



**MARCH 2021**

**ANALYSIS OF COMPLAINTS IN 2019-  
2020 BY FRENCH RETAIL INVESTORS TO  
THE AMF PUBLIC RELATIONS CENTRE  
CONCERNING EUROPEAN FINANCIAL  
INSTITUTIONS OPERATING ON A  
FREEDOM TO PROVIDE SERVICES BASIS**



[amf-france.org](https://www.amf-france.org)

AUTORITÉ  
DES MARCHÉS FINANCIERS



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*This study was performed by the Retail Investor Relations and Protection Division. It is based on sources that are considered to be reliable but whose comprehensiveness and accuracy cannot be guaranteed.*

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## INTRODUCTION

Following numerous alerts and complaints by retail investors received by its staff, the Autorité des Marchés Financiers (AMF) has decided to issue a quantified and objective overview of the complaints submitted by French retail investors against investment service providers (ISPs) operating on a freedom to provide services basis (FPS)<sup>1</sup> in France and, to a lesser extent, against institutions located outside the European Economic Area.

Thanks to the written and oral reports by retail investors who have contacted it directly, the AMF has been able to analyse the activities of these institutions with French clients. The findings given in this note are based on 221 alerts and complaints collected over two years (2019 and 2020) concerning the provision of investment services<sup>2</sup> in France by foreign institutions. These alerts and complaints were collected by the AMF Epargne Info Service helpline, which answers questions from retail investors and professionals regarding financial investment products, financial intermediaries and possible investment scams.

Among the findings of this study, it can be noted that the great majority of complaints coming exclusively from retail investors related to investment firms established in Cyprus.

As a reminder, authorised European institutions operating within the FPS framework in France are not subject to supervision by the AMF, but to that of the national authority in their home country, i.e. the country in which their head office is located. The services and products proposed by these institutions in France are proposed by means of a passport granted by the national authority of the home country, which must check that the institution complies with the provisions of Directive 2014/65/EU ("MiFID II").

Moreover, certain complaints relate to the illegal provision of investment advice, and practices by which an ISP redirects its client to an institution in its group located outside the European Economic Area, with which the client will no longer benefit from the protection provided by European law. These practices are in breach of European regulations.

The figures presented in this note are established on the basis of reports from retail investors who contacted the AMF between 1 January 2019 and 31 December 2020.

<sup>1</sup> The freedom to provide services refers to the provision of an investment service or the performance of an investment activity by an investment firm in a State of the European Economic Area other than its home Member State, in which it operates without a branch on the basis of the European passport provided for in Article 34 of Directive 2014/65/EU of 15 May 2014 on Markets in Financial Instruments (MiFID II). Under the principle of mutual recognition, investment firms authorised in their home Member State can provide all or part of the services and investment activities for which they have received authorisation in the whole European Economic Area.

