treatment, and the provisions governing redemption, which are set out in the fund's information circular and rules.

Other complaints received in 2008 highlighted a discrepancy between the information provided in contractual documents, i.e. the information circular and rules, and the procedures implemented during the execution of redemption orders.

It is crucial for the investor to know the date and, where applicable, the time at which redemption requests will be collected, the net asset value that will be used as a base for executing requests, and the maximum time between execution and the transfer of the sale's proceeds to the customer's account.

If this information is not clearly provided in the contractual documentation, the customer should write to the management company for clarification before issuing redemption instructions.

c) Discretionary management

As in past years, the Ombudsman's Department received requests for mediation in the area of discretionary management, which exposed situations where ISPs had provided inadequate information and advice at any time during the contractual relationship. There are few amicable settlements in this area, because managers are subject to a best-efforts requirement rather than an absolute obligation, and poor returns alone do not constitute mismanagement.

Some requests concerned management fees. Many investors asked about performance fees. Feeling that such commissions should not be paid in the event of losses, they wrote to the Ombudsman, asking for these fees to be reimbursed.

The Ombudsman's Department reminded them that, as the regulations stand, the remuneration paid to the management company may include a variable portion linked to outperformance by the managed portfolio, also called a performance fee.

They were also reminded that the management agreement should contain information about variable management fees and might stipulate that the variable portion was payable on every euro earned, as determined relative to the management objective.

A few requests concerned the obligations of ISPs offering advisory or assisted portfolio services.

This type of service is actually a straightforward order reception/transmission service in which the holder of the portfolio retains full control over investments while receiving regular advice on markets and financial instruments.

In this regard, the terms used in the agreement should be clarified when the document is signed to prevent any ambiguity.

D - Recent developments in mediation

1 - At European level

The Financial Dispute Resolution Network, or FIN-NET[1], aims to assist consumers in finding quick, simple and inexpensive solutions – avoiding legal action where possible – to disputes with financial services providers such as banks, insurance companies and investment firms based in a Member State other than their home State.

At present the network has 50 members. Most are either ombudsmen or heads of "dispute commissions" or "consumer arbitration panels", depending on the country. Members are linked by a memorandum of understanding (MOU) that sets out the procedures for cross-border cooperation and states the basic principles for out-of-court settlement, which are defined in Commission Recommendation 98/257/EC of 30 March 1998.

In December 2008, the AMF Ombudsman was appointed to the FIN-NET steering committee.

The network meets regularly, following an agenda that is chiefly given over to legal developments in European financial services, the development of out-of-court systems of redress, cooperation by members and new, complex or recurring disputes. FIN-NET members are also consulted individually by the European Commission when it carries out studies.

In 2008, FIN-NET members worked hard to raise awareness among Member States about the need to create and promote alternative dispute resolution systems in all financial sectors. The goal is to provide investors with a way to reach amicable solutions in national and cross-border disputes that would not usually reach the courts because of the time and expense involved.

FIN-NET also looked at how members deal with mediation requests for which they do not have territorial jurisdiction. Out-of-court dispute settlement organisations cover providers of financial services that operate within and from the country in which the organisation is based.

When a request is submitted over which they do not have jurisdiction, some FIN-NET members, including the AMF Ombudsman, tell the complainant to contact the competent body directly, providing full information about the organisation and, if necessary, its procedures. Some members even help the applicant to translate the complaint, if he or she is unable to formulate the request in the appropriate language or in English. The goal of FIN-NET is to ensure that complainants would at least be able to express their complaints in the language of the agreement or the language in which they customarily deal with the financial services provider. Many members do however allow other languages to be used.

FIN-NET members were also asked to provide comments on the European Commission's draft consultation on alternative dispute resolution systems. They thus got the opportunity to adjust and clarify some of the questions included in the consultation before the document was released.

They considered the impact of the financial crisis on their activity. All of them received many questions concerning loans, deposit guarantee funds and large bank failures. In their view, investors had not panicked and seemed reassured by the presence of the guarantee funds and the fact that several countries had increased the maximum amount covered to €100,000.

They responded to numerous studies and consultations, including:

- a study on European consumer assistance networks;
- a study on the impact on the conclusion of cross-border financial service contracts between professionals and consumers of Directive 2002/65 concerning the distance marketing of consumer financial services;
- a consultation document on developing a harmonised methodology for classifying and reporting consumer complaints across the European Union;
- a consultation on alternative dispute resolution in financial services.

