

MARKETING PRACTICES AND AGEING POPULATIONS
FINAL REPORT

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Introduction

A. Context of the study

The research presented in this report began in March 2020 and is a continuation of the work conducted by the joint unit of the *Autorité des marchés financiers* (AMF – Financial Markets Authority) and the *Autorité de contrôle prudentiel et de résolution* (ACPR – French Prudential Supervision and Resolution Authority) on the marketing of financial products to ageing populations. The ageing segment of the population is constantly increasing. This demographic is characterised by high levels of wealth with less diversification in the types of financial products held compared to other age groups. The marketing of financial products to older adults sometimes leads to inappropriate or even abusive sales. The issue is present at the international level: Japan made financial inclusion and improving the financial experience of older adults a priority for the G20 during its presidency in 2019.

The French regulator, in liaison with European authorities, aims to promote good practices in the marketing of financial products to older adults. Following work conducted on protected adults in 2016 and 2017,¹ the joint unit of the AMF and ACPR took an interest in the marketing of financial products to this group, highlighting two main topics: customer protection and non-discrimination.² These issues were then broadened to include ageing populations.

An academic partnership was set up with Paris Dauphine University and Professor Eric Bonsang (economist at Paris-Dauphine University) to conduct work aimed at "preventing situations of poor marketing towards ageing populations in vulnerable situations".³ The focus was on the relationship between financial intermediaries and their older customers, to protect vulnerable seniors from "fraudulent or simply unsuitable" business practices. The report proposed identifying the "markers of vulnerability specific to this population when buying and selling banking and financial products to ensure their protection and the protection of their savings".⁴ Based on econometric insights and methods, Éric Bonsang reasoned that the quality

¹ ACPR-AMF Joint Unit (2016): *Activity Report 2016*, Paris.

² ACPR, (2016): "Banque et majeurs protégés. Le Pôle commun ACPR-AMF présente les résultats de son enquête", *La Revue de l'ACPR*, No. 34, pp. 16-17.

³ ACPR-AMF Joint Unit, (2018): "Marketing practices and ageing populations: how do we address cognitive decline in the elderly within the client relationship?", Paris, December.

⁴ ACPR-AMF Joint Unit, *ibid.*, p. 7.

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of financial decision-making is the result of a competency in numeracy, "a cognitive skill defined as the ease with which people master basic concepts in mathematics and probability".⁵ According to the author, this ability to master more or less sophisticated calculation techniques is the main factor determining levels in financial literacy, understood as the ability to independently manage one's assets according to one's personal interest.⁶ Based on a statistical study of data from the SHARE database, the author created a model for research purposes (and not for direct application in an operational environment) that makes it possible to predict a customer's level of numeracy and thus their exposure to a decline in their financial decision-making skills:

"The results suggest that gender, age, level of education, income, wealth, last occupation, risk appetite, financial planning horizons and debt levels are valid predictors of numeracy."⁷

The research focused on the point in time that financial decisions are made and proposed an individual and cognitive definition of ageing. Indeed, Éric Bonsang described the causal links between advancing age and declining numeracy, explaining that "the relationship between age and numeracy (...) can be almost entirely explained by cognitive ageing".⁸ Shifting the focus from the status of protected adult to the process of cognitive decline, these early works attest to a change in thinking about issues related to the dynamics of ageing.

Continuing its work with the financial sector, the joint unit then organised a consultation with financial actors to "engage in collective reflection" and create "a set of best practices".⁹ The consultation took place over the course of workshops ("local working groups") held between November 2019 and February 2020, which had two guiding objectives: "ensuring the safety of all stakeholders (the older adult, family, financial institution) in the marketing of financial products" and "avoiding any risk of discrimination based on age".¹⁰

⁵ BONSANG (E.), (2018): La prise de décision financière chez les personnes âgées, *Final report for the ACPR-AMF Joint Unit*, Paris, 31 December, p. 5.

⁶ LUSARDI (A.) and MITCHELL (O.S.), (2011): "Financial literacy around the world: an overview", *Journal of Pension Economics & Finance*, Vol. 10, No. 4, pp. 497-508.

⁷ Bonsang (E.), *ibid.*, p. 74.

⁸ Bonsang (E.), *ibid.*, p. 3.

⁹ ACPR-AMF Joint Unit, (2019): "Workshop 1: Product design", Working Group on Vulnerable older adults, 26 November.

¹⁰ *ibid.*

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In line with the results of their studies, the ACPR and the AMF are calling for measures to implement “enhanced vigilance to” “limit as far as possible the risk of inappropriate marketing, provide the best possible support to identify the needs and preferences of the persons concerned, and eliminate any risk of discrimination”.¹¹ This enhanced vigilance is based on three main measures: the training of advisors, the implementation of a “vulnerability referent” in the creation, and the strengthening of internal controls:

- “(a) Implement or intensify actions to **heighten the awareness of and/or train advisors** concerning the potential vulnerabilities of seniors, to better support these customers and ensure that their financial decisions are based on informed consent;
- (b) Renforce in-house awareness and support, through the creation of a “**vulnerability referent**”, entrusted with bringing this approach to the attention of the institution's upper management and ensuring its implementation and monitoring.
- (c) Enhance vigilance to better prevent risks, by reinforcing **internal procedures and controls** enabling a reduction of the risks of poor marketing and other sources of damage to customers, as well as the risks of litigation for the institution”.¹²

The issue of vulnerability was also discussed. The participants considered that the concept should be approached through a set of indicators and that it is also necessary to take into consideration the doubts that advisors may have on whether customers are making informed decisions in certain situations. These issues are addressed in this report.

B. The evolution of banking regulations: promoting savings while protecting savers

This focus on the marketing of financial products to older people is the result of changing demographics (the proportion of people over 75 will increase from 9% in 2020 to 15% in 2040)¹³ and the specific financial context: historically low market rates are encouraging customers to turn to riskier products. The increase in the risks incurred by older customers is occurring in a regulatory and political environment where reforms are being made to direct savings towards certain economic spheres. One of the objectives of the so-called Sapin II law,

¹¹ ACPR-AMF communication for professionals in the assurance, banking and finance sectors on the marketing of financial products to vulnerable older adults, (2021) April, p. 3.

¹² *ibid.*, p. 3.

¹³ BLANPAIN (N.) and CHARDON (O.), (2010): *Projections de population 2007-2060 pour la France métropolitaine: méthode et principaux résultats*, INSEE, available at <https://www.insee.fr/fr/statistiques/1380813>, accessed 7 December 2022.

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adopted in November 2016, is to direct French people's savings towards social and solidarity-oriented ventures.¹⁴ The Pacte law, passed on 22 May 2019, aims to promote shareholding and develop the financialisation of savings.¹⁵ At the same time, European regulations, in particular the MiFID 2 and IDD directives,¹⁶ seek to better protect investors, stabilise financial markets and develop market usage. There are several challenges, combining ambitions to financialise French savings (and reduce what is perceived as the French "lag" in this area: 31% of French financial assets are invested in equities versus more than 60% in the United States) and to regulate or even manage financial markets.

Personal finance has been transformed since the 1980s with a sharp rise in the number of players and financial products available. The financial deregulation initiated in the United States has led to the authorisation of increasingly complex and risky operations, while accelerating the circulation of capital throughout the world. In France, it was the 1984 Banking Law that transformed the framework for banking institutions activities.¹⁷ It was followed by the liberalisation of credit, then by privatisations, and, soon, by what the banks would come to call their "commercial turning point". Individuals began to be offered increasing numbers of products that were sometimes also increasingly risky.¹⁸ The manner of regulation was transformed, becoming less direct and instead based on endogenous controls, conducted by the institutions themselves.¹⁹ French financial laws also became part of a European framework, which, while taking into account the specificities of national markets, aimed to create as unified a market as possible (the Capital Markets Union or CMU). The European objectives were both to liberalise markets, in the sense of allowing increased competition to provide investors with more liquid markets at a lower cost, and to protect consumers against possible abuses and excessive risks. A series of directives, subsequently transposed into French law, and directly applicable regulations were introduced to govern the investment activities of retail funds.

¹⁴ Law of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, known as "Sapin 2", available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528>, accessed 6 January 2022.

¹⁵ Law No. 2019-486 of 22 May 2019 relating to the growth and transformation of companies, available at <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000037080861/>, accessed 6 January 2022.

¹⁶ MiFID is the acronym for the Markets in Financial Instruments Directive, which came into force in January 2018; IDD is the Insurance Distribution Directive, which came into force in February 2016.

¹⁷ Law No. 84-46 of 24 January 24 1984 relating to the activity and control of credit institutions.

¹⁸ For a history of retail banking in France, see Lazarus (J.), (2012): *L'Épreuve de l'argent*, Calmann-Levy, Paris.

¹⁹ GODECHOT (O.), (2005): "Prologue. Brève histoire de la transformation financière", *Poche / Sciences humaines et sociales*, pp. 21-67; LEHMANN (P.J.), (1997): *Histoire de la bourse de Paris*, Presses Universitaires de France, Paris.

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The crisis in 2001 that followed the dot-com bubble marks the moment when questions began to be raised about the transfer of excessive risk to savers. At the end of the 1990s, there had been a relaxation of regulations, tied to a recurrent discourse that French savers were behaving too timidly in the stock market. This had prompted banking institutions, including the most traditionally cautious among them, to launch massive marketing campaigns encouraging their customers to transfer their savings from safe but low-yield products towards stock market products. When the dot-com bubble burst, many lower-income retired savers lost a lot of money, leading to numerous disputes and claims. As a result, the regulation was changed in two ways: in the traditional way, by concentrating on the methods of providing information to customers, in particular, pre-contractual information; and in a new way, by requiring establishments offering investments to test the level of knowledge and experience of their customers, such as the degree of risk exposure that they are willing to accept. This was one of the key measures contained in the MiFID directive, which entered into force on 1 November 2007, and was reinforced by MiFID 2, which was adopted in 2014²⁰ and transposed into French law under Ordinance 2016-827 of 23 June 2016.²¹ The latter increased banking institutions' advisory obligations and the protection of customer interests.²²

The current guidelines on pre-contractual information and the duty to advise can be summarised as follows: know your customer, know your products, recommend a suitable product by informing about the characteristics of the product and its related costs at all stages.

In the context of these regulatory changes, the issue of older customers was first raised in the media. One event that was specific to France was the Bettencourt case in 2010 which, beyond its political aspects, brought the position of older adults with significant assets to the attention of the media: are they still capable of making informed decisions? Are they at risk of falling victims to scammers? Should they be placed under judicial protection and, if so, when? The case, which left a lasting impression on people's minds, revealed the grey area of vulnerability that exists between the legal status of full capacity, allowing financial decisions to be made based on informed consent, and the legal status of incapacity affecting adults placed under guardianship and providing them with the highest level of legal protection. The grey area exists in the period before a judicial authority has been asked to address the situation, and involves

²⁰ Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, available at <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32014L0065&from=EL>, accessed 3 January 2022.

²¹ Ordinance No. 2016-827 of 23 June 2016 relating to markets in financial instruments, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036976666>, accessed 2 January 2021.