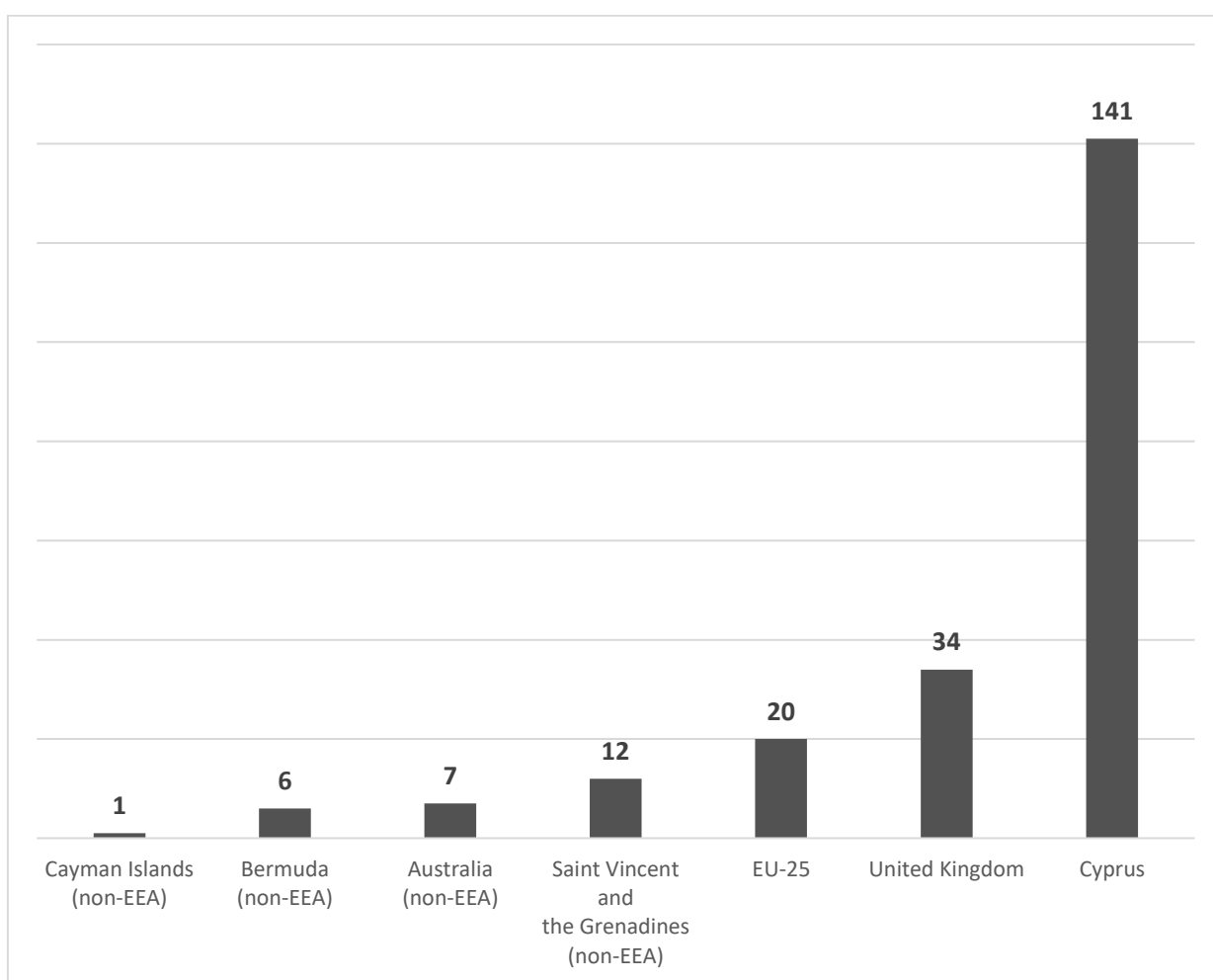
<sup>2</sup> These services are as follows: reception and transmission of orders services for third parties, third-party order execution, proprietary trading, portfolio management for third parties, and investment advisory services.

## 1. ORIGIN OF ISPS OPERATING ON AN FPS BASIS INVOLVED IN COMPLAINTS AND ALERTS

In all, 221 complaints were received by the AMF Épargne Info Service helpline between 1 January 2019 and 31 December 2020, concerning 30 investment service providers (ISPs) from the European Union and four institutions from third countries.

The graph below shows the home countries of the ISPs for which an alert or complaint<sup>3</sup> was sent to the AMF staff since January 2019.

**Graph 1: Breakdown of complaints and alerts received according to the country in which the ISP concerned is established (Total 221)**



Source: AMF, December 2020<sup>4</sup>

<sup>3</sup> The AMF helpline receives several types of requests: complaints, alerts and requests for information. An alert is the denunciation of a market participant or a participant's improper behaviour having not necessarily entailed a financial loss. A complaint, on the other hand, inevitably involves a financial loss.

