AMF OMBUDSMAN'S REPORT 2016

AUTORITÉ
DES MARCHÉS FINANCIERS
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New landscape gradually emerges post transposition of European Directive on consumer mediation.

It will take until the end of 2017 for the new landscape to be fully established and for all market services to be properly covered by a consumer mediation system.

The organisational freedom afforded to professionals in France has given rise to several systems of mediation. Consequently, it has taken longer and proved more difficult for the new national consumer services mediation evaluation and control commission (the *Commission d'évaluation et de contrôle de la médiation de la consommation*, or CECM) to properly check for compliance with the various legal requirements. The AMF Ombudsman's Office, being a public mediation service, had already anticipated the major new requirements set forth in the legislation, and I have been registered by the CECM since 13 January 2016 in my capacity as AMF Ombudsman.

The new hierarchy between the AMF Ombudsman and the purely financial banking mediators, most of which are not yet (at the time of writing) registered by the CECM, remains to be seen.

It will still prove to have been a transitional year in 2016 because although the AMF Ombudsman's Office has a legal monopoly in the financial sector, it also has the option to enter into sharing agreements with registered mediators, enabling investors to choose definitively between the AMF Ombudsman and the company mediator. In November 2016, the banking and insurance regulator (the *Autorité de contrôle prudentiel et de résolution*, or ACPR) and the AMF published new rules on handling customer complaints and reminded industry professionals of their new obligations. These will come into force on 1 May 2017.

The AMF Ombudsman's Office set two records in 2016: number of requests received and number of recommendations given.

In 2016, the number of requests we received rose by 7% (from 1,406 to 1,501), while the number of cases handled within our remit and closed rose even more sharply, by over 20% (from 745 to 896).

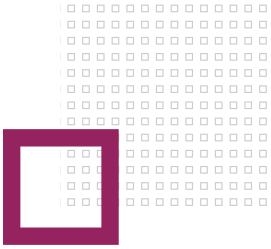
The number of recommendations given increased by more than 47%, from 364 to 534.

Thankfully, one figure that has remained stable is the strong level of adherence to our recommendations: more than 95% of recommendations in favour of the investor are followed by both parties, despite our job being merely to propose an amicable solution rather than impose a binding one. Only 4% of the recommendations not in favour of the investor are disputed. Lastly, 47% of recommendations were in favour of the consumer, including a class action involving around a hundred unfavourable recommendations being issued. Excluding this class action, the percentage of favourable recommendations in 2016 rose to 57%.

This result was only possible thanks to the hard work of each and every member of my team here at the Ombudsman's Office, led by my assistant François Denis du Péage.

Unfortunately, the number of cases we receive that are beyond our remit is growing faster than ever and now stands at over 40% of all requests. This is because the boundaries between our financial remit and the banking and insurance remit, for which we are not responsible, can be blurry. Paradoxically, the greater visibility that my position now enjoys may also be playing a part. In any event, the AMF Ombudsman's Office strives to pass on the requests to the appropriate mediators where possible.

Thankfully, one figure that has remained stable is the strong level of adherence (95%) to our recommendations.



What lessons can we learn from 2016?

I would like to draw your attention to three main points that I will develop over the course of this Annual Report.

First, I have noticed that, perhaps understandably, investors have increasingly less knowledge about complex and/or volatile financial products. I have grouped these issues around a single theme of 'disappearance': the disappearance of pre-emptive rights, which last only a few days, the disappearance following deactivation of a product such as turbos, and securities whose value disappears but still incur custody fees.

Second, I have noticed the continued importance of the two biggest sectors in terms of the number of cases we receive, which prompts me to issue more general recommendations for each of them: salary savings (17% of cases) and retail currency speculation, forex and binary options (11.5% of cases), although the number of requests relating to these highly speculative products fell for the first time in five years. The AMF is used to focusing hard on this issue.

Third, even disregarding the new rules on consumer services mediation, there was an unusually large amount of new regulations in 2016.

Here are four examples that have had or may have consequences for our Ombudsman's service and will be examined more closely herein:

1. The Eckert law and its accompanying decree on inactive, so-called unclaimed, bank accounts, both of which came into effect on 1 January 2016. This law is undoubtedly very good news for consumers, broadly speaking. However, I am beginning to receive complaints from salary savers whose financial assets have, to their considerable surprise, been liquidated and transferred to the *Caisse des Dépôts et Consignations*. At the time of writing, it is too soon to tell whether the number of such complaints will remain small.

WHO IS THE AMF OMBUDSMAN?

The AMF Ombudsman is Marielle Cohen-Branche. She was first named AMF Ombudsman on 16 November 2011 and has since then been reappointed. In order to comply fully with new regulations, her term was renewed on 12 November 2015 for three years.

In compliance with the new consumer mediation requirements, the AMF Ombudsman was registered by the CECM on 13 January 2016 as the AMF's official public Mediator.

Ms Cohen-Branche previously spent eight years as a judge on special assignment to the Court of Cassation with responsibility for banking and financial law (2003-2011). At the same time, she was also:

- a member of the AMF Enforcement Committee;
- a member of the Banking Mediation Committee, chaired by the Governor of the Banque de France, responsible for supervising the independence of bank ombudsmen (2003-2012);
- a member of the World Bank Sanctions Board responsible for anti-corruption (2007-2013).

Formerly, she worked as a legal expert in banking for 25 years.

Since 15 October 2013, in parallel with her duties as AMF Ombudsman, Ms Cohen-Branche has been a member of the International World Bank Administrative Tribunal (renewable five-year term).

She is an Officier de la Légion d'honneur and an Officier de l'Ordre national du mérite.

As Ombudsman, she relies on a team of legal experts who work exclusively for her. This team is led by François Denis du Péage, Deputy Ombudsman in the AMF's Retail Investor Relations Directorate.

2. The reform of contract law and the general law of obligations regime in the French Civil Code: more than 350 Civil Code articles have been amended since 1 October 2016. It is sometimes useful when mediating to remind industry professionals of the theory of apparent authority, which is featured in the Civil Code, or the theory of undue payment.

3. Law No. 2016-1691 of 9 December 2016 on transparency, anti-corruption and economic modernisation, known as the Sapin 2 law. At the request of the AMF, one of the law's many provisions banned, with effect from 1 January 2017, the advertising by electronic means of highly speculative financial contracts such as forex and binary options. This should slow down the spread of these products among retail investors.

4. The 21st century justice modernisation law of 18 November 2016, Article 4 of which states that, under penalty of inadmissibility, the declaration to the registry of the local magistrate or the court of first instance must be preceded by an attempt to reach an amicable solution.

In such a way, the French legislators have deliberately decided to go one step further than the European Commission in above all seeking a quick and amicable resolution to a dispute. This national process, led by the CECM, is actively under way in consumer services mediation, and the AMF Ombudsman's Office is delighted to play its part in the financial sector.

Paris, 21 February 2017

Marielle Cohen-Branche

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Legal experts from the Ombudsman's Office.

Ombudsman's Report

1- IMPLEMENTATION OF THE CONSUMER MEDIATION SYSTEM

As mentioned on the section of the French Economy and Finance Ministry's website dedicated to consumer mediation, a national framework for consumer mediation is gradually being implemented. Ordinance No. 2015-1033 of 20 August 2015 on the out-of-court settlement of consumer disputes, which transposed Directive 2013/11/EU of 21 May 2013, and its accompanying Decree No. 2015-1382 of October 2015 both came into force on 1 January 2016. However, the freedom afforded to professionals in economic market sectors to choose their own mediation format (company mediation, sectoral mediation, public mediation, etc.) has given rise to several systems. Mediators must first be appointed under the new rules and then registered by the dedicated national authority (the *Commission d'évaluation et de contrôle de la consommation* - CECM) so their details can be passed on to the European Commission. These different stages have proved far more complex, and therefore time-consuming, than expected.

In France, at present, there are just two public mediators: the National Energy Ombudsman and the AMF Ombudsman.

Pursuant to Article L. 612-5 (formerly L. 152-5) of the French Consumer Code, "When there is an appropriate public mediator to proceed with the mediation of a consumer dispute, any other conventional mediation (as defined herein) is excluded, unless the [CECM] mentioned in Article L. 615-1 (formerly L. 152-1) has been notified of an agreement that shares the disputes between the mediators in question".

The AMF's free public mediation services, which was enhanced and restructured in 2011, anticipated the major new requirements introduced by the Directive, and the AMF Ombudsman has been registered by the CECM since 13 January 2016. Previously, the relevant laws had been updated in 2015 to legislate that such mediation was no longer entrusted to the AMF as an institution, but to the AMF Ombudsman (Article 621-19 of the French Monetary and Financial Code) and to further specify the conditions and term of the Ombudsman's appointment, namely by the AMF Chairman (having consulted the Board) for a renewable period of three years.

Similarly, Article 4 of Decree No. 2015-1382 of 30 October 2015 specified that a paragraph had been added to Article R. 621-12 of the Monetary and Financial Code, stating that the Ombudsman would be paid a fixed amount by the AMF Chairman (having consulted the Board).

Bank mediators are able to sign an agreement with the AMF entitling them to retain competence in the financial sector so that investors can choose definitively to take their complaint to one mediator or another[1].

At the time of writing, negotiations are ongoing with two registered mediators and two agreements have already been signed with two other registered bank mediators, one of which is appointed by four different banks and the other by a large banking group. However, it has been stipulated that these agreements will come into force only when the banks' clients have been duly informed of the new measures and given a fair chance to make a definitive choice between the two mediators.

In order to assist the financial professionals affected by the transposition of the Mediation Directive in complying with their new obligations, the AMF and ACPR have updated their complaints-handling recommendations and instructions[2]. Published in November 2016, these updated guidelines and rules will come into force on 1 May 2017. The key issue was to ensure professionals were made aware that if they refuse to uphold a complaint, they must mention in the final communication to their client that mediation is possible, providing details of the relevant mediator. Pursuant to Article L. 616-1 of the Consumer Code, this is now a legal requirement rather than merely a professional obligation. Failure to comply is punishable by a fine of up to €15,000 (Article L. 616-3 of the Consumer Code). The AMF's instruction contains suggestions on how to illustrate the difference between the banking and financial sectors. The aim is to reduce the excessive number of consumers who take their complaint to the wrong place (nearly 40% of requests received by the AMF Ombudsman need to be redirected, mostly because they concern purely bank-related requests, for example relating to credit, interest rates or bank cards, or life insurance policies, rather than financial requests.

Female employees from the Ombudsman's Office.

And in the meantime?

At the meeting of the French Financial Sector Advisory Committee held on 1 February 2016, the AMF Ombudsman proposed that, as we wait for things to settle, institutions have the option to keep things as they were for a few months. Her proposal was accepted. If a financial services provider opts for this status quo, it means that the financial Ombudsman's monopoly in financial matters is not yet effective and that, if a client is unhappy with their bank mediator, they are entitled to file a request with the AMF Ombudsman. In any event, this option will expire at the latest on 1 May 2017, which is when the updated versions of the two regulators' instructions and guidelines come into force.

In order to complete the picture regarding the transposition of European texts on mediation, we have to mention Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution (ODR) for consumer disputes, which came into force on 9 January 2016, six months after the deadline for transposing the Mediation Directive, set for 9 July 2015. This Regulation concerns only disputes arising from online transactions between a consumer and a professional, both established in the European Union. On 15 February 2016, the European Commission set up an interactive platform on its website[3], making it easier to file complaints and reach an amicable solution. This free, multilingual site covers both domestic and cross-border online purchases.

1– See 2015 Ombudsman's Report, pages 8 and 9.

2– AMF instruction DOC-2012-07 and ACPR recommendation 2016-R-03 of 26 February 2016.

3– https://webgate.ec.europa.eu/odr/main/?event=main.home.show.

2– TWO RECORDS IN 2016: CASES HANDLED AND RECOMMENDATIONS GIVEN

The number of cases handled and closed rose sharply in 2016 from 1,284 to 1,515 (+18%). This figure is greater than the number of cases received, which means that the year-end number of outstanding cases fell (from 351 to 337) for the first time in four years.