1 The website of the European Commission provides more information about FIN-NET and member systems: http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.

2 - At domestic level

a) Ongoing work within the Club of Public Service Ombudsmen

The AMF Ombudsman has been part of the Club of Public Service Ombudsmen since February 2007.

Set up in April 2002, this informal group is designed to provide a forum for sharing ideas about practices, fostering debate and proposals, and promoting mediation in France as well as at European level, since some of the members also belong to FIN-NET.

On 20 October 2008, the club organised a meeting at the French Finance Ministry to consider the challenges and prospects created by the European Directive of 21 May 2008 on mediation in civil and commercial matters. The event was attended by players from the world of mediation and included participants from the courts and from public and private organisations.

The club has undertaken a series of initiatives that seek to build on the work done during the negotiation stage to ensure that the new directive is appropriately transposed.

b) Promoting awareness about the AMF Ombudsman

One of the objectives of the Better Regulation approach is to raise awareness about the AMF Ombudsman.

The aim is to ensure that all investors enjoy the same protection and to provide them and professionals with a way to find an amicable solution to their disputes.

In 2008, various measures were taken to tell professionals and the public about the Ombudsman:

- meetings were held to present the activities of the Ombudsman to the French Asset Management Association (AFG), whose members were given the opportunity to learn about the mediation process and the types of issues tackled by the department;
- in addition to these meetings with industry, the Ombudsman's Department is in regular contact with talking partners at financial institutions, including investment services compliance officers, compliance and internal control officers and customer managers. These exchanges are an opportunity to talk about individual cases affecting institutions, but also set the stage for constructive discussions on recurring issues, regulatory reforms and possible avenues for improvement;
- the department continued its cooperation with the Financial Sector Consultative Committee as part of efforts to prepare an opinion on the marketing of financial products;
- the Ombudsman took part in discussions organised by the working group set up by the French employers' federation, MEDEF, on alternative approaches to settling consumer disputes;
- the Ombudsman answered investor questions live online, was interviewed on radio and spoke about the procedures, objectives and results of her work on investor protection in a host of articles in the business press;

Three online complaint forms were introduced on 16 April 2008 to make it easier to submit complaints and to speed up processing. The forms, which have proved successful, cover mediation, inquiries, and provision of information.

3 - Outlook

Act 2008-3 of 3 January 2008 on promoting competition for the benefit of consumers extended the scope of banking mediation to savings products in 2008. This did not lead to a decline in requests sent to the AMF Ombudsman, nor did it affect the outstanding coordination between the parties that play a role in this area. Every effort must be made to ensure that coordination is maintained at this high level.

It is vital to make investors more aware of all their out-of-court settlement options. For this, efforts must be continued to promote mediation. While the Banking Mediation Committee told credit institutions about the reform, the message needs to be conveyed to other investment participants and should include information about the AMF's role in mediation.

This will ensure that all investors receive comprehensive information. Arrangements for these disclosures should written into account agreements and should also appear in transaction slips and statements.

Transposition of the Directive on mediation in civil and commercial matters will surely help in promoting mediation. The provisions of the new legislation apply to cross-border disputes, but Member States may also apply them to "internal mediation processes".

The Ombudsman will also monitor action taken by the public authorities on the proposal by the working group on the decriminalisation of business law to develop alternative dispute resolution mechanisms in business and finance.

Furthermore, on the question of the marketing of financial products, the AMF Ombudsman's Department will pay close attention to the choices that come out of the Report by the Taskforce on the Organisation and Operation of Oversight for Financial Activities in France, which was prepared by Mr Deletré in January 2009.

The report points out that "the AMF is the only one of the three supervisory authorities to have created an Ombudsman's Department". It reviews the department's legal underpinnings and the latest figures on its activity. The report also states that if the scope of the AMF's activities were to be changed, thought should also be given to the jurisdiction of its Ombudsman's Department.