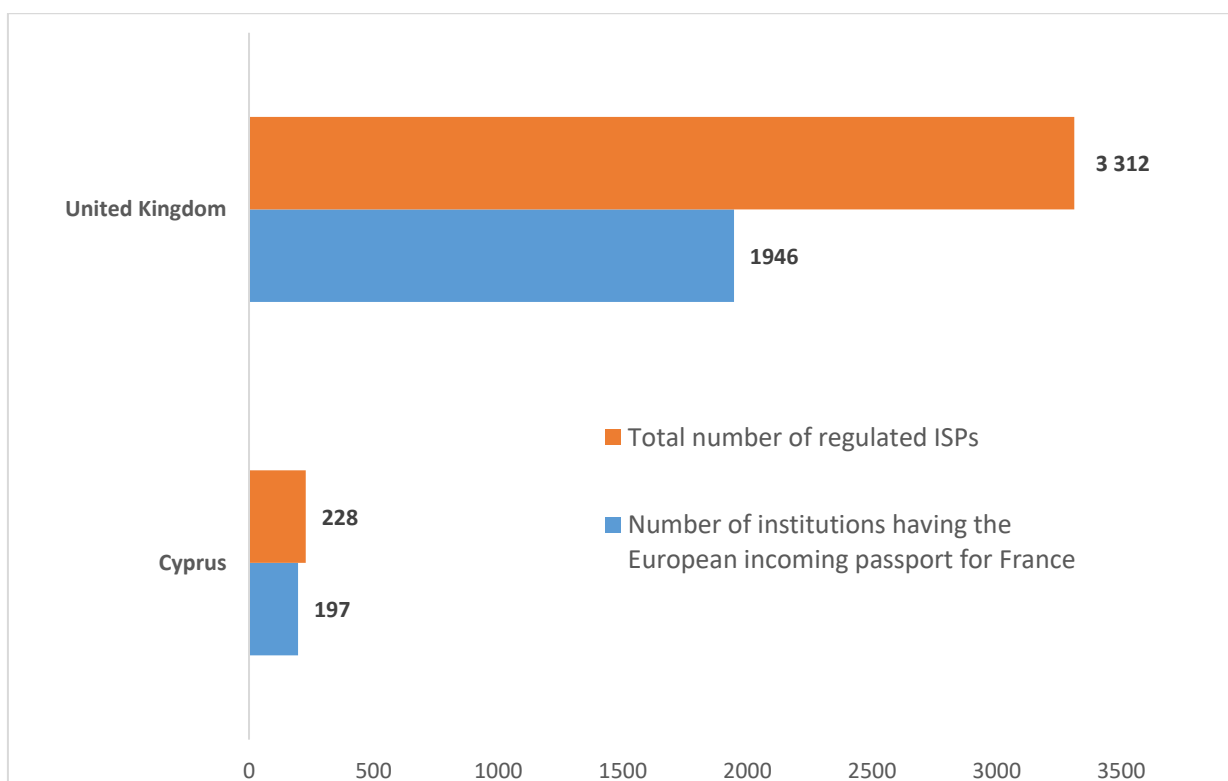
<sup>4</sup> The EU-25 corresponds to all the EU countries except Cyprus, France and the United Kingdom.

Since 1 January 2021, British institutions are no longer authorised to continue their commercial operations with French clients unless they have established a subsidiary in another EEA country having the European passport.

Of the 221 complaints and alerts received, 63% related to ISPs established in Cyprus, having the CySEC as competent national authority, and operating on a freedom to provide services basis in France. Ranking second in volume terms, 15% of the complaints concerned British entities regulated by the FCA.

Lastly, twenty-six complaints applied to entities located outside the European Economic Area (Bermuda, Cayman Islands, Saint Vincent and the Grenadines, and Australia). Since these entities have not established an authorised branch in France pursuant to Article L. 532-48 of the Monetary and Financial Code, they are not authorised to provide investment services to French investors. The complaints concerning extra-European institutions appeared in 2019, but this trend became more acute throughout 2020, and especially at the end of the year.