²² VASSALOS (Y.), (2020): *L'Europe de la finance Enquête sur la production de la régulation financière européenne (le cas de MiFID 2, 2009-2017)*, University of Strasbourg, Strasbourg.

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those who, while considered legally competent, may have difficulties providing informed consent.

- Objectives of the study

The study presented in this report seeks to better understand the relationship between seniors and their banks. In light of the findings described above, which are already available to regulators, a decision was made to deepen the existing knowledge by no longer focusing exclusively on the individual and the cognitive dimensions of ageing, but instead broadening the study to include the marketing methods used by banks and their suitability for older customers. This sociological study therefore focuses on the process of marketing financial products to older adults (financial products that hold considerable importance to financial institutions, given the level of wealth of the targeted individuals) and examines the organisational and professional structures in which this process takes place. The report thus examines the issue of the marketing of financial products to older adults, some of whom may be vulnerable, within the framework of the organisational structures in place at financial institutions, professional practices, and customer attitudes to their wealth and its management.

We used qualitative methods to conduct this research. Because we attach great importance to what happens in the relationship between customers and financial institutions, we thought it necessary to observe the communications that take place in the institutions between older customers and financial advisors. In particular, we wanted to understand how older customers are perceived by the institutions that do business with them. Age is a complex category. The social sciences distinguish between chronological age (the number of years lived), biological age (the ageing of the body) and social age (corresponding to the stages of life). The three dimensions are not unrelated but do not necessarily overlap. In the banking sector, chronological age is significant since certain legal provisions are linked to it, such as the age of legal majority at 18, the retirement age, or tax provisions regarding donations, which take into account the chronological age of the donors.

The definition of ageing that we use in this research is not based on a biological or chronological approach, but rather on the way people are perceived by banking actors and regulators. The previous academic study took a cognitive approach to ageing, centred on measuring the decline in the capacities of customers. This approach creates difficulties for financial actors because it

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is based on medical categories that are difficult to transfer to the financial sector. Ageing in this case becomes an alien category, outside the competence of financial actors, as it is defined by indicators and terms that are far removed from field of financial operations. To offer a more directly operational perspective, we have chosen to start with the **uses and thoughts behind the practices** in place at financial institutions. A person may be objectively judged as ageing (based on a number of indicators such as advanced age, difficulty in moving around, hearing problems, etc.); However, at the same time they may be (and/or consider themselves to be) fully autonomous, while their advisor subjectively views them as having the faculties required to make informed decisions – or conversely lacking, or temporarily lacking said faculties. Thus, the research aims, not so much to propose *a priori* definitions, but rather to study the ways in which advisors contribute, in practice, to the construction of the definitions they use – are they based, for example, on indices that seem to them to be markers of advanced age, or do they subject customers to tests²³ (which can be very basic) to back up their judgement? – and to make this a focus of study in its own right. Discussing the “construction of the concept of ageing” reveals the social dimensions involved: there is no objective category of ageing, but there are characteristics that are collectively defined (in different ways depending on the groups, places or times concerned) as belonging to ageing, as well as ways of identifying these characteristics, interpreting them and interacting with those presumed to embody them. The terms used to designate older customers and the practices involved are therefore analysed as “constructs” that must be placed in their institutional and professional contexts.

The approach complements the multi-criteria approach that was identified as important during the fieldwork. First, it avoids the pitfall of **threshold effects**. Defining ageing using just an age indicator (whether the indicator is linked to social or chronological age, as is the case with approaches based on the "fourth age" or those that propose a pivotal age such as 80, marking a turning point in life, or whether it refers to administrative data, such as in studies proposing to tie the concept of ageing to the moment of retirement) makes it particularly difficult to take into account the very different attitudes to ageing that each person has, notably as a result of their living conditions and social characteristics. In addition, by focusing on the categories of

²³ Here, the test concept was borrowed from Luc Boltanski and Laurent Thévenot, who define it in *De la justification* (Gallimard, 1991) as any operation that allows us to emerge from uncertainty by assigning states and values to things.

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classification used by advisors and other banking professionals (whether they are part of everyday language or part of administrative procedures), we can extend our analysis to cover organisational patterns. In this sense, this study is in line with disability studies²⁴ that remind us that a disability is only expressed because the environment with which the person is confronted has not been suitably adapted. Applied to our study, this approach makes it possible to emphasise that ageing is not a problem in itself but only in situations and relationships that are ill-prepared to accommodate certain characteristics that sometimes arise with age. It is therefore necessary to understand how the standard marketing of financial products works in order to measure the extent to which it is suited to people considered elderly.

The study also proposes focusing on the risks attributed to certain financial transactions, including the identification of risks linked to the marketing of financial products to older customers. Risk in this case is understood not from a legal and/or compliance perspective, but **sociologically**. Olivier Borraz proposes a definition of risk as "the result of a qualification process that aims to reduce the uncertainties surrounding an activity (...) so as to make it controllable".²⁵ In this approach, risk is tied less to the individual and their characteristics than to the organisation where they conduct their activities. Understanding the marketing of financial products to seniors in this way makes it possible to focus the analysis on the **situations, and not the professionals**, that can put organisations at risk and create difficulties in handling certain customers and/or certain requests. The goal is to **question what, in the way the marketing of financial products is organised, generates risks in the otherwise adequate management of the assets of those who do not fit the ideal customer type on which the organisation is based**. This method of analysis allows us to rule out the idea that inadequate care for older adults is attributable to the intentionally harmful practices of professionals or the deviant behaviour of a few outliers, and places the focus of research on the organisation of the banking relationship.

²⁴ For a general presentation of this current study, refer to ALBRECHT (G.L.), RAVAUD (J.F.) and STIKER (H.J.), (2001): "L'émergence des disability studies : état des lieux et perspectives", *Sciences Sociales et Santé*, Vol. 19, No. 4, pp. 43-73.

²⁵ BORRAZ (O.), (2008): *Les politiques du risque*, Presses de Sciences Po, Paris, p. 13.

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These three elements (institutional framework for marketing practices, customer categorisation methods and manifestation of organisational risks) form the basis of the design of the study presented. Our research took three directions: first, we looked at the categories used to talk about older customers and identified the limits of the term "vulnerability". Then we looked at the ways in which financial products are marketed and how the ageing of customers disrupts institutions' processes and organisation. Finally, we sought to identify existing good practices and looked at their advantages and limitations.

C. Survey methodology

As sociologists specialising in the history and sociology of retail banking, we used investigation methods that helped us to understand marketing practices and the interactions between customers and institutions. We used three standard methods: documentary research, interviews and observation. This is a qualitative approach, based not on multiple case studies but on the in-depth study of a selection of them (in this case three specific institutions: a private bank, a retail bank, and an online bank). This was accompanied by interviews with representatives of other institutions to ensure that the results found were not too specific to the institutions studied; while we studied only a few institutions in depth, this method permits generalisations insofar as it allows us to explore issues that all institutions face. The questions that we address in this report, relating in particular to marketing methods, their (mal)adjustment to older customers and the application of the law, arise at all financial institutions. Therefore, we believe that our survey provides lessons that can inspire the entire profession and its regulatory bodies.

We surveyed multiple financial sector participants and, more specifically, three banking institutions. We detail below the different methods used and their scope of application.

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- Interviews

We conducted a total of 73 interviews. Initially, 21 interviews were conducted with professionals from retail banks, private banks, insurance companies and independent asset management advisors to identify the issues and particularities of the institutions surveyed. At the same time, we conducted interviews with financial sector regulators and mediators (10 interviews), as well as with consumer and senior citizen associations (9 interviews) to complete our analysis of the problem and its challenges. A list of the interviews conducted is available in the appendix.

The interviews were conducted in a semi-structured manner, i.e. following a grid of questions, but keeping them open-ended, while following the thread of the discussion, to gather stakeholder views and perceptions on three main areas: the general organisation of the institutions and the specific treatment of older people, if any; the signs and indicators for identifying the vulnerability of ageing customers; professional practices and their specificities when the customer is identified as “elderly”, whether or not such customer is perceived as vulnerable. Semi-structured interviews have the advantage of not limiting the questioning to the preliminary hypotheses of the survey and leaving space for possible surprises. They are mainly used at the beginning of research to identify as many issues as possible.

In the context of the case-specific fieldwork, 46 interviews were conducted at three different banking institutions (a private bank, an online bank and a retail bank, see the ethnography presentation below). Seven of these interviews followed a more rigid structure, including questions focused on the results of the ethnographic survey. The aim here was to verify that the results obtained for the banks studied could be generalised to other institutions.

- Document review

The research included an in-depth study of various public reports and financial institutions’ internal documents, seeking to deepen an understanding of the ways of categorising ageing used in these institutions. By looking at regulators as well as financial actors, from senior executives to customer advisors, the study sought to understand how “vulnerability” is defined, how it is implemented in regulatory texts framing financial practices, and how it is disseminated (or not) to professionals in contact with customers.

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- Ethnographic research

Broadly defined as relying "on the personal and long-term involvement of a sociologist (...)", ethnography enables the researcher to "directly observe the behaviour of individuals in a variety of circumstances and access fragments of their daily lives".²⁶ Ethnographic study gives access not only to the **discourse** of the actors involved, but also to their **everyday practices** and the context in which they unfold. Ethnography is thus the best way to collect data on the conditions under which financial products are marketed, as it involves analysing them in their professional and organisational contexts. This emphasis on the contextualisation of social phenomena is accompanied by a focus on practices and their operational realities. We made several visits to several branches of a banking institution (a total of 37 days). This long-term immersion helped facilitate a systematic comparison and analysis of the interactions and events studied, and made it possible to sketch **the characteristic features and properties** of banking work. Interviews with actors from other banks enabled us to check the reliability of the data collected in the institutions where the in-depth survey was conducted and ensure that our results could be generalised.

The ethnographic fieldwork was conducted in a private bank. Because private banks cater to wealthier clients and are structurally more oriented towards investment activities, issues related to the sale of financial products to the elderly are, in their case, more acute, making them a more relevant selection for our research.

At the chosen institution, we conducted **semi-structured interviews with management personnel (N = 22)** to identify their perceptions of the older customers and the strategies deployed to do business with them. Next, we studied interactions with customers, both older and otherwise. We also attended many meetings between the employees of the institution, both at the head office and in the regions studied. We sought to understand the context in which the interactions unfold, which led us to take into account elements as diverse as the organisation of work, commercial objectives and the application of regulations. We wanted to conduct observations in different bank branches, located in various contexts (urban, rural) and in different regions (Île-de-France but also in departments in the east, west and south-east of

²⁶ Schwartz (O.), (2011): "L'empirisme irréductible", *Le Hobo, sociologie du sans-abri*, Armand Colin, Paris, p. 338.

France). In all, we spent 37 full days with advisors at 11 different branches belonging to the same private bank. Finally, interviews were conducted with the banking advisors that we had been observing, as well as with their management, to better understand the meaning they ascribe to their professional practices (N = 17).