Appendix I

Commission Recommendation

(of 30 March 1998)

COMMISSION RECOMMENDATION of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (*) (Text with EEA relevance) (98/257/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155 thereof,

Whereas the Council, in its conclusions approved by the Consumer Affairs Council of 25 November 1996, emphasised the need to boost consumer confidence in the functioning of the internal market and consumers' scope for taking full advantage of the possibilities offered by the internal market, including the possibility for consumers to settle disputes in an efficient and appropriate manner through out-of-court or other comparable procedures;

Whereas the European Parliament, in its resolution of 14 November 1996 (1), stressed the need for such procedures to meet minimum criteria guaranteeing the impartiality of the body, the efficiency of the procedure and the publicising and transparency of proceedings and called on the Commission to draft proposals on this matter;

Whereas most consumer disputes, by their nature, are characterised by a disproportion between the economic value at stake and the cost of its judicial settlement; whereas the difficulties that court procedures may involve may, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;

Whereas the 'Green Paper on the access of consumers to justice and the settlement of consumer disputes in the single market` (2) was the subject of wide-ranging consultations whose results have confirmed the urgent need for Community action with a view to improving the current situation;

Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes - provided certain essential principles are respected - have had good results, both for consumers and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

Whereas one of the conclusions of the Green Paper concerned the adoption of a Commission recommendation with a view to improving the functioning of the ombudsman systems responsible for handling consumer disputes;

Whereas the need for such a recommendation was stressed during the consultations on the Green Paper and was confirmed during the consultation on the 'Action Plan` communication (3) by a very large majority of the parties concerned;

Whereas this recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent;

Whereas the decisions taken by out-of-court bodies may be binding on the parties, may be mere recommendations or may constitute settlement proposals which have to be accepted by the parties; whereas for the purposes of this recommendation these various cases are covered by the term 'decision;

Whereas the decision-making body's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes;

Whereas a body can only be impartial if, in exercising its functions, it is not subject to pressures that might sway its decision; whereas, therefore, its independence must be guaranteed without this implying the need for guarantees that are as strict as those designed to ensure the independence of judges in the judicial system;

(*) A communication on the out-of-court settlement of consumer disputes was adopted by the Commission on 30 March 1998. This communication, which includes this recommendation and the European consumer complaint form, is available on the Internet (http://europa.eu.int/comm/dg24).

(1) European Parliament resolution on the Commission communication 'Action plan on consumer access to justice and the settlement of consumer disputes in the internal market` of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 275).

(2) COM(93) 576 final of 16 November 1993.

(3) Action Plan on consumer access to justice and the settlement of consumer disputes in the internal market, COM(96) 13 final of 14 February 1996.

Whereas, when the decision is taken by an individual, the decision-maker's impartiality can only be assured if he can demonstrate that he possesses the necessary independence and qualifications and works in an environment which allows him to decide on an autonomous basis; whereas this requires the person to be granted a mandate of sufficient duration, in the course of which he cannot be relieved of his duties without just cause;

Whereas, when the decision is taken by a group, equal participation of representatives of consumers and professionals is an appropriate way of ensuring this independence;

Whereas, in order to ensure that the persons concerned receive the information they need, the transparency of the procedure and of the activities of the bodies responsible for resolving the disputes must be guaranteed; whereas the absence of transparency may adversely affect the rights of the parties and cause misgivings as to out-of-court procedures for resolving consumer disputes;

Whereas certain interests of the parties can only be safeguarded if the procedure allows them to express their viewpoints before the competent body and to acquaint themselves with the facts presented by the opposing party and, where applicable, the experts' statements; whereas this does not necessarily necessitate oral hearings of the parties;

Whereas out-of-court procedures are designed to facilitate consumer access to justice; whereas, therefore, if they are to be effective, they must remedy certain problems associated with court procedures, such as high fees, long delays and cumbersome procedures;

Whereas, in order to enhance the effectiveness and equity of the procedure, the competent body must play an active role which allows it to take into consideration any element useful in resolving the dispute; whereas this active role is all the more important when, in the framework of out-of-court procedures, the parties in many cases do not have the benefit of legal advice;

Whereas the out-of-court bodies may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct; whereas, however, this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts;

Whereas the parties are entitled to be informed of the decisions handed down and of grounds for these decisions; whereas the grounds for decisions are a prerequisite for transparency and the parties' confidence in the operation of out-of-court procedures;

Whereas in accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right that knows no exceptions; whereas since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State; whereas out-of-court procedures cannot be designed to replace court procedures; whereas, therefore, use of the out-of-court alternative may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised;

Whereas in some cases, and independently of the subject and value of the dispute, the parties and in particular the consumer, as the party who is regarded as economically weaker and less experienced in legal matters than the other party to the contract, may require the legal advice of a third party to defend and protect their rights more effectively;