**Graph 2: Comparison between the number of authorised ISPs in the United Kingdom and Cyprus and, of these, the number of ISPs which have informed the AMF of an incoming passport to provide services on an FPS basis in France**



Source: AMF and other regulators, December 2020

A comparison between the authorised ISPs in Cyprus and the United Kingdom tends to show the very significant use of the passport by ISPs authorised in Cyprus and operating on an FPS basis with France.

At the same time, it is noted that the complaints of French investors concern offers coming from Cypriot market participants in a significantly higher proportion:

- Of 228 authorised ISPs in Cyprus, 197 (i.e. 86%) carried out passport notification with France pursuant to Article 34 of MiFID II, and 15 of them (i.e. **7.6% of the Cypriot ISPs operating in France**) were the subject of complaints by French investors to the AMF.
- By comparison, of 3,312 authorised ISPs in the United Kingdom, 1,946 (i.e. 59%) carried out passport notification with France, and 12 of them (i.e. 0.6% of the British ISPs operating in France) were the subject of complaints by French investors to the AMF.

ISPs authorised in Cyprus therefore appear to be over-represented among the investor complaints received by the AMF.

Lastly, the analysis of these alerts and complaints highlights the substantial marketing of complex, high-risk financial products such as CFDs. Of the underlying assets most frequently proposed, Forex CFDs are the most heavily represented.

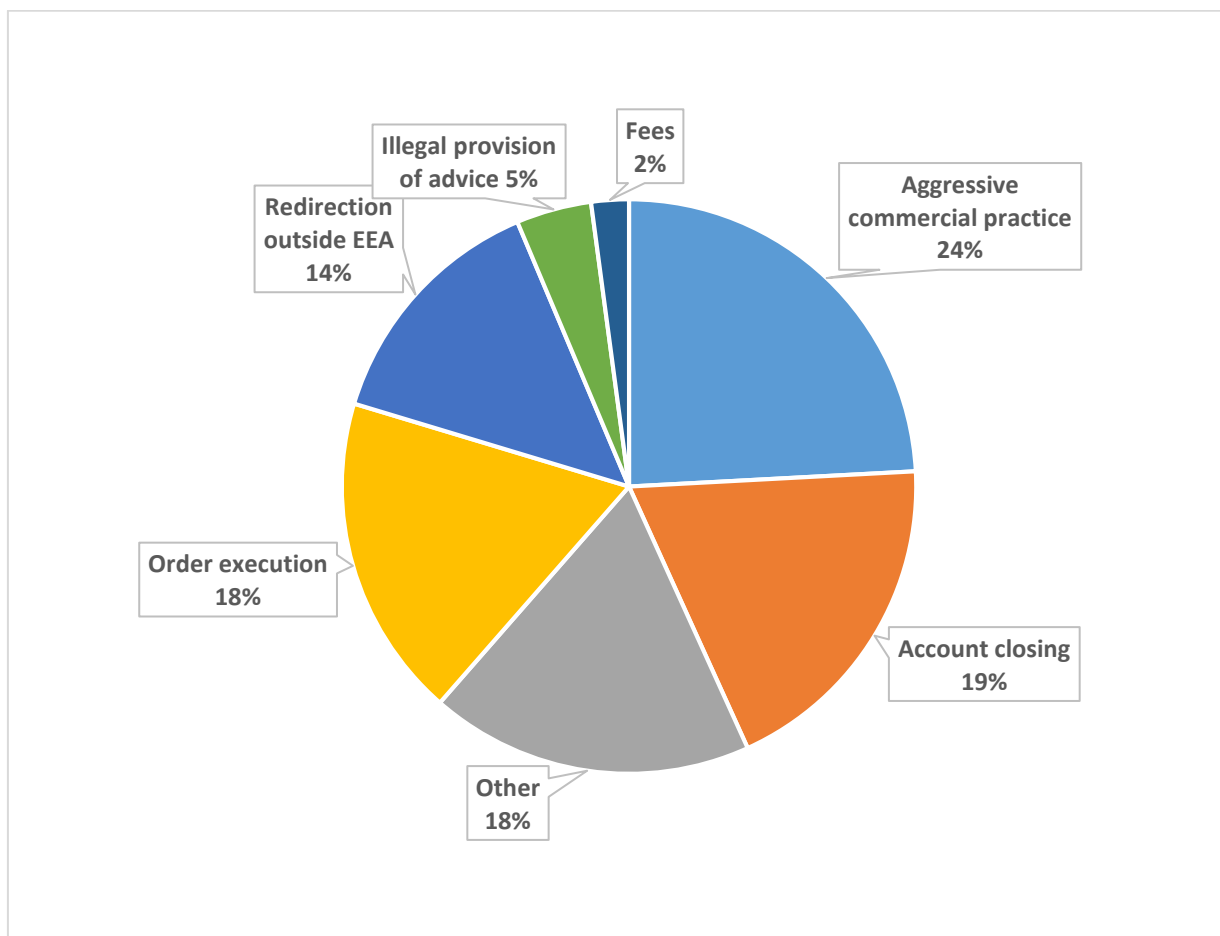
The AMF staff have reinforced their supervision activities over the years with regard to the marketing of extremely complex and very risky investment products, such as those which are covered by the measures of the Sapin 2 Act and European measures. Such products were heavily represented in the activities of the entities which were the subject of investors' alerts and complaints. Since these are mostly entities operating on an FPS basis which, by definition, have no branch or permanent establishment in France, the AMF has no direct power of control over these entities.