FOCUS – Private banks: context and issues for a study on the marketing of financial products to older customers

The French population has grown richer over the past 20 years. The financial wealth of households increased by 75% between 1998 and 2010, at the same time as inequalities increased, so that in 2015, the wealthiest 1% of households earned on average almost seven times more than the population as a whole and received around 7% of the total income mass and 30% of wealth income.²⁷ As a result, the potential clientele for private banks has expanded – depending on the institution, this service is open to customers with at least EUR 500,000, or even EUR 1 million of financial assets.

The consulting firm Sia partners estimates the total savings held by households with more than EUR 1 million in financial assets at EUR 1,588 billion, which thus constitutes the size of the potential private banking market.²⁸ The outstanding assets of such customers are only partially managed by private banks, as a significant share of their available savings is held by retail banks. Market share gains are therefore a major priority and, for several years, private banks have been racing to “win back wealthy customers”.²⁹ The current situation is marked by the liberalisation and increased professionalisation of independent actors,³⁰ the increased structuring of specialised actors, and the intensification of competition fuelled by the presence of foreign institutions.³¹ Banks are thus working to win back wealthy customers in an

²⁷ INSEE, (2018): *Patrimoine -Les revenus et le patrimoine des ménages*, available at <https://www.insee.fr/fr/statistiques/3549498?sommaire=3549502>, accessed 12 January 2022.

²⁸ "Les clients éligibles à la banque privée et les évolutions du marché", *SIA partners internal document*, 2018.

²⁹ Oubrier (A.), (2011): "Reconquérir les clients aisés", *L'AGEFI Hebdo*, 17 February.

³⁰ HERLIN-GIRET (C.), *Rester riche. Enquête sur les gestionnaires de fortune et leurs clients*. Op. cit.

³¹ "La banque privée s'allie au réseau de détail pour changer d'échelle en France", *Les Echos*, February 2014, available at <https://www.lesechos.fr/2014/02/la-banque-privée-sallie-au-reseau-de-detail-pour-changer-dechelle-en-france-271921>, accessed 7 January 2022.

environment marked by stiff competition³² and by the need to develop a profitability model that ensures their sustainability.

At the same time, the business model of private banks is undergoing a major overhaul. In 2015, the European Financial Management Association published a white paper on private banking in Europe. It notes that "between 2007 and 2013, the operating ratio of private banks in Europe fell by 20 percentage points, from 85% to 65%. A number of private banks are no longer profitable and several are at risk of being pushed out of the market or taken over."³³

The increase in management costs, linked in particular to regulatory obligations, partly explains this reduced profitability. In response to this, many private banks are in the process of restructuring and are trying to implement innovative solutions (especially digital ones) to attract new customers. Like all distributors and advisors, private banks are also being affected by the implementation of MiFID and IDD.

Table 1: Market share by size of assets under management in 2010



Source: "Les établissements financiers à la conquête de leur clientèle haut de gamme", *Les Échos*.

All of these contextual elements make private banks a particularly interesting field in which to analyse the marketing of products to an ageing clientele. Their clientele is constantly being renewed as the core is made up of a higher proportion of senior citizens than at other institutions. Private banks are therefore a place where **the issues linked to institutional functioning and ageing are particularly acute**. This is due in particular to the **over-representation of older wealthy clients**, making private banks a particularly relevant field of inquiry for the study.

³² (2011): "Banque privée. La difficile conquête des particuliers fortunés", *Revue Banque*, No. 741, November, pp. 24-45.

³³ EFMA, (2015): *Livre blanc sur la banque privée en Europe*.

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- Anonymity

Strict principles of anonymity have been adopted for the remainder of this report. The respondents are designated solely by the type of institution in which they work (retail bank, private bank, etc.). We also report broadly on their job functions, referring to them as "advisors" (a function which in practice can take on different labels depending on the type of institution), or as "department managers" (without mentioning the precise nature of their management duties). Finally, locations will be stated generically, providing only the information necessary for a broad contextualisation of the events reported.

Scope summary

- Research was conducted at three institutions, including an in-depth ethnographic study at one of them.
- 86 interviews
- 37 field days
- Workshop observation
- Analysis of reports on financial vulnerability

I. Defining vulnerability: (mal)adjustment of the categories used

What are the challenges of marketing financial products to seniors? The financial stakes are high: older people hold the largest share of both real estate and financial assets, and this share is growing. It is therefore important for financial institutions as well as for national and European regulators to establish a marketing framework that is satisfactory to all parties.

Our survey shows that marketing to seniors generates potential conflicts, felt both individually by advisors in contact with this clientele and by organisations. The primary issue is to ensure that the customers are sufficiently discerning so as to provide valid consent. However, it appears that, apart from a status of guardianship or trusteeship, no single criterion can define vulnerability: neither age, nor health status, nor working (or retired) status. Moreover, the fact that a customer's capacities are diminished does not mean that they are no longer able to make decisions. Their needs do, however, differ from those of more autonomous customers. Both institutions and regulators are still looking for the right tools to deal with senior customers.

A. Ageing and wealth: an inventory in France

To understand the treatment of advanced age in banking institutions, it is useful to consider the social characteristics of older adults who hold financial savings.

- What is the wealth of older adults in France?

Wealth increases with age. The work of André Masson, an economist and research director at the CNRS (French National Centre for Scientific Research), showed that in 2015, 57% of global financial wealth was owned by people over the age of 60.³⁴ Our analyses³⁵ show that **wealth ownership is concentrated in the hands of people over 50**. This is particularly true if we consider net wealth (see Table 3). People over 50 hold 74.96% of the total net wealth of French

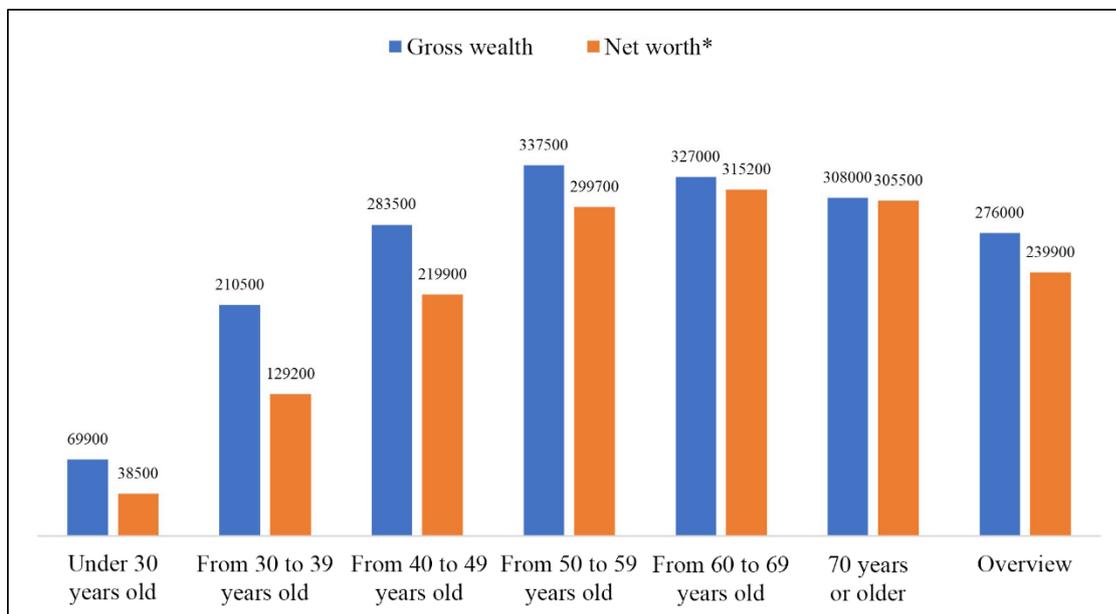
³⁴ MASSON (A.), (2018): "Les enjeux du patrimoine et de sa transmission dans nos sociétés vieillissantes", *Revue française d'économie*, XXXIII No. 2, pp. 179-234.

³⁵ The research team performed statistical work on the INSEE heritage database, which confirmed the results found in the literature on this subject. These analyses were produced by Sylvain Thine, Doctor of Sociology, and Sijia Li, intern.

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households (while constituting 34.8% of the French population in 2018).³⁶ And adults over 70, while constituting only 9.3% of the French population (excluding Mayotte) in 2018,³⁷ hold 19.74% of the total net wealth of the country's households (see Table 1). Luc Arrondel and Jérôme Coffinet note that the phenomenon of wealth concentration in the hands of older people has been increasing for several decades: “the relative position of the over-60s improves significantly from one survey to the next compared to the position of those under 40”.³⁸ More specifically, the over-60s owned 36% of gross wealth in 2004, a proportion that rose to 45.5% by 2014, even though their proportion of the population had only increased by 5 points.

Table 2: Breakdown of wealth by age in 2017-18



Source: INSEE, *Life History and Wealth Survey 2017-2018*, treatment by the authors.

Definition: Net assets equals gross assets minus any private and/or professional loans still outstanding.

Scope: French households, excluding Mayotte.

This concentration of wealth among the oldest people can be explained not only by the accumulation of labour income, which increases over the course of a career, but above all by

³⁶ Source: INSEE, *Tableaux de l'économie française, éditions 2018*, available at <https://www.insee.fr/fr/statistiques/3303333?sommaire=3353488#tableau-T18F032G1>, accessed 7 January 2022.

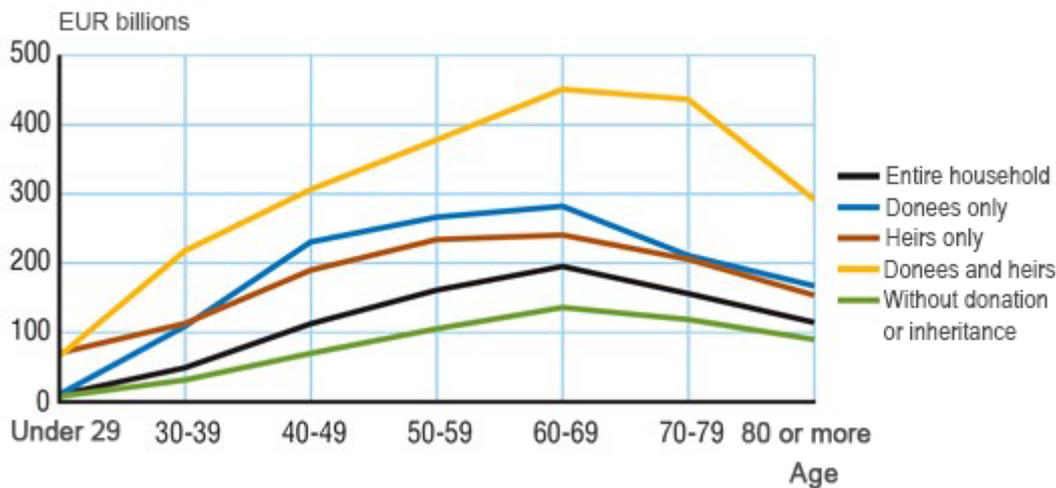
³⁷ Source: INSEE, *Tableaux de l'économie française, éditions 2018*, available at <https://www.insee.fr/fr/statistiques/3303333?sommaire=3353488#tableau-T18F032G1>, accessed 7 January 2022.