We received 1,501 cases in 2016, an increase of 7% on 2015 (1,406 cases).
In 2012, we received just 747 cases, so the number has doubled in five years.

A major class action of 102 cases was filed regarding a bank's obligations to provide its clients with financial information about the tax consequences for them of the spin-off of a company in which they hold shares.

Since our recommendation in all the cases under this class action was unfavourable to the plaintiff, we have presented our statistics in two different ways so that a fairer comparison can be made with previous years: the overall total and the total excluding data relating to this class action (see page 10). This mediation is a good example of a dispute that falls within the Ombudsman's remit because the complaint is financial in nature, while its consequences are tax-related.

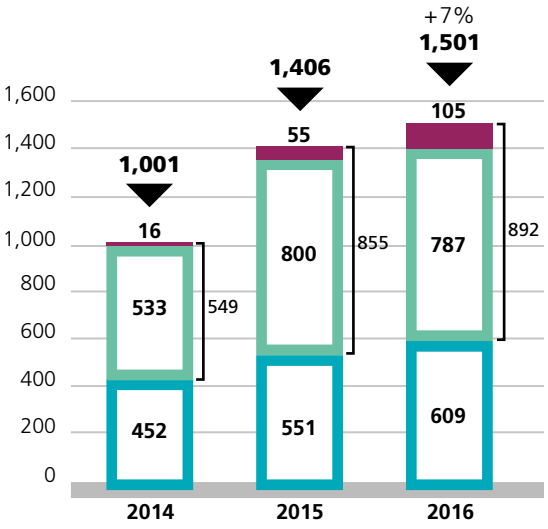
There was an even greater rise (+11%) in the number of cases received in 2016 that were outside the AMF's remit.

↘

In some years, the number of complaints brought before the Ombudsman can be hugely affected by different class actions, i.e. a group of individual complaints from investors regarding the same dispute with one or several financial institutions. Although these requests can be filed together by a single advisor or spokesperson, the disputes are examined on an individual basis.

There were 609 such cases received in 2016, compared with 551 in 2015. This is disappointing because it shows that the public have a poor grasp of the respective remits of the banking and insurance and financial mediators. In reality, most of these cases involve the banking sector (payment incidents, loan renegotiations, payment fraud, charges, etc.) and a smaller number the insurance sector (life insurance). They also include financial cases received in error for geographical reasons, i.e. neither party is resident in France, for reasons of criminal competence, i.e. the conduct of the professional can be classified as criminal, or for reasons of tax competence, making sure to make a distinction between cases where the complaint is tax-related and those where it is financial but the consequence is tax-related, as mentioned above.

NUMBER OF CASES RECEIVED



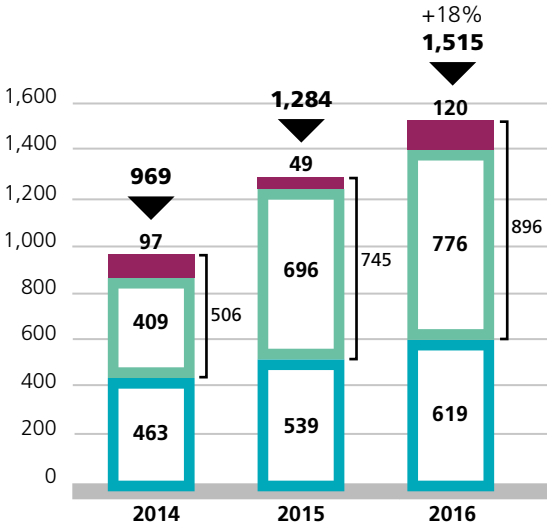
Within the Ombudsman's remit: 892 (+4%)

- Class actions, including 102 pertained cases pertaining to a major class action filed in 2016
- Other disputes

Outside the Ombudsman's remit: 609 (+11%)

- Disputes outside the Ombudsman's remit

NUMBER OF CASES PROCESSED



Within the Ombudsman's remit: 896 (+ 20 %)

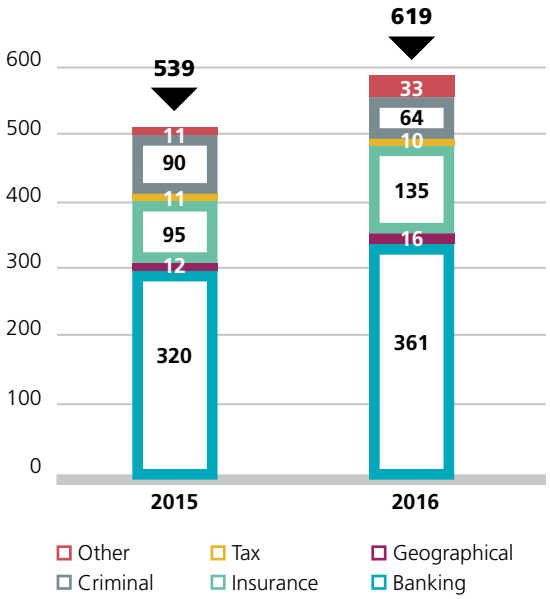
- Class actions, including 97 pertained cases pertaining to a major class action filed in 2016
- Other disputes

Outside the Ombudsman's remit: 619 (+ 15 %)

- Disputes outside the Ombudsman's remit

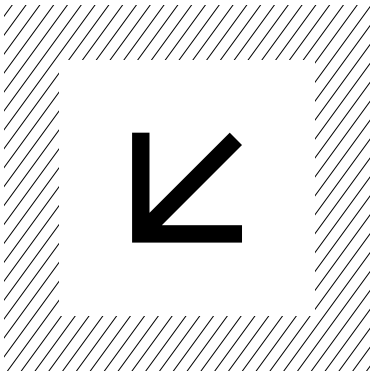
In 2016, 28% of applicants contacted the Ombudsman using the electronic form available on the AMF web-site, compared with 22% in 2015 and 28% in 2014. The vast majority of applicants therefore continue to prefer to submit their requests by post.

BREAKDOWN OF OUT-OF-REMIT CASES HANDLED



Cases received outside the Ombudsman's remit are quickly redirected to the appropriate Ombudsman. They are even sent directly when they concern the Ombudsman's lack of remit in the banking sector. Of the 619 cases handled and closed in 2016 that were outside the Ombudsman's remit (compared with 539 in 2015), 361 concerned the banking sector (nearly 60%, in line with 2015).

An amicable solution is not possible for cases outside the Ombudsman's remit owing to the criminal nature of the alleged conduct. In these situations, the case is sent to the Public Prosecutor (64 cases in 2016, compared with 90 in 2015 and 69 in 2014).



HOW MEDIATION WORKS AT THE AMF OMBUDSMAN'S OFFICE

While the AMF has offered mediation for many years and this service has been significantly expanded since 2011, the AMF Ombudsman has featured expressly in the law since the Ordinance of 30 August 2015 amending Article L. 621-19 of the Monetary and Financial Code.

Mediation is a public service, free of charge to both consumers and professionals, that aims to encourage an amicable resolution to financial disputes. It targets savers and investors, both individuals and corporate entities (a retirement fund or an association, for example). The range of disputes eligible for mediation corresponds to the AMF's remit, i.e. disputes with an investment services provider (a bank, a management company, etc.), a financial investment advisor or a listed company. The Ombudsman also has jurisdiction over crowdfunding investment advisors. On the other hand, it has no remit in the areas of taxation, life insurance or bank transactions or investments. The Ombudsman can examine a case where only the consequences are tax-related and the complaint itself is financial in nature.

In concrete terms, you can contact the AMF Ombudsman if you are a saver, whether you are an individual or a corporate entity, and if you believe that your institution or financial advisor has engaged in misconduct regarding a financial service or product and that this misconduct has caused you financial harm.

Before requesting mediation, you must have filed an unsuccessful written claim with the professional with which the dispute arose. The Ombudsman is therefore contacted only if the professional has not been able to resolve the client's problem.

The mediation process is governed by a charter (see Annex 3 to this report).

Through her position as a legally recognised public mediator, signifying that she is an independent third party, and drawing on her own experience and the technical expertise of her dedicated AMF team, the AMF Ombudsman will, once the claim has been investigated and appears justified, propose an out-of-court solution to the financial disputes submitted to her. She does this in accordance with law and equity and as efficiently as possible.

If the Ombudsman's recommendation, which is issued in the form of a strictly confidential opinion, finds in favour of the investor, the recommendation, once accepted by both parties to the dispute, takes the form of a total or partial payment or compensation for the loss suffered. It does not imply acknowledgement of any kind of liability on the part of the professional.

Since July 2013, all applicants have received a confidential code which allows them to track the status of their case step by step on the Ombudsman's page of the AMF website.

REASON FOR CLOSING THE 1,515 CASES PROCESSED IN 2016 COMPARED WITH 2015

1,515 **total cases handled** including class action

+18% **compared with 2015** (1,284)

1,418 **cases handled** excluding class action

+10% **compared with 2015** (1,284)

619 **cases handled outside the Ombudsman's remit**

- **361** Banking
- **135** Life insurance
- **64** Criminal
- **16** Geographica
- **10** Taxation
- **33** Other

896 **cases handled within the Ombudsman's remit** including class action

+20% **compared with 2015** (745)

799 **cases handled within the Ombudsman's remit** excluding class action

+7% **compared with 2015** (745)

234 **cases not handled on the merits**

- **161** Premature requests
- **15** Requests reclassified as consultations
- **13** Requests reclassified as alerts
- **11** Unusable
- **11** Filed with another mediator
- **7** Court proceedings
- **4** Late requests
- **12** Other

662 **mediations handled on the merits** including class action

+44% **compared with 2015** (460)

565 **mediations handled on the merits** excluding class action

+23% **compared with 2015** (460)

128 **cases suspended**

- **98** Cases dropped by the applicant
- **30** Cases rejected or dropped by the professionall

534 **recommendations made** including class action

+47% **compared with 2015** (364)

437 **recommendations made** excluding class action

+20% **compared with 2015** (364)

We issued opinions on 534 cases in 2016, a considerable increase on 364 in 2015.

Legal expert from the Ombudsman's Office.

In 2016, 896 cases were handled and closed within the AMF Ombudsman's remit (799 if we exclude the 97 cases from the primary class action filed in 2016).
Of these:

- **11** cases were closed because they were unusable, **7** because they were subject to court proceedings, which is not compatible with the out-of-court nature of mediation, **11** because another mediator was asked to intervene at the same time, **4** because they were filed late (since the transposition of the EU's Mediation Directive, the initial complaint cannot have been made more than one year prior to the submission for mediation);

- **161** cases were closed because they were referred prematurely since the saver/investor provided no proof that a prior claim had been rejected or left unresolved for at least two months. This is down on the 231 cases closed for this reason in 2015, mainly because there was a sharp fall in the number of salary savings requests received from a non-EU country and with no accompanying documentation or information enabling us to make a recommendation;

- **13** cases were reclassified as alerts because they aimed merely to criticise a practice rather than seek any damages. Once reclassified as alerts, these cases are forwarded to the relevant AMF staff for monitoring;

- **15** cases were reclassified as consultations because they involved questions for the Ombudsman but no dispute was referred;

- **98** cases were closed because they were abandoned, as permitted under the charter, either because the dispute was settled after the referral was received, or because the saver/investor did not provide the evidence necessary to pursue the case. This figure was 81 in 2015, with the increase of 21% in line with the rise in the number of cases handled within the Ombudsman's remit;

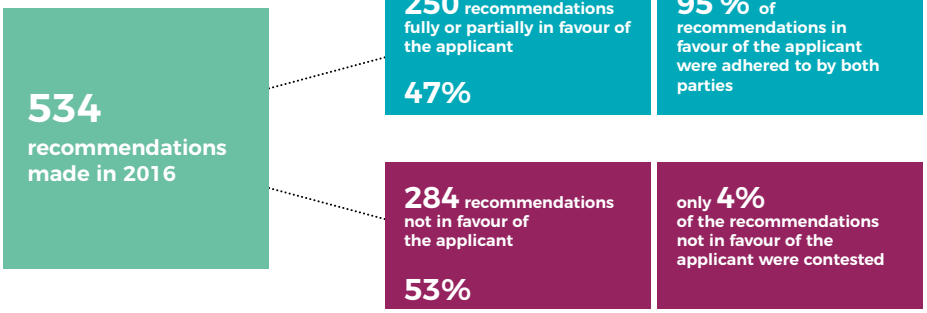
- **30** cases were rejected for mediation by the professionals, 15 of which pertained to one institution that did not wish to seek an amicable resolution to a class action;

- in total, **534** cases were the subject of a recommendation in 2016. This represents a sharp rise (+47%) on the 364 recommendations made in the previous year. This figure includes the 97 cases handled and closed in 2016 from the major class action.