In the event of market practices identified as problematic, the AMF acts proactively by reporting them directly to its European counterparts. If these activities come from extra-European institutions, the AMF establishes contact directly with these institutions so that they may regularise their situation with regard to French and European regulations, and informs the extra-European regulator in accordance with its cooperation agreements. If these institutions do not rectify their situation, the AMF places those companies' websites on its blacklists.

## 2. DETAILS OF THE SUBJECTS OF INVESTORS' COMPLAINTS

A detailed analysis of the 221 complaints and alerts collected since January 2019 highlighted the various reasons for and subjects of complaints relating to ISPs operating on an FPS basis.

**Graph 1: Breakdown of subjects of complaint concerning ISPs operating on an FPS basis (01/2019 - 12/2020)**



Source: DREP, December 2020

The main complaints expressed by investors against the ISPs in question were as follows:

- a) Aggressive commercial practices (repeated and/or unsolicited calls, incentives to invest, promises of quick gains, etc.)
- b) Order execution problems. Clients complained, for example, that their buy or sell orders and their various positions taken were not acted on or that, conversely, orders were placed in their name without

their knowledge. These incidents resulted in unwanted investments on the one hand and, on the other hand, losses due to orders that were incorrectly executed or not executed at all.

c) Problems related to account closing. Here investors complained of difficulties in closing their trading accounts with their broker, or even the impossibility of closing them.

d) Redirection to brokers established outside the European Economic Area (EEA) and not authorised to provide services in France accounted for 14% of the complaints. In most cases, the investors stated that they were redirected to a non-European subsidiary of the service provider with which they had had a first contractual relationship. Thus, retail investors thinking they were making investments with an authorised European service provider were being redirected, without knowing it, to third-country entities with which they no longer benefit from the protection provided by European law. In particular, investors in relation with third-country entities do not benefit from a limited-risk account, nor from the capping of leverage for the most risky derivative products.

Of the 15 Cypriot ISPs for which there was a complaint, 4 cumulated four different subjects of complaint, 4 cumulated two, and 7 were the target of complaints on only a single subject.