³⁸ ARRONDEL (L.) and COFFINET (J.), (2018): "La dynamique des patrimoines des ménages selon l'âge et la génération en France et dans la zone euro", *Revue française d'économie*, XXXIII No. 2, pp. 157.

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the increase in wealth transfers through inheritances, which primarily take place around the age of 60. According to the *Household Finance and Consumption survey*,³⁹ inheritances in France are received, on average, at the age of 57. The following chart shows that inheritance is the primary cause of wealth concentration and that advancing age does not reduce the wealth gap between those who inherit and those who do not.

Table 3: Median household net worth by age of reference person



Source: *Household Finance and Consumption Network survey*, Phase 2, 2014.

Scope: Households in France

André Masson suggests a number of explanations for what he calls the "patrimonialisation" (growing weight of wealth) of society. According to this economist, the ageing of the population is being accompanied by a sharp decline in the age of inheritance. Moreover, the rise in longevity is translating into the **need to provide for one's old age and for the inherent risk of dependency**. This need is all the more acute given the precarious balance in the pension systems and the profound changes in the forms of protection previously provided by families (the transformation of family structures and the feminisation of the labour market are changing the ability of families to provide support to their elders).

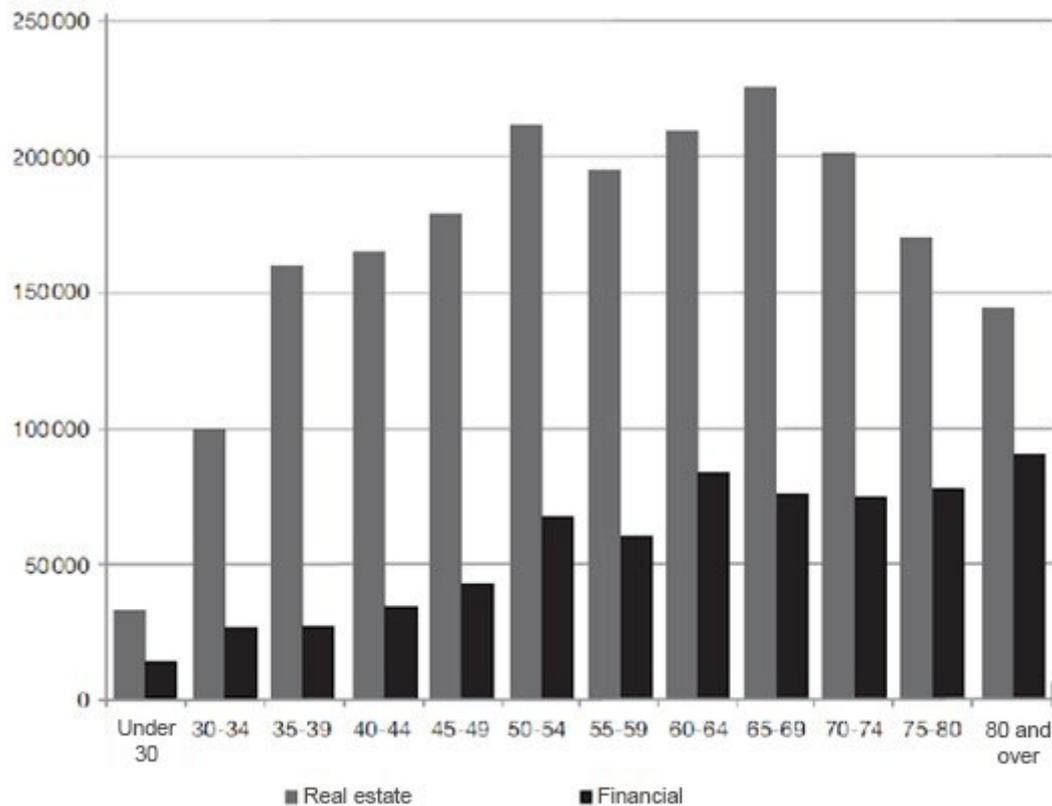
In addition to holding a large share of wealth, **older population groups are characterised by a higher proportion of financial assets in their overall wealth**, particularly with respect to the real estate assets they hold. The share of financial assets in households' net personal wealth

³⁹ Since 2006, the Household Finance and Consumption Network has conducted a survey of household wealth in the euro area to better understand consumption and savings behaviour. The results of these surveys can be viewed at <https://www.ecb.europa.eu/stats/html/index.en.html>, accessed 11 January 2022.

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increases with age due to a decline in the average share of real estate assets held (net of loans) and a rise in the proportion of financial assets (see Table 4).

Table 4: Real estate and financial assets by age

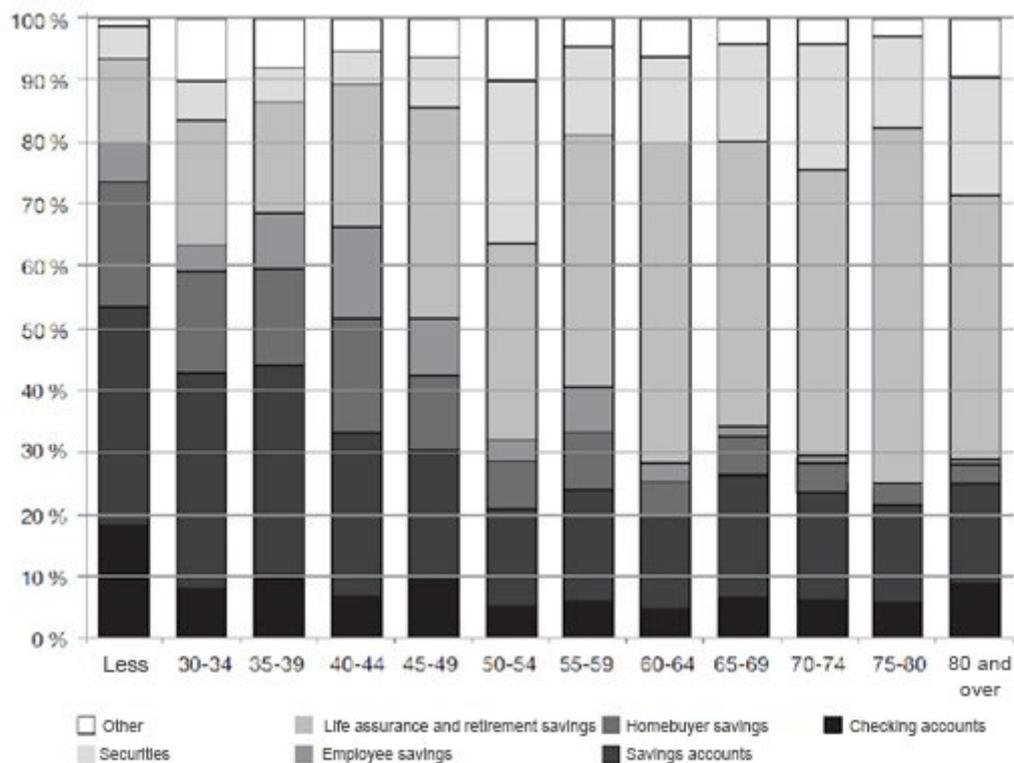


Source: 2014 Household Wealth Survey, INSEE. Treatment in Arrondel (L.), Coffinet (J.), (2018) "La dynamique des patrimoines des ménages selon l'âge et la génération en France et dans la zone euro", *Revue française d'économie*, Vol. XXXIII, pp. 147-177.

Scope: 2014 Household Wealth Survey, INSEE.

While the financialisation of assets increases with age, **the composition of an individual's financial assets also changes over their life cycle.** The percentage invested in life assurance increases with age, as does the share of securities. At the same time, other asset classes decline, such as housing savings accounts (PEL) and passbook savings accounts (*livrets*) (see Table 5).

Table 5: Structure of financial assets by age



Source: 2014 Household Wealth Survey, INSEE. Treatment in Arrondel (L.), Coffinet (J.), (2018) "La dynamique des patrimoines des ménages selon l'âge et la génération en France et dans la zone euro", *Revue française d'économie*, Vol. XXXIII, pp. 147-177.

Scope: 2014 Household Wealth Survey, INSEE.

Regarding their risk preferences, seniors are characterised by low-risk and sometimes illiquid choices. André Masson uses the term "**asset tension**" to designate "seniors holding an inert mass of low-risk wealth", invested primarily in quasi-liquid assets (Livret A passbook savings account), insurance savings products (euro funds and other life assurance contracts) and residential real estate.⁴⁰ In his view, seniors over-save in order to pass their wealth on to their children later and later in life, often after their children reach 60 and when they no longer need it. **He believes this tendency reflects a risk aversion that tends to increase with age and is accompanied by a preference for flexibility** (in other words, asset strategies that are sub-optimal but leave room for contingencies). However, the term needs to be questioned; it suggests that the investments are entirely chosen and controlled by the holders and does not question the practices of financial institutions which are precisely what this research is focused

⁴⁰ Masson (A.), (2018): "Les enjeux du patrimoine et de sa transmission dans nos sociétés vieillissantes", *Revue française d'économie*, Vol. xxxiii, No. 2, pp. 179-234.

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on. Is the fact that older people have a specific investor profile, marked by less risky but often less profitable products, entirely of their own will? Are there generational effects involved (e.g. older people sometimes hold products that were taken out decades ago)? Age-related effects? And what about the effect of specific commercial proposals from banks?

The literature shows that **it is above all the level of wealth that determines an individual's propensity to take risks on the financial markets**. For example, investing in risky assets depends primarily on the amount of financial wealth: 76% of households belonging to the wealthiest 1% own shares directly (compared to 10% of all households, and 38% of the financially wealthiest 10%).⁴¹

Ageing and wealth: financial issues

The financial habits of older people present a range of challenges for banks:

- They hold a significant volume of assets.
- These tend to be financial assets more often than in other age groups.
- There is a conflict between, on the one hand, customers' need for liquidity and desire to avoid risk, and, on the other hand, the standard practice of diversifying the assets of high net worth individuals to maximise returns.

B. The elderly as seen by bankers

Most retail financial investment is channelled through investment services provided by intermediaries or service providers. How do financial actors perceive seniors?

First, it should be noted that vulnerability is an issue that banking institutions take into account. However, it is treated unequally across the networks we were able to contact. Our observations show that it creates tensions within organisations because of its contingent nature and the difficulty of defining its limits. In a context of intensifying competition for market share in capital management and a downward trend in euro funds, the characteristics of senior customers are very specific. Their financial wealth is comparatively greater than that of other

⁴¹ INSEE, (2021): "Household Income and Wealth", *INSEE References*.

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age groups. However, senior citizens are also sometimes described as problematic, as they pose at least two conflicting risks to financial institutions: on the one hand, the risk of engaging in inappropriate marketing, which could lead to accusations of inadequate advice and information, and on the other the risk of insufficiently interacting with them, generating dissatisfaction and losing market share.

Finance professionals therefore aspire to create a framework that protects institutions while preserving the normal business practices of employees.

- Disrupted business practices

Ageing disrupts the marketing of financial products. Because financial transactions ultimately depend on individual choice and therefore on the ability of customers to both make financial decisions and express informed consent, the process of loss of autonomy, whether real or projected by advisors, destabilises the customary framework of banking interactions and the practices of financial professionals.