Of these 534 recommendations (also known as opinions), 250 (47%) came down in favour of the applicant and 284 (53%) against the applicant. The respective percentages in 2015 were 62% and 38%. However, the 2016 figure was grossly skewed by the 97 unfavourable opinions issued as a result of the class action. Excluding these, there were 437 recommendations made in total, of which 250 (57%) were in favour of the applicant and 187 (43%) against.

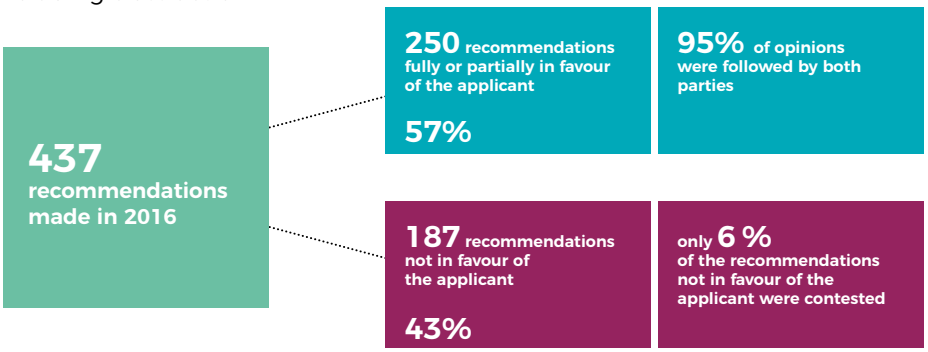
BREAKDOWN OF AND ADHERENCE TO RECOMMENDATIONS MADE IN 2016

including class action



BREAKDOWN OF AND ADHERENCE TO RECOMMENDATIONS MADE IN 2016

excluding class action



The continued strong level of adherence to our recommendations is worthy of note: 95% of our opinions in favour of the applicant were accepted by both parties in 2016, and just 4% of our opinions not in favour of the applicant were contested by the applicant. Since these figures have remained broadly stable for four years, we can state that, in most of the cases we receive, the saver/investor finds a satisfactory out-of-court solution to their dispute by means of mediation.

In 2016, the cases we handled and closed pertained to 288 different institutions: investment services providers, financial investment advisors, market operators, unregulated service providers, listed companies and asset management companies. The vast majority (82%) of cases related to investment services providers.

In 2016, the cases we handled and closed pertained to 288 different institutions.

DURATION OF AMF MEDIATION IN 2016

The AMF's mediation process takes place in several stages.

A file is created as soon as the complainant contacts the Ombudsman's Office. An examination of the case requires that the office send a written questionnaire to the financial institution to obtain its comments and supporting documentation and that it request clarifications or additional information from the complainant.

The Ombudsman must, in accordance with Articles R. 612-2 and R. 612-5 of the decree transposing the Directive, investigate admissible cases within a timeframe of 90 days. This period begins when the Ombudsman has received the documents on which the request is based, i.e. as stated in whereas clause 40 of the Directive, all the documents necessary to carry out the procedure.

The charter of the AMF Ombudsman states that once the Ombudsman has received all the relevant information from all parties, she has 90 days in which to issue her opinion. This same decree and charter specify that this timeframe may be extended at any time by the Ombudsman when the complexity of the dispute so requires.

Generally, when she finds in favour of the complainant, the Ombudsman states that the parties have 30 days in which to accept or reject the opinion. In addition, the Ombudsman may, at the parties' request, supervise the drafting of the memorandum of understanding and oversee the payment of the agreed compensation. The administrative closing of the file is then deferred by the same amount of time.

Average processing times resulting in an opinion from the Ombudsman were as follows in 2016:

- approximately 4.5 months: that was the average time in 2016 between receipt of the complainant's file and when it was complete, with a median of 4 months. This timeframe included time spent waiting for responses to the Ombudsman's requests, which sometimes require follow-ups and several back-and-forths. Some financial intermediaries are more responsive than others.
- 6 months: this was the average time between receipt of the complainant's file and the issuance of the Ombudsman's opinion, with a median of 5 months.
- 40 days: this was the average timeframe between completion of the file and issuance of the Ombudsman's opinion. AMF mediation is therefore well within the 90-day timeframe imposed by regulation.

Mediation topics:

A topic-based classification system was developed according to the type of grievance:

- poor execution;
- inadequate information or advice;
- poor management.

Just as in 2015, the first two categories of complaint accounted for 91% of mediation cases handled. Poor management accounted for just 4%.

Each year, the topics addressed differ widely, as illustrated by the Ombudsman's Online Diary, which is published monthly on the AMF website (see page 32).

On top of the recurring disputes, and just as in the previous three years, in 2016 the Ombudsman observed two major trends:

- requests relating to forex speculation, i.e. the foreign-exchange market accessible to the general public (plus binary options) remain plentiful, albeit fewer in 2016;
- requests relating to salary savings.

RESULTS IN 2016 ACHIEVED THANKS TO MEDIATION

A favourable opinion from the Ombudsman, when followed by the parties concerned, may take two forms, depending on the situation:

- **an instruction is carried out (21% of favourable opinions followed); or**
- **the harm is remedied through compensation (79% of favourable opinions followed). The total amount of compensation obtained in 2016 was €1,531,067, compared with €851,653 in the previous year.**

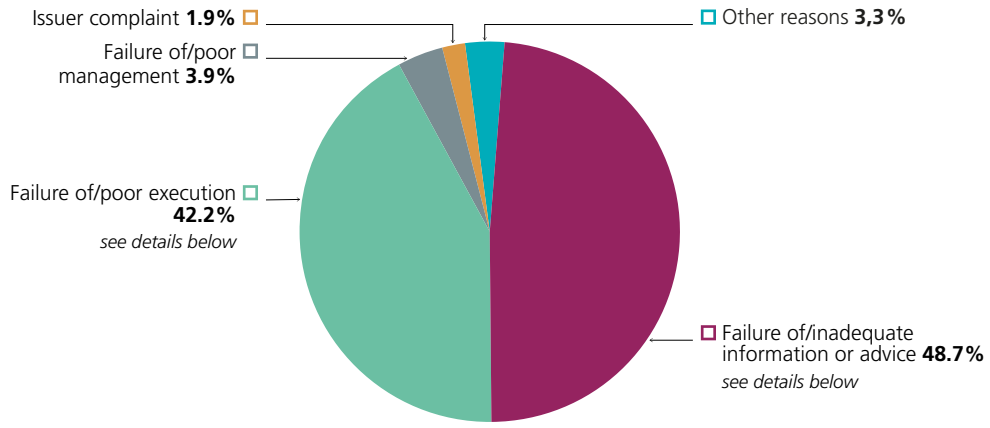
Out of all cases closed in 2016, 250 favourable recommendations were made, including 199 financial recommendations.
For these 199 financial recommendations, goodwill gestures ranged from €8 to €250,000, with an average of €7,772 and a median of €1,000.

Of the forex cases closed in 2016, 71 favourable recommendations were made, all of which were financial recommendations.
For these 71 financial recommendations, goodwill gestures ranged from €200 to €84,170, with an average of €11,938 and a median of €5,000.

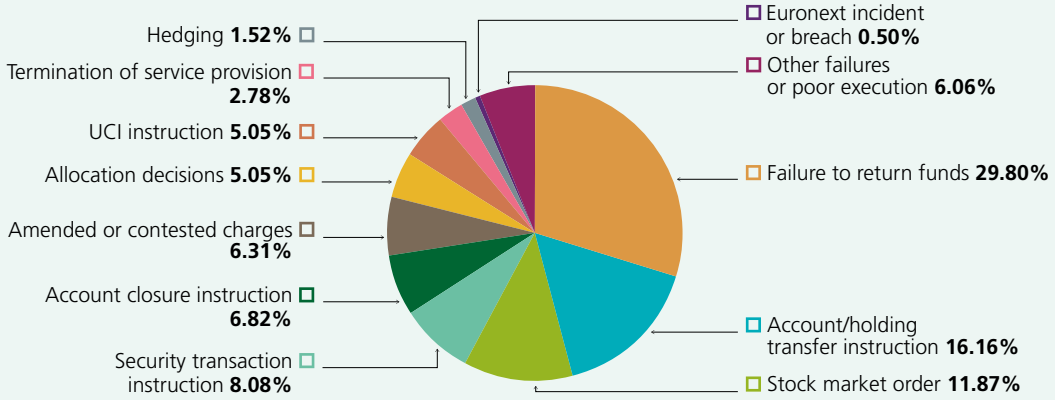
Of the salary savings cases closed in 2016, 62 favourable recommendations were made, including 43 financial recommendations.
For these 43 financial recommendations, goodwill gestures ranged from €11 to €99,970, with an average of €4,221 and a median of €760.

CASES CLOSED BY REASON FOR THE COMPLAINT

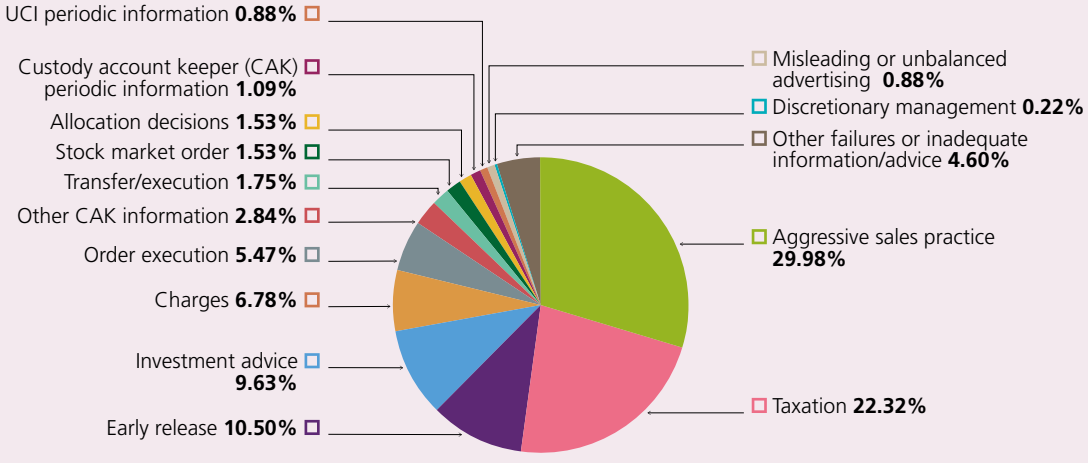
% CASES BY REASON FOR COMPLAINT



CASES CLOSED DUE TO POOR EXECUTION



CASES CLOSED DUE TO INADEQUATE INFORMATION OR ADVICE



3- WHAT LESSONS CAN WE LEARN FROM 2016?

1- Issues related to 'disappearance'

Albeit very different from one another, the issues discussed in this section all have similar outcomes.

A- LAPSED PRE-EMPTIVE RIGHTS

The Ombudsman receives mediation requests relating to the disappearance of a holding from an ordinary securities account or a share savings plan (PEA). This issue illustrates the need for securities holders to pay attention to the information provided by their bank about transactions potentially affecting these securities.

Among these requests, the Ombudsman has taken a particular interest in the 'disappearance' of pre-emptive rights. A shareholder notices the 'appearance' of a new holding in their securities account, corresponding to pre-emptive rights. A short while afterwards, having placed no order, the shareholder is concerned that this holding has disappeared and notices when reading their transaction history an "exit of securities without value".