Whereas, in order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards; whereas the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative; whereas, to ensure standardised information and to simplify the transmission of these data, a standard information form will be made available to the Member States;

Whereas, finally, the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 129a of the Treaty, a high level of consumer protection; whereas it does not go beyond what is necessary to ensure the smooth operation of out-of-court procedures; whereas it is therefore consistent with the principle of subsidiarity,

RECOMMENDS

that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes respect the following principles:

I. Principle of independence

The independence of the decision-making body is ensured in order to guarantee the impartiality of its actions. When the decision is taken by an individual, this independence is in particular guaranteed by the following measures:

- the person appointed possesses the abilities, experience and competence, particularly in the field of law, required to carry out his function,
- the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause,
- if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

II. Principle of transparency

Appropriate measures are taken to ensure the transparency of the procedure. These include:

1) provision of the following information, in writing or any other suitable form, to any persons requesting it:

- a precise description of the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute,
- the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure,
- the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure,
- the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.),
- the decision-making arrangements within the body,
- the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional or on both parties. If the decision is binding, the penalties to be imposed in the event of non-compliance shall be stated, as shall the means of obtaining redress available to the losing party.

2) Publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified.

III. Adversarial principle

The procedure to be followed allows all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements.

IV. Principle of effectiveness

The effectiveness of the procedure is ensured through measures guaranteeing:

- that the consumer has access to the procedure without being obliged to use a legal representative,
- that the procedure is free of charges or of moderate costs,
- that only short periods elapse between the referral of a matter and the decision,
- that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

V. Principle of legality

The decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross-border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

All decisions are communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

VI. Principle of liberty

The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

VII. Principle of representation

The procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

THIS RECOMMENDATION is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

Done at Brussels, 30 March 1998.

For the Commission

Emma BONINO

Member of the Commission

Appendix II

Monetary and Financial Code

(Legislative Part)

Article L. 621-19

(Act 2003-706 of 1 August 2003, Article 1, Article 17, Article 46 V 1º Official Journal of 2 August 2003)

(Order No2005-429 of 6 May 2005 Article 82 Official Journal of 7 May 2005)

(Act 2005-811 of 20 July 2005 Article 1 I Official Journal of 21 July 2005)

(Act 2005-1564 of 15 December 2005 Article 17 Official Journal of 16 December 2005)

(Order No 2007-544 of 12 April 2007 Article 5 Official Journal of 13 April 2007, effective 1 November 2007)

The [Authority] is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The limitation period in civil and administrative proceedings shall cease to run when a dispute is referred to the Autorité des marchés financiers for out-of-court resolution. It shall resume once again when the Autorité des marchés financiers has declared that the mediation procedure is terminated.

The Autorité des marchés financiers cooperates with its foreign counterparts with a view to out-of-court resolution of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to holders of financial instruments and the public, the financial instruments markets and the status of investment service providers. Each year, it draws up a report to the President of the Republic and Parliament which is published in the Official Journal of the French Republic.

The chairman of the [Autorité des marchés financiers] is heard, when they so request, by the Finance Committees of the two assemblies and may ask to be heard by them.

Appendix III

Mediation Charter

In application of Article L. 621-19 of the Monetary and Financial Code, the Autorité des marchés financiers is authorised to receive claims relating to matters that fall within its jurisdiction from any interested party, and to deal with them appropriately. When relevant, it proposes an out-of-court settlement of the disputes brought to its attention, via conciliation or mediation.

The submission of a dispute to the Autorité des marchés financiers to find an out-of-court settlement, implies the suspension of the statute of limitations for civil and administrative proceedings. It starts to run again when the Autorité des marchés financiers declares the mediation as ended.

The Autorité des marchés financiers cooperates with foreign stockmarket regulators in the resolution of cross-border disputes.

Contacting the Ombudsman

The Ombudsman may be contacted by any person or legal entity, involved in a dispute of an individual nature falling within the Autorité des marchés financiers jurisdiction, only if no legal action or AMF investigation, regarding the same facts, is in progress.

The mediation procedure is free of charge.

Prior action

A claim may only be brought to the attention of the Ombudsman when a prior action has been taken against the investment services provider or issuer, and your complaint has remained unanswered or has been rejected either totally or partially.

The mediation process

The necessary means to carry out mediation in a neutral, impartial and independent manner are registered in the budget of the Autorité des marchés financiers.