Faced with customers perceived as elderly, advisors are confronted with a paradox: older adults are both **important customers given the assets they hold**, and at the same time are often the archetypal high-risk customer, perceived as difficult to control. Caught in a bind, bankers often prefer to do nothing and "play it safe" or "keep their heads down". The following excerpt from an interview conducted with a financial advisor for a private bank illustrates well the position in which advisors find themselves when they have to deal with clients with disabilities and, moreover, elderly ones. The case of this customer is particularly interesting, not least because it is the case the advisor spontaneously chose to illustrate the problems encountered with older clients. The advisor's position shows the ever-present intertwining of different sources of vulnerability: age and disability – elderly customers frequently have health problems. In describing the customer's case, the advisor listed all the types of risks that older customers potentially pose to their bankers.

Financial advisor: "I have a good example of the difficulties that we encounter. This particular customer is rich, lives alone and is quadriplegic, and has a lot of problems speaking. He has difficulties placing orders: he has trouble using his hands. In short, this gentleman is severely handicapped. But he **has all his wits about him**, he's at home all day and his life is the stock market. **Reading books and the stock market**. We have a lot of trouble understanding him when he

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speaks, and he's not able to write e-mails or letters, so his banker is on the phone with him very regularly, and has many problems understanding him and has to ask him to repeat himself. This gentleman is adamant about placing his stock market orders himself. He calls frequently to sell this and that. We have tried several times to refer him to services more suited to his age, but he refuses. It puts us at risk because sometimes we don't understand what he's telling us, what he's asking us to buy or sell, so we're sometimes faced with complaints because we didn't understand him. And the difficulty is that he's someone who refuses management solutions that would make his and our lives easier! He has all his wits about him, so he doesn't make bad management decisions for his assets, except that communicating them is very difficult. [...] To what extent can the bank force or compel a customer to use one service rather than another? Can the bank refuse to sell something without being held liable? In fact, this gentleman is very active in the voluntary sector. And so we are careful because first of all **he is a frail customer to be protected**, but at the same time, [...] we really don't understand anything he says. We would need a future protection mandate or even a guardianship, we would then have to switch to a discretionary mandate and tell him 'You need to stop giving your orders on your own, it will be simpler for you', but the worst thing is that [when we do suggest that] he threatens us, saying 'I do what I want' or 'You just don't like old people'. And because we do not want to create a reputational risk, **we do nothing**. Sometimes, when faced with people who refuse to listen, it's complicated. Imagine if he takes us to court for discrimination. So we do nothing and manage as best we can. The other reputational risk is that he might make a mistake with his securities account. So we're on a tightrope with this gentleman. But when a customer insists on having something, a type of service or a financial instrument, we in fact can't refuse. Primarily, so as to not discriminate, but also to avoid incurring reputational risk. At the same time, what responsibility do we have to his heirs? Imagine that this gentleman loses everything and his heirs turn against us? Accusing us of selling this or that to their father. But, even if we put a red flag in the contracts, even if we repeat 'This service is not right for you', if the customer absolutely wants to purchase a financial instrument or a service we have to follow his orders. **And we have no solutions or protection against this type of behaviour which puts us at risk.**"

Q: "What do you risk?"

Financial advisor: "Well, contractual risk with respect to the client, and legal risk with the heirs. But because we want to avoid discrimination and reputational risks, well, we have to manage it, even if it requires a lot of time and patience." (Financial advisor, private bank, March 2021).

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This interview excerpt illustrates many of the difficulties faced by financial advisors in commercial interactions with the elderly, and more broadly, with people in vulnerable situations who wish to retain their autonomy but see it reduced by their disability or loss of physical capacity. While the advisor recognises the customer's financial skills, his capacity to make decisions on his own and cope with an RTO (reception and transmission of orders) type of investment system, the advisor would prefer that the customer choose a discretionary mandate, where, in her view, errors and, above all, the risk of the bank being accused of having misadvised the customer, particularly by his heirs, would be limited. The advisor also mentions the risk of discrimination: the conflict derives from the fact that the customer wants to be treated as a customer like any other, whereas the usual organisation of banking interactions would prefer that he be treated as a customer with special needs.

Many interviews confirmed to us that this conflict arises frequently and causes difficulties for advisors. The fears they express are not related to individual representations of old age or disability but to the fact that the organisation of their work and customer interactions are often at odds with the specific needs of clients who require more time. In the case described above, the advisor considers the best solution would be to act in the customer's place and goes so far as to mention guardianship, which contradicts what she says about the customer's intellectual capacities and the fact that he makes sound decisions regarding his wealth. The need for supervision or a discretionary mandate is more an organisational issue for her: she finds interaction with this customer too difficult and time consuming. Moreover, it appears that the advisor is left on her own with this type of customer, with no tools to ensure that she is making appropriate decisions or enabling her to classify the customer as either autonomous or requiring special care.

Ageing can thus pose a challenge to the organisation of the marketing of financial products. Financial transactions involve both the individual choice of customers and the advisory function of financial advisors, which is at the core of their professional identity, but the loss of autonomy, physical or intellectual, of a customer disrupts the workflow of banking services, as it creates doubts about the ability of customers to provide informed consent.

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In order to find practical solutions to these situations, market players, at the behest of regulators, have agreed on the need to look into how they could deal with older customers. The idea has thus emerged – although it is not without difficulties – of viewing customers through the prism of their “vulnerability” as a way of protecting them – and protecting financial institutions from the risks that they pose – while also enabling them to make financial decisions under sound conditions.

- Operational and financial risks

As we saw in the introduction to this study, the marketing of financial products has become increasingly regulated over the past 20 years. This regulation is based in particular on the assessment of a customer's profile as well as the notion of informed consent, a key concept in consumer law.

Measuring the risk profiles of older people by means of customer questionnaires **usually leads to great caution in the proposals made to them** – sellers expose themselves to significant legal risks if it turns out that they have made inappropriate or even forced sales. However, **the financial expectations of these customers, acquired through experience and over their course of their lives, at times when the financial context made it possible to find high-yield investments, seems to be out of step with the possibilities offered by current markets.** Although other segments of the population may have identical expectations due to a lack of up-to-date benchmarks, financial advisors describe older adults in particular as having "unrealistic demands" in the current context of low interest rates and low returns on guaranteed savings. They expect capital gains comparable to those seen in previous periods, yet with little exposure to risk. According to advisors, these unrealistic requests come primarily from older adults. As the compliance officer of a retail bank told us:

Compliance officer: “The expectations of elderly customers, which consist in receiving returns with no risk, are no longer being met. They demand that we meet these expectations; return, without risk. Imagine that! So, we are obliged to advise them regarding what they want, namely, yields. But then we are faced with the problem of the maturity of the instruments. For instance, buying SCPIs when the customer is 85 years old, which are products that carry a 10% subscription fee, means that if the customer dies two years later, they will not even have recovered the subscription fee. They would have been better off doing nothing. We often have to deal with this issue.” (Compliance officer, retail bank, June 2020)

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Another area of concern for institutions is **competition and the risk of the departure of dissatisfied older customers** who consider their yields too low. Institutions that attract very wealthy customers are highly exposed to this risk – high net worth customers are described as particularly demanding:

Compliance officer: "I think it's important to develop other types of products for the elderly that include security features because with the low interest rates and low returns we see today, we can no longer say to these clients, 'look, you have good money, we'll put it in at 0.05, and that's all we can do for you'. We really need to change our policy for these customers, keeping in mind that there is a certain amount of protection that needs to be provided, but I think we can get past that barrier. After all, they are very wealthy customers." (Compliance officer, private bank, March 2020).

With the emergence of new banking intermediation professionals, such as independent asset management advisors (who have been increasingly regulated since the early 2000s), there is real competition between institutions to attract and retain the substantial assets of older adults. The liberalisation of the asset management market has weakened the position of banks, which are now at risk of losing market share to new and recognised intermediaries. For their part, asset management advisors consider older adults to be a niche market that needs to be tapped – including those under legal protection through judicial measures determined by a court and implemented by trustees.

Independent wealth management advisor: "The guardianship market is very attractive because there's still a lot up for grabs. No one has really gone in all the way. It's quite complicated. But as independents, we have been trained differently and have positioned ourselves in this market. It's a market with significant assets. Admittedly, it's not cutting-edge business, but it has strong potential from a human point of view. There are genuine customer relationships. Our business model works, we target older adults with rates of return that are admittedly low, a little low, especially at the moment, but we provide enough. It's a winning bet."

(Independent wealth management advisor, October 2020)

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- Legal and reputational risks

While these financial elements have important strategic implications, they do not make it impossible to actually do business with older customers. However, financial advisors need to be extremely prudent in their relationships with these individuals.

The vulnerability of some older customers may jeopardise the compliance of transactions conducted on their behalf. If these transactions prove to be non-compliant with regulations, they are likely to give rise to claims or complaints from customers, and even damage the reputation of banking institutions. Banking, after all, is not only an advisory activity, it is also a strictly regulated commercial activity.⁴² However, current regulations reinforce the duty to advise incumbent on bankers. The marketing of financial products to older adults entails legal risks (for instance, having the customer or their heirs take legal action against an allegedly forced sale) and increased reputational risks (having the bank's reputation tarnished by being seen to mistreat potentially vulnerable customers). These risks hamper the sale of financial products.

To ensure that financial products are well adapted to customers, European regulations require the measurement of their risk profiles and the collection of their informed consent through various tools. Bankers therefore take extra care when selling financial products to people considered elderly. The example provided by the compliance officer of a private bank bears witness to this:

Compliance officer: “How do you attend to someone whose consent you are unsure of? When you sell a financial product, the basis is informed consent. Consent is what drives the whole process. It is from consent that we can activate the contract, validate it and ensure its compliance. If there's any doubt about this dimension, the process is blocked and we can no longer work.”

(Compliance officer, private bank, April 2020)

Work processes are rigorously organised in banking institutions. The procedure leading up to the subscription to an investment offer is computerised so that each step is precisely defined

⁴² In previous works (Lazarus (J.) (*Lazarus (J.)*, (2012): *L'épreuve de l'argent. Banque, banquiers, clients*, ed. Calmann-Lévy, Paris), we have shown that a banking advisor wears four "different banker hats", referring to as many different injunctions that they receive from their superiors and customers, as well as the way in which they represent their profession. These are (i) the judge (in charge of enforcing the law as well as ethical financial practices), (ii) the advisor, (iii) the salesperson and (iv) the saviour (more figurative than real, a banker who finds solutions to help people get out of financial difficulties). These roles bring with them intrinsic conflicts that can be intensified in connection with the sale of risky products to older adults.