This reveals a lack of understanding of how pre-emptive rights work. These rights are given to shareholders for a few days during a capital increase, entitling them to subscribe to new shares before they are issued to the general public and often at a discounted price. During this short period of validity, the rights holders can either sell their rights or exercise them, i.e. subscribe to the new shares. Failure to do either will see the rights lapse and 'disappear'. In these cases, the Ombudsman checks that the custody account keeper has informed the shareholder correctly about the operational methods of the capital increase, the deadline for exercising the pre-emptive rights and, above all, the fact that these rights will lose all their value if they are not exercised or sold within the stated timeframe. Purely by way of example, when one investor in Parrot came to us during the company's capital increase, we were able to verify, using documents supplied to us by the account keeper, that the

WITH NEW ELECTRONIC MEANS OF COMMUNICATION, THE INFORMATION THAT MUST BE MADE AVAILABLE TO THE CLIENT MUST ALSO BE PROVIDED ACTIVELY

The Ombudsman checks that the information that must be provided to the investor has been addressed to them personally and does not feature only on the professional's website, even in the client's own dedicated area.

This same check has just been carried out by the European Court of Justice in a Judgment of 25 January 2017 (C-375/15 BAWAG PSK Bank v Verein für Konsumenteninformation).

The Judgment sets out the conditions that should be fulfilled in online banking payment services for a piece of information or contractual amendment to be considered as having been provided to the consumer. Merely appearing on the financial professional's website is not enough. The service provider must also make an active effort to make the consumer aware that such information exists and is available on the said website.

In the absence of such an effort, if the consumer has to consult the website to become aware of this information, the information is deemed simply to have been made available but not to have been provided.

Legal experts from the Ombudsman's Office.

shareholder had been duly informed, both in a personal letter dated 25 November 2015 and on his dedicated area of the website, about the company's capital increase, the methods thereof and the deadline for exercising or selling his pre-emptive rights. It was further specified that any rights not sold or exercised by December 4 would lapse. Since no particular instruction was provided by the shareholder in question, the holding of €4,000 corresponding to the pre-emptive rights legitimately disappeared from his account.

B– KNOCKED-OUT TURBOS

Sometimes, this issue reflects a lack of understanding on the investor's part about this complex financial product, warranting a check of the information or warning provided by the financial services provider to its client prior to investment.

Investors in turbos regularly make a complaint to the Ombudsman after losing all of their investment. It transpires that many of them had failed to grasp one of the basic characteristics of turbos. Unlike warrants, these particular financial products are equipped with a knockout barrier, making them expire worthless if this barrier is breached.

The turbo is a risky listed financial instrument because it comes with significant leverage on a wide range of financial assets (indices, equities, commodities, etc.) known as underlying assets. More often than not, this security is issued by a bank and uses leverage to amplify the movement of these underlying assets, without the need to actually own them. Turbos enable their holders to benefit from the rise (turbo call) or fall (turbo put) of an underlying asset. The thing that distinguishes them from warrants is the knockout barrier, which is defined prior to issue. If the price of the underlying asset reaches or breaches this barrier, the turbo is 'knocked out' and the entire initial investment is lost. However, the primary function of the knockout barrier is precisely to ensure that the loss cannot exceed the initial investment, which is a consequence of leverage. The investor may lose 'everything', but that 'everything' is restricted to the amount of their initial investment.

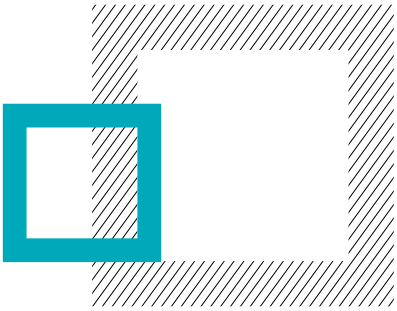
In these cases, the Ombudsman takes particular care to explicitly remind the investor of how the knockout barrier works. The Ombudsman has also insisted that these speculative financial products be aimed at very informed investors who have the knowledge and experience required to understand how such an investment works and what the associated risks are. Therefore, we check that the financial intermediary has conducted the knowledge, experience and competence assessment survey required by the regulations, and if so, whether the client has refused to respond to said survey, in which case the professional is subsequently excused from its disclosure and notification obligations. We also check that the information provided about these products is clear and accessible. In this case, it is the investor's responsibility to read the information provided to them carefully and to not invest in a product unless they fully understand how it works.

C– CUSTODY FEES ATTACHED TO SECURITIES WITHOUT VALUE

This issue arises primarily when the portfolio of an investor held by an account keeper contains securities of companies in irrevocable bankruptcy proceedings or court-supervised liquidation.

If these securities become worthless as a result of the court-supervised liquidation, they will be cancelled only when the company ceases to exist, i.e. when a judgment pronounces the closure of the liquidation proceedings because there are no longer sufficient assets, the company now being formally wound up only at this final stage[4].

The closure of the court-supervised liquidation proceedings may not take place until 10 or 15 years after they were opened, and the company's securities remain in the investor's portfolio unless they have been delisted. Although these securities technically still exist, it is questionable whether the financial intermediary should continue to receive custody fees, in the form of a fixed minimum amount, on this particular holding of securities without value.



LEGAL TIMEFRAMES FOR RECORD-KEEPING

Savers/investors regularly complain to the Ombudsman that they are unable to get a copy of documents from the bank. Occasionally, we have to remind applicants that financial institutions are legally required to keep these records only for a certain period of time.

How long are businesses legally required to keep records?

Unless otherwise stated in law, all contractual documents and agreements entered into as part of a business relationship or correspondence must be stored for a period of five years (Article L. 110-4 of the French Commercial Code).

In this digital age, contracts that are signed electronically are subject to their own specific regulations. Pursuant to Article L.213-1 of the Consumer Code, professionals must, for a period of ten years, be able to provide their co-contracting clients with access to these documents upon request at any moment.

Although some institutions have a policy of keeping these records for longer, once this period expires and the bank indicates that they no longer hold the documents in question, unless there is evidence to the contrary, we are unable to conclude that any failure has taken place.

4– Pursuant to Article 1844-7 (7) of the Civil Code, as amended by the Ordinance of 12 March 2014.

Custody fees are basically payment that a financial intermediary receives for ensuring the safekeeping and servicing of the securities (payment of coupons or dividends, monitoring of corporate actions, etc.) it holds on behalf of its clients.

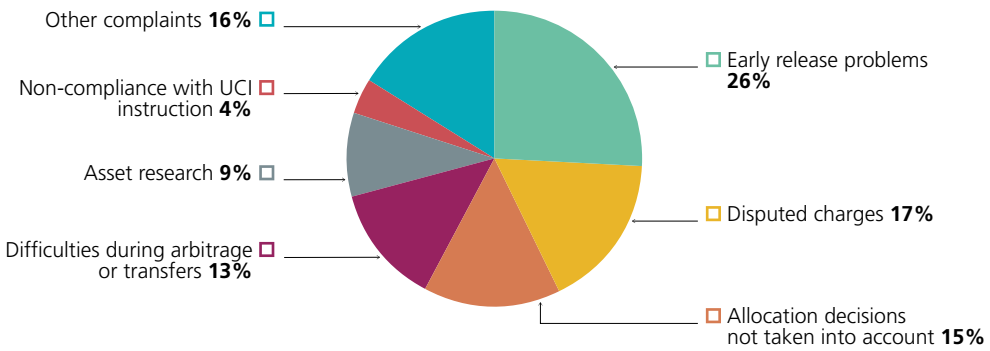
The Ombudsman has been pleased to note during mediations that, every year, certain financial institutions automatically cancel custody fees on securities that have become worthless. We welcome this good practice, which prevents misunderstandings and needless disputes.

2– Cases still dominated by salary savings and forex

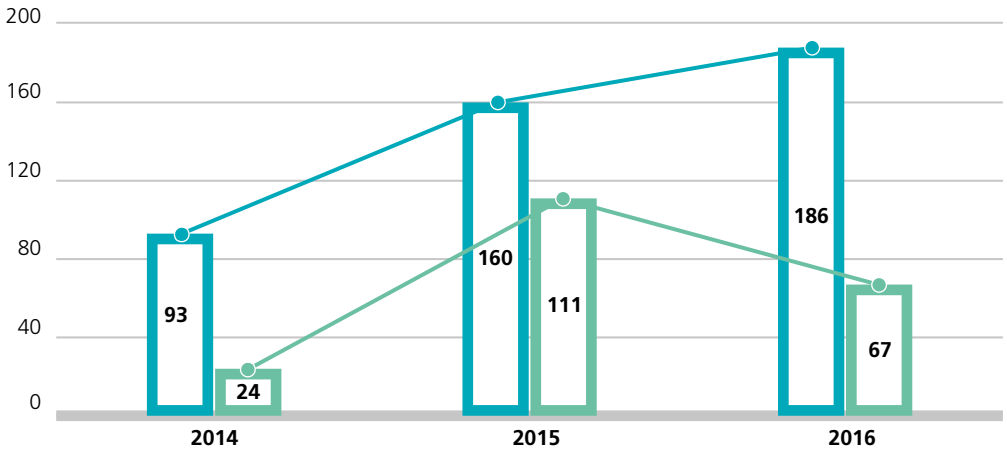
A– SALARY SAVINGS

Admissible salary savings cases increased again in 2016, from 160 to 186. The number of cases that were inadmissible because they were filed too early fell sharply. Based on the cases received, the Ombudsman has observed that certain problems are easing, some remain the same and others are actually getting worse.

SALARY SAVINGS PLAN ISSUES IN 2016



CHANGE IN NUMBER OF SALARY SAVINGS CASES RECEIVED



Within the Ombudsman's remit

- Cases handled on the merits
- Admissible disputes with no supporting documentation from the same non-EU country, not handled on the merits

1– PROBLEMS THAT ARE EASING

a– Account-keeping fees

Since the introduction of the law for economic growth, activity and equal opportunity (the so-called Macron law) on 1 August 2016, and following through on a recommendation from the AMF Ombudsman, employers must inform employees when they leave the company that they are now liable for account-keeping fees and that these will be deducted directly from their savings plan assets.

Thanks to these new measures, there has been a significant reduction in the number of cases brought before the Ombudsman because the employee was not aware of these fees; the complaints now tend to focus on whether such fees are legitimate. Given the freedom-of-pricing principle, the Ombudsman will intervene only if the employee was not properly informed.

Having said that, in some cases the Ombudsman observes that information on fees could still be improved. In one case, we felt obliged to remind the parties that, although the duty of disclosure does indeed lie with the employer, the account keeper remains the direct contact of the employee and its pricing should be clear and accessible. One former employee who demanded the redemption of his assets noticed that the amount he received had been reduced by account-keeping fees of which he was unaware , and that these fees seemed excessive in view of the amount of money saved. After examining the case, the Ombudsman observed that information on the account-keeping fees was not sufficiently accessible because the employee had to conduct searches on his dedicated area of the website in order to consult the general terms and conditions. It is easy to understand why an employee, prior to the Macron law, would not automatically perform such a search because the employer was liable for the fees throughout the employment relationship. Moreover, the saver may not have understood that the reduction in his plan's assets was due to the deduction of account-keeping fees because the fees were classed simply as "capping"[5] in the general terms and conditions.

5– This term is used to designate the discreet deduction of fees directly from account assets (by units or even thousandths of units).

In some cases, the Ombudsman observes that information on fees could still be improved.

In this case, the Ombudsman decided that the employee had not been sufficiently informed about the existence of the account-keeping fees and therefore recommended that the account keeper refund them, which it agreed to do. More generally, the Ombudsman is concerned that such an implicit term as "capping" continues to be used by certain account keepers, and calls for more clarity on pricing.

b– Delays in recognising voluntary contributions

Two years ago, the Ombudsman was concerned to note that there may be a delay of up 45 days between the date of an employee's voluntary contribution and the date on which said contribution is recognised as an investment. Only account assets, i.e. assets that have been recognised prior to the occurrence of the event, can be released. There was no information about this delay, which was the subject of several disputes.