The Autorité des Marchés Financiers reiterates that the leverage limits for retail investors on opening a position range between 30:1 and 2:1, varying depending on the volatility of the underlying assets, namely:

- 30:1 for the main currency pairs;
- 20:1 for second-rank currency pairs, gold and the leading stock market indices;
- 10:1 for commodities other than gold and non-major stock market indices;
- 5:1 for equities and any underlying asset not mentioned elsewhere;
- 2:1 for crypto-assets;

The practice by which a European ISP refers a client to a company belonging to the same group established in a third country can be interpreted as an evasion of the Product Intervention measures adopted by ESMA in March 2018 and incorporated in national law on 1 August 2019,<sup>5</sup> which require in particular that service providers proposing CFDs in France state the percentage of clients who have suffered losses and offer limited-risk accounts preventing clients from losing more than the amount initially invested.

ESMA specifically drew investors' attention to these evasion practices in its news release of 11 July 2019 ([ESMA35-36-1743](#))<sup>6</sup>.

e) Lastly, another topic of complaint, more marginally in terms of quantity, was the illegal provision of investment advice. The AMF has alerts and complaints indicating that certain ISPs operating on an FPS basis provide personalised advice and recommendations to investors even though this service does not

<sup>5</sup> AMF Decision of 1 August 2019 restricting, in France and from France, the marketing, distribution or sale of contracts for difference to retail investors.

<sup>6</sup> "It was observed that some CFD providers established in the Union are marketing the possibility for retail clients to move their accounts to an intra-group third country entity. Information in relation to the 'benefits' of trading CFDs with such an intragroup third-country entity could be seen as a circumvention of ESMA's product intervention measures by the EU authorised firm or a solicitation of retail clients or potential clients, promotion or advertising of investment services in the Union by the third-country entity." (§ 18, Statement of ESMA on the application of product intervention measures under Article 40 and 42 of Regulation (EU) No. 600/2014 (1) (MiFIR) by CFD providers).



appear among the investment services that they are authorised to provide by virtue of their authorisation.

### 3. REPORTED LOSSES

Taken together, the complaints and alerts received by AMF staff between 1 January 2019 and 31 December 2020 concerning ISPs operating on an FPS basis represented around €3.3 million in reported losses, i.e. an average loss of €33,548 per investor. 60% of these losses involved Cypriot ISPs and 35% ISPs located outside the European Economic Area.<sup>7</sup>

## CONCLUSION

The European ISPs that are the subject of the complaints described above are not under AMF's supervision, by virtue of the division of powers under European law between home and host authorities in the context of the cross-border provision of investment services, known as the freedom to provide services or FPS.

However, MiFID2 provides coordination mechanisms between the home authority of an ISP and the host authorities of the jurisdictions where the ISP provides its services, when host authorities become aware of irregular practices on the part of the ISP (Article 86 of MiFID2).

The AMF therefore reserves the right to take any appropriate measure provided for by the applicable law, pursuant to these mechanisms, to put an end to behaviour that is detrimental to the interests of investors resident in France<sup>8</sup>.

Nevertheless, the adoption of precautionary measures by the host jurisdiction's authority against an ISP acting under the freedom to provide services is a complex and cumbersome adversarial procedure, the duration of which may be difficult to reconcile with the urgency of putting an end to the breaches that have been observed and that affect investors in the host jurisdiction.

This is why the AMF, without ruling out the activation of the coordination mechanism provided for by MiFID2 depending on the circumstances, is working actively alongside its European counterparts - particularly those facing the same irregular practices - to promote, under the aegis of ESMA and in the context of the forthcoming MiFID2 review, a strengthening of measures aimed at protecting investors against the actions of certain distributors of complex products.

<sup>7</sup> By comparison, the average losses reported in 2020 on Forex (including financial scams) amounted to €38,000.

<sup>8</sup> On 1 August 2016, pursuant to Article 62 of MiFID, the Autorité des Marchés Financiers (AMF) took the decision to ban the service provider Rodeler Limited (regulated by the Cypriot authority) from providing services to both new and existing clients in France. <https://www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/lautorite-des-marchés-financiers-interdit-rodeler-limited-24option-de-fournir-des-services-sur-le>. After remedial measures, suspension of the passport was removed one year later.