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(customer identification; offer proposal accompanied by all the information on the product – characteristics, return/risk and investment horizon – and on the fees; subscription, which sometimes is only effective after a cooling-off period). Adapting to a customer's abilities and possible vulnerability seems to be difficult to reconcile with a standardised work schedule that meets productivity requirements:

Compliance officer: "Some people tend to forget about vulnerability because they are busy doing their job. The banker has to follow through with the sale and there are processes to comply with. We are in production mode, so some bankers will think: 'I have such and such a customer, I've got something that suits him, I'll =sell it to him.' But they need to pause for a second and say: 'Be careful, this customer is a certain age, so you shouldn't just give advice and follow procedure, you have to remain alert to certain issues.'" (Compliance officer, retail bank, June 2020).

At first glance, this interview might seem to contradict a previous one where the interviewed advisor is worried about not finding a suitable solution for an older and disabled customer. However, both professionals are talking about the same thing: the fact that vulnerable people disrupt the workflow of a bank. These situations can put the bank at risk (the advisor has to deal with the unexpected) but, as we see in the above interview, customers who need specific attention can also be put at risk when the service provided is standardised (and the advisor, by applying commercial routines, contravenes their advisory mission). The result is therefore the same: the marketing of financial products is a potential source of conflict, and advisors, despite being subject to regulations, do not have tools that would enable them to resolve the conflict between three dimensions at work: (i) respect for compliance, (ii) productivity requirements, and (iii) the need to pay more attention to these customers to ensure their consent is valid.

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The uncertainty about consent that arises in certain situations not only disrupts the organisation of banking work, but it is also likely to jeopardise the compliance of the operations conducted and generates a risk of claims or complaints from customers or their heirs. Advisors are generally very worried about reputational risk. Even if the Bettencourt case did not involve the marketing of financial products but rather an abuse of weakness, it has made a strong impression on all levels of banking institutions where it symbolises the risks associated with the weakening of consent in the management of people's financial affairs. This executive officer of a private bank echoes such concerns:

Executive officer: “We have always been concerned about vulnerability. But the Bettencourt case brought a sense of urgency to the concern. Reputation is a defining element in our marketplace. If we accumulate complaints and doubts about our ethics, we will certainly be penalised.”

(Executive officer, private bank, March 2020).

The risk of being accused of poor marketing practices exposes institutions to a reputational risk that could lead to a loss of assets, which is considered a major risk for private banks that manage relationships with family ecosystems beyond the individual customer. "What will the heirs do if they see us as crooks?", asks a director of a private bank. Therefore, selling financial products to older adults is costly in terms of working time and risky from a legal and reputational perspective.

The challenges of ageing for financial institutions

Ageing creates multiple difficulties for financial actors.

- The double-edged issue of consent:
 - How to ensure that consent is valid?
 - How to avoid denying a person their capacity to consent when they have health problems but retain their intellectual capacities?
- The challenge of the workflow:
 - How to combine meeting the productivity requirement of advisors with the need to pay increased attention to certain older customers?

- The risks involved:
 - Risk of being accused of inappropriately selling or abusing weakness if consent is deemed invalid.
 - Risk of being accused of discrimination if customers' abilities are not taken into account.
 - Risk of losing customers in the event of customer dissatisfaction.

C. A category of public policy thinking and action: vulnerability

The ageing of high net worth customers is a statistical reality. It is also an issue affecting the daily business practice of bankers. How has the problem been structured and taken on board by the different actors? Financial sector participants have taken it into account via the notion of vulnerability. Raising the issue of the treatment of vulnerable people may seem obvious and a natural consequence of the ageing of the population. However, an analysis of the processes that led to the identification and definition of this problem shows that it has been interpreted in a certain way, with a tendency to represent seniors as individuals who are potentially in danger, likely to be the object of decisions that could be detrimental to them – when other diagnoses could have been used. Examining these processes contributes to one of the objectives of the study: understanding how problematic marketing situations involving older people (some of whom are considered vulnerable) and advisors are identified and defined. By looking at how regulators have analysed the notion of ageing and how their definitions⁴³ have been received by the various market players, it is possible to **shed light on the ways in which these customers are represented, revealing the categories of thought that are used to define them.** The attention paid in this study to the categories used by the actors involved reflects the idea that people, in their everyday lives as well as in their professional activities, dissect the reality they are dealing with and arrange it into different boxes (or categories) allowing them to give it meaning, assimilate it and be able to better control it and find their way in it. The advantage of this constructivist approach is that it highlights the relatively contingent, and

⁴³ For the definition of vulnerability as employed by regulators, see the introduction to this report, p. 7.

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historically and socially evolving nature of the categories that actors use to think about these categories.

To come back to the subject of this study (senior customers), it is interesting to ask how banking professionals were led to define the problem they were facing, to identify its outlines, to approach it from a certain angle (to "frame" it); how they tried to devise the most effective categories to designate these customers and their characteristics, and then imagine the solutions to these potential problems: Is ageing a purely medical issue? A family matter? A regulatory issue? A business issue? Let us now consider how the framing of the problem encapsulates the use of the term "vulnerable".

- Vulnerability: cross-sectoral circulation of a polysemic term

The concept of vulnerability emerged at the turn of the millennium to refer to different target groups of the welfare state. It is not a term derived from the financial sector, but has been circulating for nearly two decades in different areas of public policy (disability, protection of adults, poverty), where it is used to avoid the problems associated with age thresholds or health status. The category "vulnerable" originally referred to people living in poverty or with a disability, and its use is the result of an ongoing development in terminology which can be seen in the scientific field as well as in public policies.

The term vulnerability emerged in the fight against poverty as a response to criticisms levelled against the term "exclusion", a category considered to be too focused on the lack of social integration.⁴⁴ Vulnerability is thus central to the latest reform of anti-poverty policies, where it is used to characterise actions to provide "protection to households" by "preventing and anticipating breakdowns".⁴⁵ By proposing to take action before people fall into poverty, the use of the term vulnerability signals the intention to **decompartmentalise the problem**, which is becoming a risk for all citizens. The movement towards decompartmentalisation is also present

⁴⁴ PAUGAM (S.), (ed.), (1996): *L'exclusion : l'état des savoirs*, Éditions la Découverte, Paris, p. 582.

⁴⁵ (2013): "Plan pluriannuel de lutte contre la pauvreté et pour l'inclusion sociale", *Comité interministériel de lutte contre les exclusions*, p. 7.

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in several research works on the sociology of poverty. Sociologist Danilo Martucelli proposes capturing what he sees as the "universal and common experience of being exposed".⁴⁶

Extending this analytical framework, Marc-Henry Soulet presents a **contextual approach** to vulnerability, which he defines as a possibility whose occurrence depends on environmental factors. It is then a matter of "looking at the moments and situations that create the potential for individuals to be vulnerable".⁴⁷ This contextualisation of the problem of poverty is accompanied by a focus on its dynamics. If vulnerability is a conjunctural situation, it is also **reversible**. By acting on an individual's immediate environment and strengthening their capacities, the risks involved should be reduced. Along this line, poverty reduction policies currently include several avenues based on the activation of individual skills⁴⁸ or on the role played by the family environment in poverty reduction.⁴⁹

Vulnerability is also a legal category included in the law of 11 February 2002 dealing with disability. The category is defined there as "any limitation of activity or restriction of participation in social life suffered by a person due to a substantial, lasting or definitive impairment of one or more physical, sensory, mental, cognitive or psychological functions [...]".⁵⁰ Seeking to replace approaches that were too focused on deficits, the emergence of the term "vulnerable" corresponds to the different developmental points already noted in the context of poverty. The aim is to underline **the universality of the risk of experiencing a disability** and focus on **its contextual nature**, thus avoiding the use of confining and stigmatising categories.⁵¹ Accordingly, policies for people with disabilities aim to develop action levers relating to the environment (the built environment for example) and regarding the

⁴⁶ MARTUCELLI (D.), "La vulnérabilité, un nouveau paradigme" in BRODIEZ-DOLINO (A.), VON BUELTZINGSLOEWEN (I.), EYRAUD (B.) et al. (eds.), (2014): *Vulnérabilités sanitaires et sociales. De l'histoire à la sociologie*, Presses Universitaires de Rennes, Rennes, p. 28.

⁴⁷ SOULET (M.H.), "Les raisons d'un succès. La vulnérabilité comme analyseur des problèmes sociaux contemporains" in BRODIEZ-DOLINO (A.), VON BUELTZINGSLOEWEN (I.), EYRAUD (B.) et al. (eds.), (2014): *Vulnérabilités sanitaires et sociales. De l'histoire à la sociologie*, Presses Universitaires de Rennes, Rennes, p. 63.

⁴⁸ GENARD (J.L.), (2007): "Capacités et capacitation: une nouvelle orientation des politiques publiques", *Action publique et subjectivité*, LGDJ, Paris.

⁴⁹ The multi-year plan for the fight against poverty and for social inclusion (Plan pluriannuel de lutte contre la pauvreté et pour l'inclusion sociale) thus includes a chapter devoted to supporting families, defined as one of the means of stemming the rise in the poverty rate (Inter-ministerial Committee for Combating Exclusion, (2013): *Plan pluriannuel de lutte contre la pauvreté et pour l'inclusion sociale*, pp. 17-20 and pp. 36-40).

⁵⁰ Article L. 114 of the Family and Social Action Code.

⁵¹ DUPONT (H.), (2016): *Ni fou, ni gogoll*, Presses universitaires de Grenoble, Fontaine.

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engagement of the family circle. This is how the issue of family carers has been placed on the public agenda.⁵²

These examples of the use of the term "vulnerability" shed light on its application with respect to older people. Three dimensions characterise its use: the **decompartmentalisation** of the categories involved (everyone is subject to a risk), their **contextualisation** (the risk must be assessed in a specific context) and the attention paid to its **reversibility** (the risk exposure is reversible). These three dimensions are also used to characterise **ageing**, in particular in the guardianship reform of 2019. Adults placed under protective measures were designated as "incapable adults", then as "protected adults", then in 2018 the interministerial mission report by Anne Caron-Dégli⁵³ proposed a change in terminology by defining the conditions for deploying protective measures according to a person's vulnerability. The report defines the term as a situation of "loss of autonomy",⁵⁴ limited in time and intended to be overcome or offset. Moreover, in the report, age is judged as an insufficient category for identifying the process of loss of autonomy in an older person. A loss of autonomy is rooted in the specific context in which the elderly person lives, since the geographical, social and institutional environment can cause varying levels of dependence for the same state of physical health. Finally, offsetting these dependencies is thought to be primarily a matter for the family. Since 2009, therefore, there has been a tendency in public policies to avoid any legal intervention for protected adults (by limiting the number of measures ordered by a judge and favouring mechanisms such as the future protection mandate). These few elements show that the use of the term "vulnerability" is the result of terminological changes that can be observed in various sectors. Throughout all of them, the category remains *decompartmentalised*, *contextual* and *reversible*. In other words, the complex nature of its use is inseparable from its meaning. As it is defined by means of a process, in a relative and individual manner, its practical implementation is essentially complex. Vulnerability is necessarily contingent and requires targeted and active attention to be paid to people's particular situations.

⁵² WEBER (A.), (2015): "Des enquêtes nationales pour connaître l'aide apportée par les proches en raison d'un handicap ou d'un problème de santé", *Informations sociales*, Vol. 2, No. 188, pp. 42-52.