Today, we receive fewer complaints about this matter. However, we did still receive some in 2016 and we noticed that the situations - and therefore the responsibilities of the different parties - vary depending on whether the employer has opted for delegated management.

In one case submitted this year, the saver had made a voluntary contribution directly with their employer that took two months to be recognised among the plan assets, and so the money was not released following the termination in the meantime of their employment contract.

Following examination of the case, the Ombudsman identified two delays in the processing of this employee's voluntary contribution:

- an initial delay of over two months from the payment of the voluntary contribution to the account keeper receiving the file containing the voluntary contributions and the cash collected by the employer;
- a second delay of six days from the account keeper receiving the data on the voluntary contributions to these contributions being recognised among the assets, it being specified that the company mutual fund in question was valued weekly, which explains the delay.

Consequently, the Ombudsman found that the excessive delay was exclusively attributable to the employer and, believing that the employee in these circumstances should not have had to suffer financially, obtained, on an exceptional basis and with the support of the French Employment General Directorate, the release of the sums invested.

Legal expert from the Ombudsman's Office.

2– PROBLEMS THAT REMAIN

a– Legitimate cases for early release

In 2016, the Ombudsman again received requests relating to legitimate cases for early release and was thus forced to remind people of certain relevant principles.

↗ Intra-group mobility does not constitute grounds for an early release of the company savings plan

In one case we examined, the Ombudsman was forced to remind the applicant that intra-group mobility does not constitute grounds for an early release of the company savings plan (PEE). An employee saver was requesting that his plan assets be released after he moved from one group subsidiary to another. The account keeper refused to agree to his request. Having examined the case, the Ombudsman upheld the decision of the account keeper and stressed that, in compliance with the Interministerial Circular of 14 September 2005, an employee cannot secure early release of their plan assets on these grounds, even if they are able to prove they have entered into a new contract of employment.

↗ The amount released cannot exceed the deposit on the purchase of the primary residence

On occasion, the Ombudsman has been forced to recommend that account keepers amend the documentation they send to savers. One such case related to early release on the grounds of "purchasing a primary residence". For early release requests of this nature, applicable salary savings regulations dictate that the applicant provide a finance plan showing a deposit that includes any amounts released from their salary savings scheme. Moreover, the release request form provided to savers by the account keeper must state this explicitly. In the case we examined, the form at the centre of the dispute did not specify that the amount released could not exceed the deposit mentioned in the finance plan or that this deposit had to include the amounts released from the salary savings scheme on the grounds of "purchasing a primary residence".

The Ombudsman and the Deputy Ombudsman.

Supporting documents required on the birth of a third dependent child

The Ombudsman may have to interpret applicable regulations on early release. This was the case in 2016 when we examined a request for release on the grounds of "the birth of a third child". In compliance with the Interministerial Circular of 14 September 2005, the account keeper must collect the supporting documents establishing both the birth or adoption of a child and the permanent existence of three dependent children in the household. The saver must provide two supporting documents to the account keeper to this effect: the family record book (or a copy of the birth certificate) and a statement from the child benefit office (CAF) proving the existence of three dependent children.

With 'blended' families becoming increasingly common, it is sometimes more difficult to get hold of these specific official supporting documents, but there are other ways to prove the dependency of the third child. In one particular case, a divorced saver who fathered a third child with his new partner saw his request for an early release of his salary savings assets turned down by the account keeper. The saver was unable to provide a statement from the CAF proving he had three dependent children because the mother of his first two children was receiving child benefit, so the CAF statement mentioned only two children. In equity, and in light of the applicant's particular family setup, the Ombudsman consulted the Employment General Directorate which, as an exception in this specific case, ruled that submitting a divorce ruling and a tax return would be enough to prove the birth of a third dependent child and therefore secure for the saver the early release of his assets.

b– Problems related to proof

In some cases, the Ombudsman asks the account keeper to provide her with the recordings of phone conversations that employees wish to use in support of their request.

Listening again to a phone conversation can support the claim of one of the parties in a dispute and therefore help the Ombudsman to formulate her recommendation for that particular case. In one case, we were able to establish by listening to a phone conversation that an advisor had incorrectly informed the applicant that termination of the employment contract constituted grounds for releasing the collective retirement savings plan (PERCO). In this instance, we were able to release the sums placed into the PERCO in error, on an exceptional basis. However, in another case, by listening to a recording we were able to ascertain that the applicant had not remembered the content of the conversation correctly, so the opinion we issued was not in the applicant's favour.

In order to obtain the recordings, the applicant must be able to specify the exact date on which the call took place. If they are unable to do so, it is extremely difficult for the account keeper to recover the conversation. This is because they receive so many calls on a daily basis.

c– Default allocation of mandatory and/or discretionary profit-sharing bonuses

Just as in previous years, the Ombudsman has received requests concerning the default allocation of mandatory profit-sharing (known as participation in French) income. Remember, if the account keeper receives no specific instructions from the employee within the relevant timeframe, it applies the default allocation, i.e. 50% in the PEE and 50% in the PERCO. Until 2016, discretionary profit-sharing (known as intéressement in French) bonuses, however, were paid in full into the employee's bank account, unless otherwise instructed.

In the cases we received, applicants thought they had submitted their instructions within the relevant deadlines and claimed that these instructions had been ignored for whatever reason (routing of mail, lack of online validation, etc.).

Although the Macron law of 1 August 2016 changed nothing in terms of the default allocation of mandatory profit-sharing income, it did profoundly change the rules on how discretionary profit-sharing income is allocated. Since 1 January 2016, in the absence of explicit instructions from the saver, the amounts owed for discretionary profit-sharing have no longer been paid into their bank account but allocated in full to the PEE and are therefore locked up for at least five years.

In spite of this new regime that significantly changes things for salary savers, the Ombudsman has received very few complaints about the new default allocation of discretionary profit-sharing income. The clear and precise provisional arrangements set out by the government have doubtless prevented misunderstanding and mistakes on the part of employees well in advance of any need for mediation. The Macron law gives employees a right of withdrawal in the three months following notification of allocation to the PEE (for discretionary profit-sharing rights allocated between 1 January 2016 and 31 December 2017). It is, however, too soon to tell whether these new measures will be properly taken on board by employees, i.e. whether they will be aware that the default position is no longer for their discretionary share of profits to be like an immediate cash bonus but rather will be invested in their PEE. They can only have the money paid straight into their bank account if they explicitly choose that option.

If the account keeper receives no specific instructions from the employee within the relevant timeframe, it applies the default allocation for mandatory profit-sharing income: 50% in the PEE and 50% in the PERCO.

3– PROBLEMS THAT ARE GETTING WORSE

The Ombudsman has noticed an increase in the number of requests relating to PERCOs. The government's efforts to encourage long-term saving should be applauded, but it is equally important, since these savings will be locked up until retirement, to ensure that employees are clear about the choice they have to make.

While there are nine grounds for releasing PEE assets, there are only five for PERCOs. Moreover, not all companies have a PERCO in place, and with this in mind, one of the situations of most concern to the Ombudsman is the case of an employee whose employment contract has ended. The termination of an employment contract does not constitute grounds for releasing PERCO assets, no more so than unemployment or, assuming the person in question has found another job, the new employer not yet having a PERCO into which the employee can transfer their previous PERCO assets. In such a situation, the Ombudsman has observed that, since their employment contract ended, the employee is being charged account keeping fees which, in view of the amounts locked up for fifteen years or so, will have halved the amount of assets locked up. In one such case, we consulted the Employment General Directorate to examine possible solutions. Beyond that particular case, the Ombudsman is keen for a debate to begin on how the retirement savings system can be adjusted to deal with this kind of situation.

The issues surrounding PERCOs brought before the Ombudsman in 2016 can be split into three categories:

- First, there are employees who do not understand what the PERCO is and how it differs from the PEE. In these cases, the Ombudsman checks that the information about each available salary savings scheme on the account keeper's website is clear, complete and accessible.
- Second, there are employees who do not understand the consequences of the PERCO, in particular that there are fewer grounds for early release. For example, the termination of an employment contract, divorce or unemployment are not legitimate grounds for releasing PERCO assets (see the Ombudsman's Online Diary for February 2017).
- Third, there are purely clerical errors involving, for example, the choice between transfer and arbitrage, the effects of which are very different. An arbitrage, which involves adjusting the allocation of one's savings between the different components offered within a single savings scheme, can be revoked, while a transfer, which involves moving PEE savings into a PERCO, cannot. In such a case, the Ombudsman checks that, since this is a choice that can be made online, the account keeper's website makes provision for a summary that enables the saver to correct any mistakes before making the definitive choice. The Ombudsman wishes to take this opportunity to welcome the decision by a major account keeper to change its website so that the employee is clearly informed that the savings they are about to transfer to a PERCO are *"unavailable until retirement (except where there are legitimate grounds for early release), [and] cannot be transferred to another PERCO"*.

For the first time, the number of requests pertaining to Forex and binary options has fallen slightly.

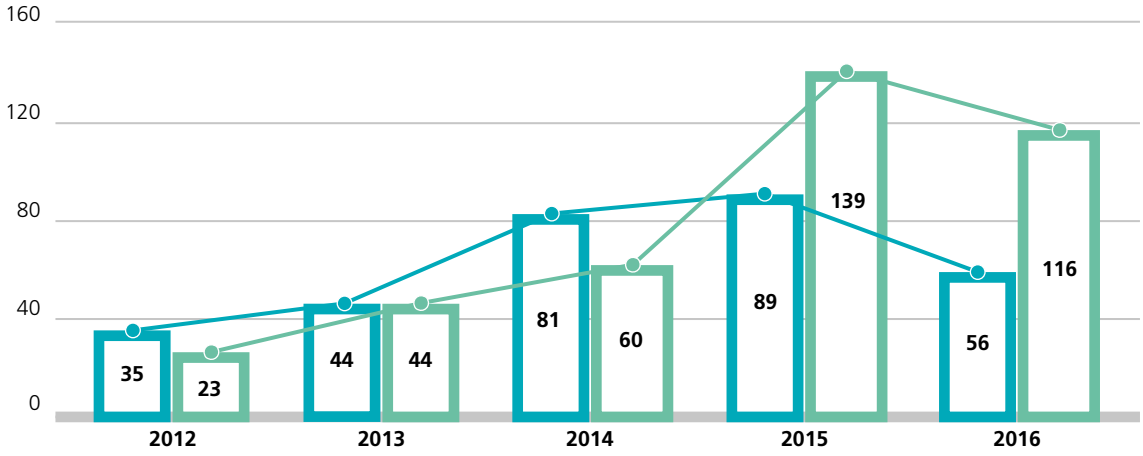
B– FOREX

The number of cases we received from applicants who had seen all or part of their savings swallowed up by forex and binary options websites increased fivefold between 2011 and 2015. This number decreased for the first time in 2016.

The drop was slightly more significant (89 cases to 56, a reduction of 37%) as regards cases involving companies not authorised to offer their financial services in France. However, since this lack of authorisation constitutes a criminal offence, the Ombudsman must recuse herself and forward the case to the Public Prosecutor in compliance with Article L. 621-20-1 of the Monetary and Financial Code.

If we consider cases that are within the Ombudsman's remit because they concern a company authorised by a regulator in an EU Member State, the drop in the number of cases in 2016 was much smaller (139 to 116, a reduction of 17%). Most mediation requests (83%) concerned companies authorised by the Cypriot financial regulator to use the European passport rules to easily market their services throughout Europe. All complaints of psychological manipulation, harassment or siphoning of funds related to firms authorised by the Cypriot regulator. Lastly, the 116 cases received pertained to 40 different companies, although half of them were focused on just five firms.