The Ombudsman may only undertake the mediation procedure with the consent of both parties.

In principle, mediation lasts three months from the time when all useful evidence has been supplied to the Ombudsman by the parties.

The mediation procedure is a contradictory procedure. It is carried out in writing, but the Ombudsman may decide to hear the parties separately or together.

The Ombudsman and the parties are bound by the strictest obligations of confidentiality.

Legal action

Both parties retain the right to bring the dispute in front of the courts at any time. The submission of the dispute to the courts brings the intervention of the Ombudsman to an end.

On this assumption, any exchange that has taken place during the mediation procedure may not be used or submitted to the courts.

End of the mediation procedure

The mediation procedure ends either by an out-of-court settlement, or by the statement of a persistent disagreement, the withdrawal of one of the parties, or by the start of legal action relating to the dispute.

Whatever the outcome of the procedure, the Ombudsman informs the parties, in writing, of the end of his intervention.

Annual report

The Ombudsman presents an annual report to the Board of the Autorité des marchés financiers, in which his activities are reviewed. This report is published.

Appendix IV

Thank you letters

Dear Madam,

Thank you for your letter, of which I enclose a copy.

I am also enclosing a duplicate of the letter sent by XXXXXXXXX on 21 January because it does not specify whether you received a copy, as you had requested.

I wish to thank you for your effective efforts.

Quite simply, I was forced to solicit your good offices in order to obtain a reply (which was instructive though obviously technical) from XXXXXXXXX after six months' of fruitless attempts to reach them by phone.

In general, and as you are doubtless unfortunately aware, it is often difficult to maintain harmonious relations with banks. Because they have the time and the money, many of them can afford to be offhand in their dealings with clients, even those like me who have the good fortune never to be overdrawn – quite the contrary – whenever we dare hold them to account or ask for explanations, sometimes citing laws or regulations, which seems to infuriate them enormously.

Without belabouring the point I feel that, despite the plethora of statutes, it is too often necessary to dig one's heels in and be prepared to waste time. More than ever before, the lone citizen, who is usually unfamiliar with the maze of legislation, feels defenceless.

Long may the AMF, who knows the situation better than anyone, continue to stand up for the weak against the powerful. And I hope it will make itself better known to the general public, though this will demand resources, which are surely inadequate.

Since this is still the festive season, I wish both the AMF and you personally every success in these endeavours for the New Year, despite the prevailing uncertainty.

Yours truly

Dear Madam,

The purpose of this brief message is to inform you that XXXXXXX has just sent us the settlement for the last swap fixing. In principle, therefore, our relations with this client are getting back to normal.

I wish to thank you for having accepted at such short notice to arrange and conduct our last meeting which in principle, should allow us to reach an out-of-court settlement to the dispute.

Best regards

Madam,

I wish to confirm that after several months of discussions, XXXXXX Bank finally admitted that it had made "an error" when preparing the subscription form and had failed to provide us with any information. We have now received full repayment.

I would like to thank the AMF for the part it played, through your involvement, in allowing a modest citizen to stand up successfully to a major banking group.

Dear Ms Guidoni,

I am writing to inform you that I received your letter of the 11th and that I won my claim against my bank, XXXXXXXX, which repaid me the sum of 25,053.04 euros, with no expenses, on 1 August.

The refund was undoubtely due to your intervention on 29 July.

All my thanks

Yours truly

Dear Madam,

In response to your letter of 2 July, I wish to confirm that the credit transfer, of which XXXXXXXXX informed you, has been made.

XXXXXXXXXX refunded the expenses it had wrongly charged by restoring the number of employee savings fund shares allotted to me when I paid in my profit sharing bonus in November 2004. The case is therefore closed.

Thank you for your effective mediation.

Yours faithfully

Appendix V

Public service Ombudsmen's Charter

(extracts)

The Ombudsmen who signed this charter on 16 September 2004 all share the same conception of service to citizens, customers and users, a conception based on attentiveness, dialogue and out-of-court dispute resolution […].

Institutional mediation is an "alternative dispute resolution" mechanism. Like contractual mediation, it can be used in an effort to avoid legal action and resolve specific individual disputes between natural or legal persons and institutions or companies. The procedure is free of charge, quick and freely accessible, both directly and indirectly […]. The purpose of mediation is to improve service quality and user satisfaction […].

Institutional Ombudsmen not only play a key role in resolving disputes between institutions and users; they also have a preventive role and expedite change in institutions or companies […].