⁵³ Caron-Dégli (A.), (2018): "L'évolution de la protection juridique des personnes. Reconnaître, soutenir et protéger les personnes vulnérables", *Inter-ministerial Mission Report*.

⁵⁴ Caron-Dégli (A.), *ibid*, p. 20.

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- From financial abuse to vulnerability: the gradual inclusion of ageing on the financial sector's agenda

Vulnerability is a term that circulates in different areas of public policy, and its appearance within the financial sector is the result of both **the control mechanisms deployed by regulators**, who need to establish categories, in the sociological sense of the term, to designate the problems encountered in the marketing of financial products to older adults (see the introduction to this report), and the **warning role played by voluntary associations** who found an opportunity to make their voices heard during the **2019 guardianship reform**.

Regulators are paying increasing attention to the issue of ageing, as part of discussions on systems for safeguarding protected adults (see the introduction to this report). The MiFID 2 and IDD directives have been applicable since 1 January 2018 and 1 October 2018, respectively, reinforcing the controls on marketing processes and introducing the question of seniors. They have drawn attention to the specific issues related to this type of customer.⁵⁵

Before the term vulnerability was used, **the problem of ageing was treated differently, essentially by the associative sector, which highlighted the “financial abuse”** of which ageing adults are sometimes victims, within their families or at the hands of institutions. In 2011, Alain Koskas⁵⁶ and Véronique Desjardins drafted a report on financial abuse⁵⁷ for the Mediator of the French Republic. The report did not specifically address the marketing of financial products but pointed to the absence of measures adopted by banks to fight against financial abuse, and recommended the development of "good practice protocols for the very

⁵⁵ See in particular AMF, *Synthèse des contrôles SPOT sur les connaissances et l'expérience des clients MIF 1 / MIF 2*, 2018.

⁵⁶ A gerontologist, he is president of the International Federation of Associations of the Elderly (FIAPA). This association takes part in the development of public programmes at the European level and international level (at the UN in particular, where it is a member of several commissions and in particular the commission relating to social cohesion. It also works closely with the World Health Organization). Founded 40 years ago, it was initially dedicated to the defence of rural senior citizens and their rights upon retirement. For more information about this association, visit the website <https://www.fiapa.net/>.

⁵⁷ Hospital director, AP-HP.

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specific needs of protected and vulnerable adults".⁵⁸ The Koskas-Desjardins report gave momentum to the gradual construction of the category of financial abuse in several ways.

First, the authors provided a definition of financial abuse as "any act knowingly committed with a view to the use or appropriation of any person's financial resources to their detriment, without their consent or by abusing their trust or condition of physical or psychological weakness".⁵⁹ In the report, abuse mainly refers to theft, fraud or abuses of weakness, preying on the older adult's state of frailty. Several elements of the report proposed assessing frailty using an index in order to prevent abuse, thus giving rise to a form of medicalisation of the problem, where frailty is understood as a geriatric concept that is assessed using a grid that includes observations on a person's mood, nutrition, medical care and housing conditions. A ratio is then formulated, which can be used to measure whether the person's "decision-making ability is compromised".⁶⁰

The report stressed that banks should do more to fulfil their duty to warn, which should go as far as reporting the situation to a judge, as provided for in Article 449 of the Civil Code, amended in 2007, which states that "third parties may inform the judge of acts or omissions" by guardians.⁶¹ The authors also recommended formalising good banking practices, so that vulnerable older adults are properly taken care of regardless of who they are talking to. The report focused on those subject to protective measures and had important consequences: it inspired elements of the 2015 law relating to the adaptation of society to older persons⁶² and, above all, it disseminated the notion of the financial abuse of older persons, which subsequently became a focus of public action.

In 2016, an investigation on the financial abuse of older persons (i.e. not only those under protective measures) was entrusted to Alain Koskas by Pascale Boistard, Secretary of State for Older Persons and Independence, with the aim of updating the state of awareness of financial

⁵⁸ Koskas (A.), Desjardins (V.), (2011): *Rapport de la mission sur la maltraitance financière à l'égard des personnes âgées dans les établissements sanitaires, sociaux et médico-sociaux*, "Report to the Mediator of the Republic", p. 39.

⁵⁹ Koskas (A.), Desjardins (V.), "Rapport de la mission sur la maltraitance financière à l'égard des personnes âgées dans les établissements sanitaires, sociaux et médico-sociaux", *op. cit.*, p. 9.

⁶⁰ *ibid*, p. 26.

⁶¹ *ibid*, p. 34.

⁶² Law No. 2015-1776 of 28 December 2015.

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abuse. The investigation gave rise to a report submitted in 2017 describing the financial abuse of older persons as a “silent plague”.⁶³

The report also replaced the term "frailty" with "vulnerability". The change was part of a broader movement towards the development and dissemination of the term "vulnerability" in government action.⁶⁴ The category added external variables, particularly those related to the environment, to the factors disrupting a person's decision-making capacities. Perpetrators of financial abuse are most often either scammers or family members, however, the report also raised the possibility that professionals, including bankers, may be behind some abuse (ranging from proven abuse to simple negligence preventing people from exercising their rights). The investigation included interviews with the AFUB (French Association of Bank Users), which described the complaints it received most often about relations between older adults and their banks: refusal of loans, difficulties accessing insurance, overly risky savings vehicles with maturities that are ill-suited to the age of the savers. The association also highlighted the difficulties experienced by older persons as a result of the closure of bank branches and widespread digitisation.⁶⁵

These developments (the demedicalisation of the problem of financial abuse and contextualisation of its definition) were enshrined in the new guardianship reform that took effect in 2018. Anne Caron-Déglise – general counsel at the Court of Cassation, former president of the Chamber of Guardianship of Adults and Minors, and author of numerous texts on the care of protected adults⁶⁶ – was commissioned by the Minister of Justice to conduct a study prior to the reform of protective measures for adults, ten years after the previous reform. In her report, the term "vulnerability" replaced that of "protected adult".⁶⁷ Noting that vulnerability can only be defined circumstantially, the author proposed assessing decision-making capacities by evaluating several skills: comprehension, appreciation, reasoning, and expression of choice.⁶⁸ **Financial sector actors were described as being expected to**

⁶³ Koskas (A.), (2017): *Les maltraitances financières à l'égard des personnes âgées. Un fléau silencieux*, 19 September.

⁶⁴ BRODIEZ (A.), BUELTZINGSLOEWEN (I.), EYRAUD (B.) et al., (2014): *Vulnérabilités sanitaires et sociales : de l'histoire à la sociologie*, Presses universitaires de Rennes, Rennes, p. 277.

⁶⁵ Koskas (A.), "Les maltraitances financières", *op. cit.*, p. 62.

⁶⁶ See in particular Caron-Déglise (A.), (2014): "Vieillesse et altération des facultés personnelles. Co-construire un accompagnement responsable, cohérent et respectueux des droits des personnes", *Retraite et société*, No. 68, pp. 23-40; Caron-Déglise (A.), (2012): "Protéger pour construire les capacités des personnes malades", in Gzil (F.) ed., (2012): *Alzheimer, éthique et société*, Espace éthique, Poche, Toulouse, pp. 303-317.

⁶⁷ Caron-Déglise (A.), 2018: "L'évolution de la protection juridique des personnes. Reconnaître, soutenir et protéger les personnes les plus vulnérables", *Inter-ministerial Mission Report*.

⁶⁸ Caron-Déglise (A.), "L'évolution de la protection juridique des personnes. Reconnaître, soutenir et protéger les personnes les plus vulnérables", *op. cit.*, p. 31.

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contribute to the detection and treatment of vulnerability. The report proposed reforming the conditions for initiating protective measures, which previously required a detailed medical certificate to be established, by carrying out a “multidimensional assessment” that takes into account both the individual’s capacities and their environment. This would require:

"On the one hand, the implementation of a system to assess a person's medico-social situation that is more developed than the current one, and, on the other hand, the assimilation of this system by all those involved in the protection of vulnerable adults, including the health and social sectors, lawyers, notaries, bankers, families, public prosecutors, judges and legal representatives for the protection of adults themselves" Caron-Deglise (A.), “Vieillesse et altération des facultés personnelles. Co-construire un accompagnement responsable, cohérent et respectueux des droits des personnes”, p. 70).

The category of financial vulnerability, stemming from the non-profit sector, thus spread to public policy and was adopted by financial sector participants and regulators alike. It became a fully-fledged category of public policy, in the same way as "frail customers", which, as of 2013, was used to refer to a segment of the population requiring a specific retail banking offering.

- The response to vulnerability by financial institutions

Vulnerability has thus gradually become part of the financial sector’s regulatory framework. As we have seen, public thinking on vulnerability focuses primarily on the family environment or medical problems. What role are financial institutions expected to play? Initially, they were asked to identify these difficulties in order to sound the alarm, but gradually the issue of inappropriate practices at banks arose, and the question of what measures they can implement to best meet the needs of this specific clientele.

The AMF and the ACPR launched a series of market workshops where various materials were offered to participants, including certain definitions, to help better understand the subject. The workshops provided an opportunity for reflection and also provoked reactions, some of them strong, with some bankers expressing their desire for the legislature to take up the subject to “standardise” vulnerability and overcome the existing regulatory vagueness. During the workshops, financial actors expressed strong reservations about their ability to detect financial vulnerability in older adults and assume responsibility where it is identified. Two primary arguments were advanced: the principle of non-discrimination with respect to the customer and the institution's liability if it were to detect a vulnerability.

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Financial sector participants believe that a bank is not supposed to deal with problems perceived as medical, regarding vulnerability as beyond their field of competence. Below, for example, is the point of view of the compliance officer at a retail bank:

Compliance officer: “I don't know if detecting vulnerability is our responsibility. We are bankers, we don't do social work, and we're not lawyers or notaries. We are asked to protect the interest of the customer, fair enough, but detecting whether they have cognitive abilities or not is beyond our mandate. We are not gerontologists. I agree with regulators, something has to be done, but it's not our job. And, in fact, we have the growing feeling of being used by the State in the performance of its duties. We see this clearly in money laundering, where banks and insurers are asked to do the job of the police. We would like to avoid being forced to perform more duties for the State, especially of a social or societal nature, as is the case of consumer protection.”

(Compliance officer, retail bank, June 2020).

The interview shows the refusal to assume responsibility for what is perceived as a delegation of the State's duty. While banking institutions are subject to obligations in the fight against money laundering and the financing of terrorism,⁶⁹ greater involvement in dealing with vulnerability is, for some, seen as a new public duty that is out of step with their corporate purpose of marketing financial products. They are concerned about provisions that could undermine banking secrecy, as well as the principle of non-interference in the lives of their customers. The conflict between the duty to alert and non-interference, already highlighted in the 2011 Koskas-Desjardins report, is still unresolved. The greater the customer's wealth, the more relevant the question appears. The compliance officer of a private bank explained that the interests of these customers depend above all on strict confidentiality in the management of their assets.

Compliance officer: “We have customers who are very careful about disclosing information on their assets. You have to understand that it puts them at risk of being exposed to some form of publicity.”

Researcher: "Yes, but in the case of vulnerability, you can bring things to the attention of the prosecutor, right?"