NUMBER OF FOREX RELATED CASES RECEIVED EVERY YEAR



Once again in 2016, these companies took advantage of the low interest rates on traditional investments or people's hopes of topping up their income through trading to make promises of significant, quick gains while concealing the high risks necessarily involved in such strategies. Many investors, reassured by the trustworthy appearance of these companies' websites with their EU authorisations or sponsorship deals with major football teams, allowed themselves to be tempted, most of them at this stage committing only a small amount and expecting they would merely be getting a flavour for trading. That is when the mechanism kicks into motion, and the client is soon contacted again, first by post and then by phone. The 'advisor' talks a great deal about the potential gains but makes little or no mention of the risks. He/she is clever and, in order to gain the client's trust, offers them training in trading, which turns out to be extremely brief, and even a demonstration account which, naturally, guarantees no losses.

After depositing several hundred euros, the client is giddy about the initial gains and is even offered 'bonuses', although of course the terms and conditions for granting these 'bonuses' are not disclosed (conditional on a trading volume 30 or 40 times greater than the bonus). At this stage, the 'advisor' is in constant contact and will not hesitate to engage in psychological manipulation and adopt a more personal touch in order to earn even more trust. He/she calls regularly to show the client how effective the advice has been and to encourage them to increase the amounts they invest in their trading account. The most misleading arguments are used both to reassure the client and to get them to invest the funds quickly (see the transcript of a phone conversation between an 'advisor' and an investor, relayed in the Ombudsman's Online Diary of November 2016).

As soon as the first losses start to appear, the client is caught in a downward spiral because the 'advisor' is telling them that the only way to recover these losses is to put more money in. Often, new 'advisors' then come onto the scene, claiming that the client will be able to start afresh with them and make money again. These 'advisors' use all the tricks in the book to apply pressure and get as much money as possible, sometimes even blaming or blackmailing the client. Once they feel they have got as much money as possible out of the client, the 'advisors' disappear completely and the client, realising too late that he/she has fallen into a trap, finds himself/herself up against a wall.

The Ombudsman notes that, particularly in 2016, these practices became even more aggressive and increasingly targeted investors likely to make significant payments. Several complaints regarding incidents of harassment and manipulation were from applicants with plenty of savings, of which the 'advisors' were doubtless aware. Figures for 2016 mediations appear to support this, with the average amount

recovered increasing to €11,938 and half of all cases concerning an amount above €5,000. The losses incurred by some investors topped €90,000, and the cumulative losses in cases handled on the merits, i.e. involving authorised companies, exceeded €1 million.

However, once we have investigated the case and engaged in numerous written and occasionally lengthy telephone exchanges, we can secure good results in plenty of cases. In order to do so, it is essential that the client has retained evidence of their own exchanges with these companies (screenshots, e-mails, instant messaging history, phone conversations, etc.) so we can corroborate the facts.

In 2016, the Ombudsman made 78 recommendations on this topic, of which 71 were in favour of the applicant, enabling them to recover €823,733 euros (€379,209 in 2015), which is 79% of the total sum lost.

As we can see, this problem very much still exists, but we can be pleased that the number of complaints has gone down for the first time since the phenomenon first surfaced. Although it is still somewhat early to draw conclusions, it is highly likely that the AMF's efforts over the last few years are partly responsible. Our proposed ban on advertising these toxic products materialised on 9 December 2016 through the entry into force of the law on transparency, anti-corruption and economic modernisation, known as the Sapin 2 law, which outlaws all direct or indirect digital advertising liable to affect retail investors and concerning speculative and risky financial products including forex and binary options. In addition, the Ombudsman awaits with great interest the entry into force on 3 January 2018 of the European Markets in Financial Instruments Regulation (MiFIR) and, more specifically, the Article 42 product intervention rule, which will entitle all national EU regulators to ban forex trading and binary options outright.

In spite of all this, and even if the number of cases continues to fall in 2017, we must remain vigilant and we are already seeing the first signs of the same techniques currently used in forex and binary options being shifted to other products on offer through companies such as rare earth metals and diamonds.

The only way investors can shield themselves properly is to stay off websites offering forex trading and binary options and remember that there is no such thing as a high return without a high risk.

KEY FIGURES ON FOREX AND BINARY OPTION MEDIATION

The forex and binary options cases closed in 2016 resulted in 71 favourable financial recommendations. Almost all of these were followed by the parties, more often than not after several reviews and long negotiations, resulting in total compensation of €823,733 (compared with €379,209 in 2015), which accounts for 79% of the amounts lost. The amounts recovered ranged from €200 to €84,170, with an average of €11,938 and a median of €5,000.

RARE EARTH METALS, DIAMONDS AND OTHER 'SAFE HAVENS': A NEW PLAYGROUND FOR FRAUDSTERS?

Following several successive years of increases in the number of requests pertaining to forex and binary options, the slowdown witnessed in 2016 may simply be explained by this fraudulent activity moving to other investments.

With interest rates very low and people fearing another financial crisis, investments in so-called safe-haven securities have become most tempting. Such opportunities are reassuring because of the tangible nature of the asset (rare earth metals, diamonds, wine, etc.), while also claiming to offer high returns, often because of the rarity of the product or a supposed boom in demand.

The Ombudsman received 22 complaints in this area in 2016, compared with just three in the previous year. The aggressive commercial practices we witnessed are similar to those employed in the forex and binary options sector. However, the mechanics of the fraud are even more cynical, with the client persuaded to invest in an asset they will never see and cannot be sure even exists. Even if the investor does actually own the asset, they come to realise they have overpaid for it and, because of its specific features, will never be able to sell it on.

Unfortunately, in the majority of the first few cases we have received, we have not had any response from the companies involved, making it impossible to begin mediation. The postal addresses supplied to investors are either non-existent or just PO boxes, the phone numbers send the call somewhere abroad, and the companies were set up using false names.

There is little hope of the investor getting all or any of their money back, so they are often left with no choice but to file a complaint.

3– 2016: Major class action

The class action brought before the Ombudsman's Office in 2016 contained 102 cases, of which 97 were closed by the end of the year. It related to the financial disclosure by French account keepers to their clients, shareholders of a large foreign company, and to the tax consequences under French law of a spin-off voted for by said foreign company. As a result of the spin-off, the former shareholders were allocated proportional bonus shares in the newly created subsidiary. Under French tax law, the newly awarded shares are deemed to be a taxable dividend.

French shareholders awarded these bonus shares contacted the Ombudsman after noticing on their transaction advice slips an advance, non-fixed withholding tax in respect of dividends, sometimes pushing the shareholders' accounts into the red. In their view, their account keeper should have given them prior warning of this spin-off and its tax-related consequences. In the absence of such notice, they felt they were denied the opportunity to sell their shares before the transaction and thus avoid these consequences.

Initially, the Ombudsman reminded the shareholders that case law consistently considers that an account keeper is obliged neither in usage, equity nor law to inform its clients of an event affecting an issuer[6]. However, Article 322-12 II of the AMF's General Regulation establishes two exceptions to this disclosure non-obligation:

6– Ruling of the Commercial Chamber of the French Court of Cassation no. 88-17.291 of 9 January 1990; Ruling of the Commercial Chamber of the French Court of Cassation no. 06-18.762 of 19 February 2008.

"II. - The custody account-keeper shall send, as quickly as possible, to each holder of a securities account the following information: 1° Information relating to operations in financial securities which require a response from the account holder, which it receives individually from the issuers of financial securities; 2° Information relating to the other operations in financial securities which give rise to a modification to the assets recorded on the client's account, which it receives individually from the issuers of financial securities; "

On reading this Article, it would appear that the second of these situations should apply in this particular case, given that the spin-off is an operation in financial securities giving rise to a modification to the assets recorded on the shareholder's account. However, the Ombudsman also noticed that the information sent by the foreign issuer to the account keepers contained no tax-related elements, which is perfectly understandable and normal in such a case.

Therefore, although complaints can be made against certain account keepers for not passing on information in their possession to their clients as quickly as possible, in respect of the Article quoted above, they cannot be criticised for not communicating the tax-related consequences of this operation in financial securities because they themselves had not received such information from the foreign issuer.

Consequently, the Ombudsman issued a recommendation not in favour of the applicant in all these cases.

A PEE is declared inactive if the account has not been the subject of any transaction since becoming available and if the account holder is alive and has not come forward at the end of a period of five years.

4– 2016: Plenty of new regulations affecting the AMF Ombudsman's Office

On top of the one directly governing transposition of the Consumer Mediation Directive, there were four new regulations that had in 2016, and may continue to have, consequences for the AMF Ombudsman's Office.

A– FIRST ECKERT LAW CASES (DORMANT ACCOUNTS AND UNCLAIMED POLICIES)

Since 1 January 2016, when Law No 2014-617 of 13 June 2014 (known as the Eckert law) on dormant bank accounts and unclaimed life insurance policies came into effect, financial institutions have been required, on an annual basis, to draw up a list of their dormant accounts and unclaimed policies, contact the holders and, in the absence of any transaction or manifestation on the part of the holders, transfer the corresponding sums to the *Caisse des Dépôts et Consignations* (CDC). Since salary savings schemes are affected by this reform, towards the end of 2016 the AMF Ombudsman started to receive the first disputes arising from the new measures.

Pursuant to Article L. 312-19 of the French Monetary and Financial Code, a company savings plan (PEE) is declared inactive if the account holder is alive and, at the end of a period of five years, both of the following criteria have been fulfilled:

- the account has not been the subject of any transaction; and
- the account holder has not come forward in any way.

The five-year dormant period begins at the end of the asset lock-up period, which is five years for the PEE.

Once the account has been declared inactive, and provided it remains so for 10 years from the end of the asset lock-up period (or three years if the account holder is dead), the account keeper must inform the account holder and update this information every year and then six months prior to the assets being liquidated and the funds being transferred to the CDC, which will hold onto them for 20 years (27 years in the event of the account holder's death).

If the client wishes to prevent their assets being liquidated and then transferred to the CDC, they need to carry out a transaction or come forward (this can be done simply by logging in to their dedicated online area).

In the first cases of this type submitted to the AMF Ombudsman's Office, applicants claimed they received no information prior to the liquidation and transfer of their assets to the CDC, and requested settlement.

In one case in which the saver complained not so much about the liquidation as about the transfer to the CDC, the account keeper acknowledged that, following an incident, the saver indeed did not receive any information prior to the liquidation of her dead husband's salary savings assets and the transfer of the funds to the CDC. The account keeper followed the Ombudsman's recommendation and refunded the fees deducted upon the transfer of funds. However, the applicant's request to have the funds themselves refunded was still unresolved. The account keeper simply advised her to visit the website www.ciclade.fr, a free service enabling people to trace sums from dormant accounts and unclaimed life insurance policies that have been transferred to the CDC.

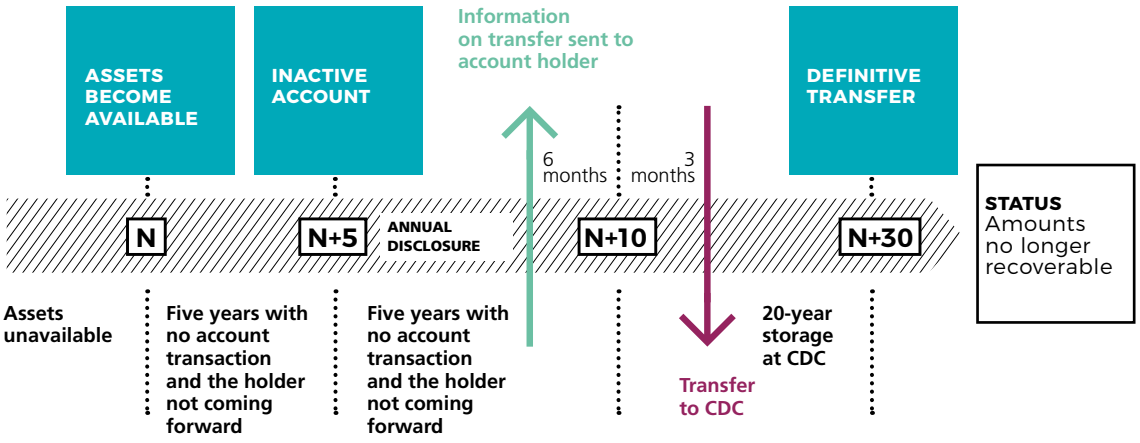
Unfortunately, the applicant did not have internet access. Having consulted the CDC to ascertain the alternative solution in such a case, the Ombudsman was able to inform the applicant that she could submit her refund request via post.