Public service Ombudsmen ensure first and foremost that the law is respected, and they rely on the intrinsic values of mediation. These are the desire to facilitate the search for out-of-court resolution of disputes; fairness (the ombudsmen can issue fairness recommendations, since a rule or practice that is suitable for the vast majority of users may prove unworkable for an individual case); impartiality relative to the complainant, company or government department; compliance with the adversarial principle; transparency; and confidentiality […].

Public service Ombudsmen also have an overall view of the problems that have been identified, enabling them to better detect an institution's shortcomings and to propose changes […].

The special status of institutional ombudsmen ensures they will be impartial in the dispute settlement process. They are independent from the organisational structures of institutions and companies […].

Because the Ombudsman's function is personalised and located at the heart of the institution, he or she can narrow the gap between citizens and institutions […], thereby putting the parties on an equal footing to establish a balanced dialogue […].

The signatories to the charter at end-2006 are the Ombudsmen of the following:

-Caisse des dépôts et consignations

-Eléctricité de France

-the national education system

-the insurance sector

-France 2, France 3

-France Télévision (programming)

-Gaz de France

-La Poste

-Paris municipal authorities

-Ministry of the Economy, Finance and Industry

-Paris mass transit authority (RATP)

-French Railways (SNCF)

-Mutualité sociale agricole (MSA)

-Autorité des marchés financiers (AMF).

Appendix VI

DIRECTIVES

DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2008

on certain aspects of mediation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To that end, the Community has to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The principle of access to justice is fundamental and, with a view to facilitating better access to justice, the European Council at its meeting in Tampere on 15 and 16 October 1999 called for alternative, extra-judicial procedures to be created by the Member States.

(3) In May 2000 the Council adopted Conclusions on alternative methods of settling disputes under civil and commercial law, stating that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice.

(4) In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law, taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation.

(5) The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. This Directive should contribute to the proper functioning of the internal market, in particular as concerns the availability of mediation services.

(6) Mediation can provide a cost-effective and quick extra-judicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

(7) In order to promote further the use of mediation and ensure that parties having recourse to mediation can rely on a predictable legal framework, it is necessary to introduce framework legislation addressing, in particular, key aspects of civil procedure.

(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

(9) This Directive should not in any way prevent the use of modern communication technologies in the mediation process.

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[1] OJ C 286, 17.11.2005, p. 1.

[2] Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 129). Council Common Position of 28 February 2008 (not yet published in the Official Journal) and Position of the European Parliament of 23 April 2008 (not yet published in the Official Journal).

(10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.

(11) This Directive should not apply to pre-contractual negotiations or to processes of an adjudicatory nature such as certain judicial conciliation schemes, consumer complaint schemes, arbitration and expert determination or to processes administered by persons or bodies issuing a formal recommendation, whether or not it be legally binding as to the resolution of the dispute.

(12) This Directive should apply to cases where a court refers parties to mediation or in which national law prescribes mediation. Furthermore, in so far as a judge may act as a mediator under national law, this Directive should also apply to mediation conducted by a judge who is not responsible for any judicial proceedings relating to the matter or matters in dispute. This Directive should not, however, extend to attempts made by the court or judge seised to settle a dispute in the context of judicial proceedings concerning the dispute in question or to cases in which the court or judge seised requests assistance or advice from a competent person.

(13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. However, it should be possible under national law for the courts to set time-limits for a mediation process. Moreover, the courts should be able to draw the parties' attention to the possibility of mediation whenever this is appropriate.

(14) Nothing in this Directive should prejudice national legislation making the use of mediation compulsory or subject to incentives or sanctions provided that such legislation does not prevent parties from exercising their right of access to the judicial system. Nor should anything in this Directive prejudice existing self-regulating mediation systems in so far as these deal with aspects which are not covered by this Directive.

(15) In order to provide legal certainty, this Directive should indicate which date should be relevant for determining whether or not a dispute which the parties attempt to settle through mediation is a cross-border dispute. In the absence of a written agreement, the parties should be deemed to agree to use mediation at the point in time when they take specific action to start the mediation process.

(16) To ensure the necessary mutual trust with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation, Member States should encourage, by any means they consider appropriate, the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services.