In another case, the account keeper in question sent the Ombudsman a copy of the correspondence sent to the account holder six months before the liquidation of the assets and the transfer to the CDC. The Ombudsman was thus able to confirm that, in compliance with Article L. 312-20 of the Monetary and Financial Code, the account keeper had notified the salary savings plan holder and that the correspondence contained all the pertinent information.

The aforementioned Article L. 312-20 requires that the institution inform its clients "by any means". In this case, the Ombudsman noted that the correspondence had been sent via registered post but with no notice of receipt, which makes it easier to identify any letters that have not been properly distributed. The Ombudsman would like to think that taking this additional precaution would reduce the number of claims pertaining to a lack of disclosure, but there is no doubt that some types of dispute resulting from implementation of the Eckert law on salary savings will still crop up.

Where the Ombudsman finds no evidence of misconduct on the part of the account keeper, she invites the applicant to visit www.ciclade.fr in order to file a refund request there.

APPLICATION OF THE ECKERT LAW TO SALARY SAVINGS



B– REFORM OF OBLIGATIONS REGIME IN CIVIL CODE

Ordinance No 2016-131 of 10 February 2016, which came into effect on 1 October 2016, amended more than 350 Civil Code articles. The aim of this legislative reform was twofold: to make French law more attractive in the international arena, and to offer more contractual protection.

Any new contract entered into after this date is governed by these new provisions. For example, professionals should be aware that, from now on, case law dictating the following has been consecrated (in Article 1170 of the Civil Code): *"any clause which deprives a debtor's essential obligation of its substance is deemed not written" and "the contract for pecuniary interest (Article 1169) is itself deemed null if the counterparty is illusory or derisory during its formation"*.

One example of case law, the notion of apparent authority, is now consecrated in a new Civil Code article (Article 1156). We used this to resolve a particular case submitted to us for mediation. Article 1156 stipulates that when an agent acts without authority or beyond the limits of their powers, the principal is not bound, except if the other contracting party legitimately believed in the agent's powers.

For example, an individual cannot be criticised for failing to demand proof of his bank advisor's powers if the advisor makes a commitment to the client. Even if there are not sufficient powers, the financial institution is committed simply if the client was legitimately able to believe in the advisor's powers.

Consequently, the Ombudsman was obliged to issue a recommendation based on this theory in a case opposing a saver and their financial institution.

In the wake of disappointing results in 2012 across all the accounts this saver held with the institution in question, his advisor agreed to waive management fees on all his accounts in 2013. This commitment was formalised in a written statement drafted by the advisor. When he received the annual statements for his accounts for 2013, the client was therefore surprised to note that he had been charged management fees of €3,260. When he asked for these to be refunded, the financial institution refused. The Ombudsman was drafted in at this stage.

Initially, the financial institution refused to refund the fees because its employee, in his position as a portfolio manager, did not have sufficient powers to make such a commitment on behalf of the company. Moreover, both the client and the employee were no longer with the company.

FIN-NET meeting of 29-30 September 2016 in Berlin. The Ombudsman speaks alongside Francis Frizon, a member of the *Sterring Committee*.

However, the Ombudsman ruled that in this case it was not possible to rule out reclassification before the courts of the circumstances described above as apparent authority, thereby rendering the institution liable. The Ombudsman found that the client could legitimately have believed that someone in the advisor's position would have the necessary powers to authorise a goodwill gesture such as waiving the management fees for a year.

The financial institution agreed to offer the client a goodwill gesture in line with the Ombudsman's recommendation.

C– SAPIN 2 MEASURES BANNING CERTAIN FORMS OF ADVERTISING

Since January 1, Article 72 of Law No 2016-1691 has banned electronic advertising of highly speculative financial products such as retail binary options and forex trading. These provisions feature in the chapter of the annual report outlining the Ombudsman's Office's activity and results in this sector.

D– 21ST CENTURY JUSTICE MODERNISATION LAW ON MEDIATION AS A PRIOR RESORT

Article 4 of the 21st century justice modernisation law on resorting to mediation, which came into force on 18 November 2016, states that, under penalty of inadmissibility, the declaration to the registry of the court of first instance must be preceded by an attempt to reach an amicable solution.

Consequently, any applicant requesting a sum of €4,000 or less (pursuant to Article 843 of the Code of Civil Procedure) before the court of first instance (or the local magistrate before 30 June 2017, this position being abolished on 1 July 2017) via a declaration to the registry (i.e. not through a judicial officer) risks their application being inadmissible if they have not first brought the case before a mediator or Ombudsman.

4– THE OMBUDSMAN'S NATIONAL AND INTERNATIONAL ACTIVITIES

1– National

Since 2007, the AMF Ombudsman has belonged to the Club of Public Service Ombudsmen. Since February 2014, she has been a member of the Club's board which meets once a month, in addition to the monthly plenary meeting.

The Ombudsman also co-hosts a semi-annual training day dedicated to "The legal aspects of mediation", organised under the auspices of the Club. This year, she gave presentations on the overall legal environment, mediation-specific concepts and, most importantly, the reform of legislation on contracts and obligations, which came into force on 1 October 2016.

2– European

As she does every year, the AMF Ombudsman attended meetings of the European Commission's FIN-NET network, which consists of 58 ombudsmen from 25 European Economic Area countries.

At this year's meeting held in Berlin on 29 and 30 September 2016, she took part in many different discussions, including on a possible media campaign aimed at raising awareness of FIN-NET. The network is a hub for wide-ranging discussions that proved particularly useful during transposition of the Consumer Mediation Directive and helped to implement the European Commission's interactive platform, as provided for by the Online Dispute Resolution (ODR) Regulation (see page 6).

3– International

Since January 2013, the AMF Ombudsman has been a member of the International Network of Financial Services Ombudsmen (INFO), which contains nearly 60 banking, finance and insurance mediators from across the globe. She engages in discussions with other members and takes part in the network's annual meeting, which this year was held in Armenia. During the plenary meeting, the AMF Ombudsman gave her position on the fine balance between transparency and confidentiality.

Lastly, in 2016, the Ombudsman once again took part in the University of Oxford's annual civil justice conference on ADR and ODR, and spoke on the topic "What do people want from dispute resolution?", setting out the different reasons why consumers present their cases for mediation.

Members of the Club of Public Service Ombudsmen met in July for a day of internal seminars. They broached the question of training Club members and their teams and sharing best practice in light of a continual increase in the number of requests.

5– THE OMBUDSMAN'S COMMUNICATION ACTIVITIES

1– The Ombudsman's *Online Diary:* a continuing success

Since 2014, the AMF Ombudsman has written a monthly blog on the AMF website (www.amf-france.org – The Ombudsman) in order to provide a better understanding of her role and the benefits of mediation. The Ombudsman's Online Diary highlights a mediation case, in complete confidentiality, which illustrates the task that the Ombudsman and her team of legal experts tackle on a daily basis.

The readership of the Ombudsman's Online Diary again increased sharply in 2016, confirming web users' appetite not only for the details of that month's case, but also the 'Lesson to be learned', both by consumers and professionals. The blog had nearly 23,430 hits in 2016, which equates to 1,952 a month, compared with 1,432 in 2015 and just 814 in 2014.

In 2016, Marielle Cohen-Branche also continued her monthly appearances on the live BFM Business TV show *Intégrale Placements*, where she talks about the cases previously covered in her *Online Diary*.

OMBUDSMAN'S *ONLINE DIARY*

The cases published in 2016 and available in full on the AMF website
www.amf-france.org – The Ombudsman

- "Best execution" of orders or the relative importance of the total cost paid by the client
- Binary options and telephone training on how to trade: how to see your savings go up in smoke
- When a holding disappears from a share savings plan: understanding how pre-emptive rights work
- Beware of financial packages that are ill-suited to customer needs!
- Beware the difference between transferring and switching assets within employee savings schemes!
- Inheritance: what are the rights of the beneficial owner of a securities portfolio?
- Employee savings: your allocation decisions must be made in writing a nd within the required timeframe!
- Sale of unlisted shares held under an equity savings plan: don't forget to pay the receipts into your plan's cash account – and inform your bank!
- Company savings and purchase of principal residence: documentation is not interchangeable.
- Avoiding confusion over UCITS orders centralisation cut-off times

2- Speeches by the Ombudsman

Keen to improve the visibility and knowledge of mediation, the Ombudsman speaks at a number of events organised for professionals and the general public.

In 2016, she presented at a dozen or so seminars and/or forums for professionals or academic institutions.

As well as her speech on 29 November 2016 at the Consumer Mediation conference (see photo below), the Ombudsman's notable speeches this year included ones at the European Institute of Financial Regulation's (EIFR) *Matinale Actualité* on "Financial mediation: new challenges and lessons to be learned" and at the *Ethics and Financial Markets* conference organised by Revue Banque.

The Ombudsman also led several training sessions and spoke about her experience and her vision of mediation in France and Europe. In particular, Ms Cohen-Branche spoke at the AMF's training programme for investment services compliance officers (RCSIs), outlining for participants how the AMF's mediation process works.

Her educational role also involves writing articles for the trade press, which are sometimes picked up by media with a broader audience. Two examples of articles published in 2016 are:

- 2016: *une étape historique pour la médiation* (2016: an historic year for mediation) - Joly Bourse Newsletter - September 2016
- *La médiation change de dimension* (A new dimension for mediation) - *Banque & Droit* - July/August 2016

On 29 November 2016, the AMF Ombudsman spoke at a round table during the Consumer Mediation conference held in Bercy by the French secretary of state for consumer affairs with a view to presenting a first update on the generalisation of consumer mediation in France almost a year after the transposition of the European Directive. The round table was chaired by Emmanuel Constans, Chairman of the Consultative Committee of the Financial Sector (CCSF); also present were Jean-Pierre Teyssier, tourism and travel Ombudsman and Chairman of the Club of Public Service Ombudsmen, as well as Luc Tuerlinckx, Chairman of the Belgian Mediation Authority and telecoms Ombudsman.

ANNEXES

Annex 1

ARTICLE L. 621-19 OF THE MONETARY AND FINANCIAL CODE

AMENDED BY ORDER NO. 2015-1033
OF 20 AUGUST 2015 - ART. 2

I– The Ombudsman of the Autorité des Marchés Financiers shall be appointed by the chairman of the Autorité des Marchés Financiers, after consultation with the Board, for a three-year renewable term.

The Ombudsman is authorised to deal with claims from any interested party relating to matters within the competence of the Autorité des Marchés Financiers and to resolve them appropriately.

The Ombudsman carries out his consumer mediation duties under the conditions provided for in Title V of Book I of the Consumer Code.

A referral to the AMF Ombudsman shall suspend limitation of any civil or administrative action as from the day on which the referral to the Ombudsman is made, pursuant to Article 2238 of the Civil Code. Said limitation shall resume for a period that cannot be less than six months when the AMF Ombudsman announces the close of the mediation procedure.

The AMF Ombudsman cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes.

The Ombudsman publishes an annual report on his activity.

II– The Autorité des Marchés Financiers may formulate proposals for amendments to the laws and regulations concerning the information provided to the holders of financial instruments and to the public, the markets in financial instruments, in units referred to in Article L. 229-7 of the Environmental Code and in assets referred to in paragraph II of Article L. 421-1 herein, and the status of the investment service providers.

Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal of the French Republic. Said report presents, in particular, the changes to the regulatory framework of the European Union applicable to the financial markets and reviews the cooperation with the regulatory authorities of the European Union and of the other Member States.

Annex 2

MEDIATION CHART

Mediation team (2017)

GÉRARD RAMEIX
Chairman

BENOÎT DE JUVIGNY
Secretary General

MARIELLE COHEN-BRANCHE
Ombudsman

CLAIRE CASTANET
Director
Retail Investor Relations Division

MEDIATION UNIT

FRANÇOIS DENIS DU PÉAGE
Deputy Ombudsman

LYSIANE FLOBERT
Assistant

LAËTITIA HAVAS
VIRGINIE LAVOLÉ
NELLY LEBEL
FANNY THOMAS
JÉRÉMIE WIEDLIN
Legal Advisers

Annex 3

MEDIATION CHARTER

Article 1– PURPOSE OF THE CHARTER

This charter is intended for any person who refers a case to the Ombudsman. Its provisions, to which the parties are subject, govern the mediation process.

Article 2– THE OMBUDSMAN

Pursuant to Article L. 621-19 of the Monetary and Financial Code, the Ombudsman of the Autorité des Marchés Financiers (AMF), a public consumer Ombudsman for financial matters, shall be appointed by the chairman of the AMF, after consultation with the Board, for a three-year renewable term. The Ombudsman carries out his consumer mediation duties under the conditions provided for in Title V of Book I of the Consumer Code.

Article 3– JURISDICTION

Any individual or legal entity is entitled to contact the Ombudsman with regard to a financial dispute of an individual nature falling within the jurisdiction of the AMF. However, the Ombudsman has no jurisdiction in the areas of banking, taxation and insurance.

Pursuant to Article L.152-2 of the Consumer Code, the Ombudsman is not authorised to intervene when:

- the consumer has no proof that he or she first attempted to resolve the dispute directly with the professional via a written claim;
- the dispute has been heard by another Ombudsman or by a court;
- the consumer submitted his or her request to the Ombudsman more than one year after filing a written claim with the professional.

Article 4– APPLICABLE PRINCIPLES

Independence: As part of the AMF, an independent public body, the Ombudsman has sufficient resources and a team dedicated to carrying out his duties. He also has his own budget.

Impartiality: The Ombudsman examines cases with regard to the parties' respective positions in a strictly neutral manner. He receives no direction on how to deal with the individual cases for which he is responsible.

Voluntary: Both parties should willingly enter into mediation, and they can withdraw from the mediation process at any time.

Confidentiality: The Ombudsman, his team and the parties to the proceedings are bound to observe strict confidentiality. Communications that have taken place during the mediation process may not be submitted or referred to in court.

Free of charge: No fees or expenses are charged to the parties to the dispute.

Suspension of the limitation period: Referral to the Ombudsman suspends limitation of any civil or administrative action as from the day the Ombudsman is contacted. Said limitation shall resume for a period that may not be less than six months when the Ombudsman announces the close of the mediation procedure.

Transparency: The Ombudsman presents an annual report reviewing his activities to the AMF Board. This report is published.

Article 5– MEDIATION PROCESS

Examination: The Ombudsman analyses and compares the parties' arguments. The examination is carried out in writing, but the Ombudsman may decide to hear the parties separately or together.

The parties may contact the Ombudsman without using an attorney. However, they may be represented or assisted by a third party of their choosing at any stage during the mediation process.

Duration: The Ombudsman renders an opinion within 90 days of receiving all necessary information from all the parties. This timeframe may be extended by the Ombudsman if the case is particularly complex.

Ombudsman's opinion and agreement of the parties: At the end of the process, the Ombudsman issues an opinion grounded in law and in equity. The mediation procedure ends with the delivery of this opinion or the withdrawal of one of the parties.

The parties may refuse or agree to follow the opinion of the Ombudsman who, where applicable, ensures the agreement is enforced.

Annex 4

OMBUDSMAN'S *ONLINE DIARY*, 2 DECEMBER 2016

"BEST EXECUTION" OF ORDERS OR THE RELATIVE IMPORTANCE OF THE TOTAL COST PAID BY THE CLIENT

Since 1 November 2007, when the Markets in Financial Instruments Directive (MiFID) came into force, investment services providers have had to apply "best execution" rules. As such, they must prepare an order execution policy that describes the factors used and the trading venues[1] selected to obtain the best possible result for their clients. With this month's case, I had the opportunity to revisit the applicable principles, and more specifically those relating to the relative importance of the total cost[2] paid by retail clients.

The facts

Mr T. stated that, on 3 December 2015, he placed a buy limit order at €12 for shares of X, valid until 31 December 2015. However, his order was not executed even though the price of the share in question reached €11.995 on 15 December at 5:18 p.m. As this price was below the limit set, Mr T. had a legitimate reason to be surprised not to have acquired the shares of X.

In response to his complaint, his account keeper, institution A., told him that his order had not been transmitted to the traditional execution venue, Euronext, but to an alternative foreign execution venue[3].

Mr T. disputed the choice of this venue on the basis of the likelihood of execution and, moreover, did not consent to having his instructions executed on a venue that was not the usual one. As the failure to execute his order caused him harm, Mr T. sought my assistance to obtain compensation.

The analysis

I questioned the client's account keeper. The institution argued, first, that its "best execution" policy lists both the traditional platform and an alternative platform among the trading venues used. Additionally, it stated that the total cost of the trade was the most important best-execution criterion. The account keeper informed me that, under this policy, Mr T.'s buy order was therefore issued to an alternative trading venue authorised by a European regulator.

I was told that, in this instance, on 15 December 2015, an order for 635 shares of X was executed at €11.995 on the traditional platform. This same amount was executed at €12.00 on the alternative venue. However, as shown in the order book, a copy of which was provided to me, the account keeper stressed that Mr T.'s order could not be executed due to the presence of a number of other investors in the stock on the alternative venue. Under the order execution time priority rules, his order was not a priority according to the "price/time" market rule.

In light of the above, institution A. confirmed its rejection of Mr T.'s claim.

The recommendation

First, since MiFID took effect, investment services providers have been required to prepare an order execution policy and provide it to the client. This takes the form of an appendix to the account agreement that clients sign when opening their account, and entities must notify their clients of any material change to their execution policy. In that context, investment services providers may suggest trading venues other than the incumbent exchanges, such as alternative venues, if they believe these venues will allow them to obtain the best possible result when executing their clients' orders.

1– Possible trading venues: regulated market, multilateral trading facility, systematic internaliser, or over the counter.

2– The total cost shall be the price of the financial instrument, plus the costs relating to execution, including all the expenses incurred by the client that are directly linked to the execution of an order, along with the charges specific to the execution venue, clearing and settlement charges and all other charges that may be paid to third parties participating in the execution of an order (Article 314-71 of the AMF General Regulation).

3– This can be a foreign regulated market (such as Equiduct, Xetra or the London Stock Exchange) or a multilateral trading facility. A multilateral trading facility, while not a regulated market, matches (buy and sell) orders – within the system and in accordance with predetermined rules – for financial instruments: the leading facilities are Chi-X, Turquoise, BATS, etc.

In this case, on reviewing institution A.'s order execution policy, I saw that the alternative venue in question was indeed listed as one of the trading venues selected by this institution. As such, I noted that clients are only required to give their prior consent to a trading venue when the order is executed outside a regulated market or multilateral trading facility[4]. However, as Mr T.'s order was not issued outside this type of trading venue, his consent was not required.

Furthermore, I observed that, in ranking its "best execution" factors, institution A. had made the best total cost paid by the client its first priority, not the likelihood of execution. On this point, I noted that, while Article L. 533-18 of the Monetary and Financial Code does in fact cite several possible best execution factors, such as the speed, likelihood of execution, price and nature of the order, best total cost remains the most important one and is assessed on a case-by-case basis. Pursuant to Article 314-71 of the AMF General Regulation, *"Where investment services providers execute orders on behalf of retail clients, best execution shall be determined on the basis of the total cost"*. In this regard, the *Guide to Best Execution* [5]stresses that *"when including qualitative criteria in the execution policy for retail clients, it should be remembered that total cost is the most important criterion for this category"*. Total cost means the price of the financial instrument plus all other execution-related costs.

In any case, it is also generally recognised[6] that simply issuing an order, and its subsequent registration, does not necessarily imply that it will be executed, even if the price limit set by the client is reached.

Orders are executed by applying two priority rules:

- first by price: a sell/buy order with higher/lower limits is processed before all orders at lower/higher limits, a market order, i.e. with no price limit, has priority over best limit orders and limit orders;
- and then by time: two orders in the same direction and at the same price are executed by order of arrival.

4– Article L. 533-18 III (3) of the Monetary and Financial Code.

5– AMF Position-recommendation 2014-07.

6– See: Beware! One market order can hide another: what are the rules on the priority of execution of orders?

Given that institution A. regularly prioritises total cost over likelihood of execution, I was therefore unable to conclude that the non-execution of Mr T.'s order, which was issued to an alternative venue, constituted a breach by institution A.

LESSON TO BE LEARNED

Due to the increased competition among trading venues fostered by MiFID, incumbent stock exchanges have been losing their monopoly since 2007. A number of alternative operators have emerged, making the financial market environment more complex and requiring that clients be provided clearer information.

It is important to be aware that, while these alternative venues offer attractive pricing, which has some effect on the total cost paid by the client, they do not necessarily always offer the same level of liquidity as the traditional regulated markets...Clients certainly always have the right to give a service provider specific instructions (Article L. 533-18 of the Monetary and Financial Code), but in that case the provider no longer guarantees the priority that had been decided on to obtain the best possible result with regard to the items covered by the specific instructions (Article 314-72 of the AMF General Regulation).

Annex 5

FIND OUT ABOUT MEDIATION

- FIN-NET website
  European financial ombudsmen network
  http://ec.europa.eu/internal_market/fin-net/index_en.htm
- INFO website
  International Network of Financial Services Ombudsman Schemes
  http://www.networkfso.org/
- Ombudsmen Club website
  http://clubdesmediateurs.fr/
- European Directive 2013/11/EU
  On alternative dispute resolution for consumer disputes
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:FR:PDF
- Regulation 524/2013
  On online dispute resolution for consumer disputes
  http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=OJ:JOL_2013_165_R_0001_01&from=EN
- Order no. 2015-1033 of 20 August 2015
  On alternative dispute resolution for consumer disputes
  https//www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031070940&categorieLien=id
- Decree no. 2015-1382 of 30 October 2015
  On consumer dispute mediation
  https://www.legifrance.gouv.fr/eli/decret/2015/10/30/EINC1517228D/jo

Advantages of the mediation procedure

- **FREE**
  No fees are charged for the procedure, either when a case is opened or when it is closed.

- **NON-BINDING**
  The Ombudsman makes a recommendation but the parties are free to reject it.

- **CONFIDENTIAL**
  The information exchanged during the mediation procedure, the names of the parties involved and the Ombudsman's recommendation may not be disclosed.

- **QUICK**
  In principle, mediation lasts three months from the time the parties supply the Ombudsman with all relevant evidence.

- **INDEPENDENT**
  The Ombudsman acts entirely independently. She receives no direction on how to deal with the cases for which she is responsible. The Ombudsman has sufficient resources to carry out her duties neutrally and impartially.

- **FAIR**
  Mediation is conducted in a fair, egalitarian and equitable manner in accordance with law and equity.

- **HANDLED WITH SKILL**
  In using the AMF's mediation service, investors can be assured that the Ombudsman and her team of legal specialists will handle their disputes with a high degree of expertise in banking and financial law.

- **EFFECTIVE**
  It is easy to contact the Ombudsman: requests can be submitted either by post or using the online form on the AMF website.

- **TRANSPARENT**
  The rules governing mediation and the mediation charter are available to the public on the AMF website. The Ombudsman publishes an annual report on her activities.

- **LEGAL**
  The use of mediation suspends the limitation period. Should mediation prove unsuccessful, the law grants the complainant extra time to bring the matter before the courts.

Contact the AMF Ombudsman

By post
Ms Marielle Cohen-Branche
Ombudsman
Autorité des marchés financiers
17, place de la Bourse
75082 Paris Cedex 02 – FRANCE

Or using the online form
available on the AMF website
www. amf-france.org > The Ombudsman

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

17, place de la Bourse – 75082 Paris Cedex 02 – France
Tél. : 33 (0)1 53 45 60 00
www.amf-france.org

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