(17) Member States should define such mechanisms, which may include having recourse to market-based solutions, and should not be required to provide any funding in that respect. The mechanisms should aim at preserving the flexibility of the mediation process and the autonomy of the parties, and at ensuring that mediation is conducted in an effective, impartial and competent way. Mediators should be made aware of the existence of the European Code of Conduct for Mediators which should also be made available to the general public on the Internet.

(18) In the field of consumer protection, the Commission has adopted a Recommendation [1] establishing minimum quality criteria which out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. Any mediators or organisations coming within the scope of that Recommendation should be encouraged to respect its principles. In order to facilitate the dissemination of information concerning such bodies, the Commission should set up a database of out-of-court schemes which Member States consider as respecting the principles of that Recommendation.

(19) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties. Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement. This could be the case if the obligation specified in the agreement was by its nature unenforceable.

[1] Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56).

(20) The content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognised and declared enforceable in the other Member States in accordance with applicable Community or national law. This could, for example, be on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [2].

(21) Regulation (EC) No 2201/2003 specifically provides that, in order to be enforceable in another Member State, agreements between the parties have to be enforceable in the Member State in which they were concluded. Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.

(22) This Directive should not affect the rules in the Member States concerning enforcement of agreements resulting from mediation.

(23) Confidentiality in the mediation process is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration.

(24) In order to encourage the parties to use mediation, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods. Provisions on limitation and prescription periods in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by this Directive.

(25) Member States should encourage the provision of information to the general public on how to contact mediators and organisations providing mediation services. They should also encourage legal practitioners to inform their clients of the possibility of mediation.

(26) In accordance with point 34 of the Interinstitutional agreement on better law-making [3], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(27) This Directive seeks to promote the fundamental rights, and takes into account the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

(28) Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive.

(30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

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[1] OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

[2] OJ L 338, 23.12.2003, p. 1. Regulation as amended by Regulation (EC) No 2116/2004 (OJ L 367, 14.12.2004, p. 1).

[3] OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

3. In this Directive, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Cross-border disputes

1. For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

(a) the parties agree to use mediation after the dispute has arisen;

(b) mediation is ordered by a court;

(c) an obligation to use mediation arises under national law; or

(d) for the purposes of Article 5 an invitation is made to the parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

(a) 'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

(b) 'Mediator' means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

Article 4

Ensuring the quality of mediation

1. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organisations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services.

2. Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

Article 5

Recourse to mediation

1. A court before which an action is brought may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available.

2. This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Article 6

Enforceability of agreements resulting from mediation

1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

3. Member States shall inform the Commission of the courts or other authorities competent to receive requests in accordance with paragraphs 1 and 2.

4. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with paragraph 1.

Article 7

Confidentiality of mediation

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Article 8

Effect of mediation on limitation and prescription periods

1. Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Member States are party.

Article 9

Information for the general public

Member States shall encourage, by any means which they consider appropriate, the availability to the general public, in particular on the Internet, of information on how to contact mediators and organisations providing mediation services.

Article 10

Information on competent courts and authorities

The Commission shall make publicly available, by any appropriate means, information on the competent courts or authorities communicated by the Member States pursuant to Article 6(3).

Article 11

Review

Not later than 21 May 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. The report shall consider the development of mediation throughout the European Union and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to adapt this Directive.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2008.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. LENARČIČ

Madeleine GUIDONI

After graduating from Ecole Nationale de la Magistrature in Bordeaux, Madeleine Guidoni joined the Paris courts to begin a career in economics and finance.

She subsequently joined the French competition authority as a rapporteur and later a deputy general rapporteur. Ms. Guidoni then moved to the Economic and Financial subdivison of the Criminal Affairs and Pardons Directorate of the Justice Ministry, where she was in charge of the serious financial crimes sector (corruption, embezzlement, public contract fraud, interference).

She was appointed legal advisor to the newly formed Conseil des marchés financiers (CMF), with special responsibility for implementing and monitoring sanction procedures.

The CMF merged with the Commission des opérations de bourse (COB) to form the Autorité des marchés financiers (AMF) in 2003 and Ms. Guidoni was appointed AMF Ombudsman in April 2004.

How to contact the Ombudsman?

• Write to:

Madame Madeleine Guidoni
Autorité des marchés financiers
17, Place de la Bourse - 75082 Paris Cedex 02

Contact forms are available in the Ombudsman section of the AMF website:
www.amf-france.org

• Call:

Investor helpline
Tuesdays and Thursdays, 2pm - 4pm
+ 33 (0)1 5345 6464

AUTORITÉ
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