Compliance officer: [...] "I think that my customers would take a very dim view of me if I ever brought a third party into their business."

⁶⁹ In France, the fight against money laundering and terrorist financing is the responsibility of the supervisor (– ACPR), the central bank (Banque de France) and the financial intelligence unit (Tracfin). For an analysis of these mechanisms, see Favarel-Garrigues et al., (2009).

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(Compliance officer, private bank, April 2020).

The banks argue that they already have difficulty incorporating measures concerning protected adults, a regulated area, having been unable to convince the legislator of the value of a file that would inventory the enacted measures. They are concerned about this broader and less defined reflection on older persons who have lost their autonomy but retain their intellectual capacities and are legally entitled to expect the same treatment as other customers.

Vulnerability: issues of capacity and disrupted flow

The challenges for financial sector participants in appropriating the term vulnerability can be seen as stemming from the different processes involved in the construction of the problem:

- the individualisation of the problem and the placement of responsibility on financial actors, which make it harder to accept;
- the contextual dimension of the problem and its supposed reversibility, which complicates its identification and suggests that handling it falls outside the scope of financial actors' professional activities.

II. The framework in which financial products are marketed to seniors

The personal banking business is structurally conflicted between its duty to advise and the fact that it is a commercial activity with commercial objectives. Moreover, French banking has the unique feature of being universal: 99% of households have a bank account and it is almost impossible to lead a normal social life without a bank account. Banks are therefore commercial services that are asked to fulfil a quasi-public service, a legacy of the history of French banking, initiated during the 1960s, when the large commercial banks were nationalised.⁷⁰ These conflicts are also present in the treatment of older customers. The purpose of this section is to describe the framework in which financial products are marketed and to measure its potential misalignment with some older customers. We are also interested in detecting problematic situations. While advisors have experiential knowledge that could enable them to determine which customers are no longer able to make investment decisions, **the organisational methods of banking institutions sometimes prevent them from doing so**. Furthermore, **the conditions for detecting situations of vulnerability are not uniform across customers and institutions**. Advisors pay varying degrees of attention to the financial practices and abilities of customers to engage in commercial transactions. The amount of attention paid varies according to the social characteristics and behaviour of customers when interacting with their advisors. Finally, even when situations of potential vulnerability are detected by advisors, the complexity of the issues that vulnerable customers face, and particularly those relating to the preservation of social ties, makes it difficult **to assess their informed consent**. **Our research shows the need to determine good practices collectively** so as not to leave advisors without the necessary tools when faced with complicated situations.

⁷⁰ For developments on the subject, we refer to our research: Lazarus (J.), (2012): *L'Épreuve de l'argent. Banques, banquiers, clients*, Calmann-Levy, Paris; Lazarus (J.), (2022): *Les politiques de l'argent*, PUF, Paris.

A. The banking model in the face of ageing

Our observations, backed up by interviews, showed that the practical knowledge of advisors is the primary tool for detecting customers with difficulties. This tool is based on experience and sensitivity to these issues. As a result, it is unevenly distributed. Moreover, the organisation of work, and particularly the strong focus on sales objectives – whether individual or team-based – sometimes prevents the application or even acquisition of this experiential knowledge. Finally, the geographical rationalisation of banking networks leaves bankers isolated and does not allow the development of a collective focus on potentially vulnerable clients.

- Signs of vulnerability: experiential knowledge

During our fieldwork, advisors mentioned various factors that would prompt them to be cautious when performing sales transactions during meetings with customers. These factors are described as signs of a lack of ability to make financial decisions and choose rationally and in an informed manner, taking into account the characteristics of the various products offered. Their analysis shows that **time and experience gathered in the relationship with the customer are essential in spotting vulnerability.**

First off, **these signs are revealed in the interaction with the customer**, namely the way the customer presents themselves. They are also related to **the customer's attitude towards the management of their wealth**, particularly, their attitude in comparison with what is defined as normal wealth management behaviour for older private banking customers. Bankers have learned to spot these signs "on the job", namely, during their careers or through communications with more experienced colleagues. They have received barely no specific training on the subject or any hierarchical directives. **The detection of risky situations is thus based on professional socialisation mechanisms**, which over time build knowledge about the behavioural norms of older people. It enables the identification of perceived problematic deviations from the norm and the development of the practical knowledge required to deal with them.

This experiential definition of vulnerability is based on identified discrepancies between, on the one hand, the practices and discourses of people suspected of having lost autonomy and, on the other hand, the “normal” practices and discourses of older people. Direct observations and interviews with both advisors and their superiors enabled us to identify the way in which socialisation in banks defines a vulnerable person. The three dimensions that alert advisors are the following:

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- **Difficulty experienced by elderly customers in foreseeing their own needs and anticipating their future dependency.** In this case, their financial management practices are considered unreasonable. Vulnerability is therefore associated with bad financial decisions. One of the advisors we contacted described for us the "typical case" of a vulnerable person: "It's someone who's going to invest in funds, risky funds, when we know very well that they might need liquidity soon to pay for, I don't know, a retirement home or something else". (Excerpt from an interview with a financial advisor, 9 June 2020).
- **Decisions that run counter to the protection of a customer's wealth and obstruct its transfer.** Advisors may identify vulnerable people through substantial cash withdrawal operations that appear abnormal, or through the sale of life insurance that runs counter to the interests of wealth preservation.
- **Communication disorders and capacity impairment,** which may be expressed in different ways: some are related to language (someone who is less articulate than usual, who seems less able to understand what is being said to them), others related to clothing or bodily appearance (a noticeable change in the care taken of their clothing or hygiene). Difficulties related to walking or in the use of digital tools (no longer knowing how to use one's mobile phone or open an email, when these practices did not previously cause any difficulties) are also taken into consideration. To be able to measure a deterioration in capacity, it is important to know the customers and have the chance to monitor them over time.

All of the institutions contacted during the various phases of this survey confirmed that the detection of situations of vulnerability is based on the "feeling" or the "sense" of advisors.⁷¹ As a result, and since there are few institutionalised mechanisms for dealing with ageing in financial institutions, the detection of vulnerability seems only possible under several conditions: face-to-face relationships must be sufficiently frequent, and advisors must have the time and means necessary to identify abnormal behaviour by their customers. They must have **a detailed knowledge of customers and their social and familial environment.** This type of relationship with customers is encouraged by the institutional context specific to private banks.

⁷¹ These verbatim statements are based on various interviews conducted with banking establishments and financial intermediaries.

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Financial advisor: “We are a private bank. I have had my clientele in my portfolio since I arrived here 10 years ago. So inevitably, if there is something that changes in their behaviour, I'll notice it. And then there's the fact that in most cases, we know the entire family, so we'll also be able to very easily find someone to help us understand what is happening and determine whether there's vulnerability.”

(Financial advisor, private bank, 31 March 2020).

Conversely, the organisation of work in standard retail banks does not seem to be conducive to the acquisition of sufficient knowledge of the customers and their environments for advisors to be able to spot vulnerability. This is what an advisor who recently left this profession told us:

Financial advisor: “We couldn't tell if customers were unwell. It was structural. We changed client portfolios often, so we didn't even know our customers. And anyway, when we received them in the office, there was no time to talk. We had to go fast to meet our objectives, so there was no time to ask how it was going. Conversations focused on the mundane, we didn't get to know people.”

(Former financial advisor, retail bank, 29 April 2020).

Private bankers seem to have more favourable conditions than retail bankers for spotting signs of vulnerability. However, our observations of private bankers showed that this activity is regularly hampered by the requirements of their profession.

- Bankers in competition

Detecting vulnerability requires time and in-depth knowledge of customers, not immediately productive and not always in line with the everyday banking tasks. **Work constraints are rarely adjusted to the needs of older and vulnerable customers.**

Regulations have set the principles of compensation in the financial sector. These rules are intended to **remove individual bonuses on sales, identified as one of the causes of sales pressure** and described as inconsistent with the protection of consumers' interests. In the past, bonuses were a significant part of bankers' salaries as a variable part of their compensation based on performance and results criteria. The branch manager of a retail bank told us about the changes that have been made in the way advisors' compensation is calculated:

“There have been changes in the compensation structures. When I started in 2008, we had individual targets and earned commissions on

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each transaction. If we sold a product, we gained a few points which were convertible into euros and, every quarter, we received our bonus. And there were some outrageous situations. For instance, for the same type of transaction, you got more points if you invested in a unit-linked contract than if you invested in a PEL (housing savings plan) or euro fund. So, there was a financial incentive to push for risk. It was relatively insidious because advisors had a tangible interest in pushing customers into unit-linked contracts. There was twice as much to gain from investing in a risky vehicle. It was an awful principle. The first step was to say "for the same type of request, we keep individual commissions on each transaction, but pay the same amount for all investments, regardless of whether they are in a euro fund, a PEL or high-risk. That was the first step.

"When was that?"

Branch manager: "Around 2010 or 2011. As a consequence of the financial crisis. (...) So then the next step was to get rid of individual commercial targets and the compensation that came with them. That was in 2014 or 2015.⁷² So individual objectives and fee-for-service were removed. We are no longer marketers like the others. We sell lifelong savings products a lot of the time. It's always good to tighten the rules and show that we are honourable."

(Branch manager, retail bank, October 2021)

The compensation system was singled out as being conducive to misselling given the conflicts of interest involved. This point has been the subject of successive reforms. As early as 2005, the report presented by Jacques Delmas-Marsalet on the marketing of financial products,⁷³ commissioned following the abuses of the dot-com bubble of the late 1990s, pointed the sales pressure borne by bank employees, who are often insufficiently trained, and the need to reform how individual compensation was calculated:

"To avoid biased advice and hence the risk of inappropriate sales, the following should be recommended:

(i) variable compensation, where it exists, should be limited to a reasonable percentage of income and based on the greatest possible number of products and the weight given to each in the calculation should only take into account their degree of difficulty of sale.

⁷² Here, the branch manager is undoubtedly referring to the application of Directive 2013/36/EU on sound remuneration policies, which stipulates in particular that the remuneration policy "should not encourage excessive risk-taking".

⁷³ Delmas-Marsalet (J.), *"Rapport relatif à la commercialisation de produits financiers"*, Report to the Prime Minister, Paris, p. 10.

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- (ii) in addition to the volume of sales, this compensation should consider more qualitative elements such as the development of the customer portfolio or the quality of customer follow-up.
- (iii) the assessment of sales advisors should be conducted according to the same principles,
- (iv) excessive pressure should not be exerted on sellers in commercial campaigns limited to a specific product."

Banks were advised to limit the variable portion of compensation to better guarantee the objectivity of the advice they gave.

The report also recommends to further segment their clienteles and more finely tailor their products.

"One of the principal causes of abusive or inappropriate sales observed in the recent past are marketing campaigns based on selling a product to as many customers as possible, without worrying too much whether it is suited to their needs (the so-called "push product" policy).

These campaigns were sometimes inadequately targeted, leading to the product being offered to people for whom it was not designed. Moreover, the sales to which they gave rise were often not accompanied by a minimal assessment that would have considered the buyer's financial situation, investment objectives and horizon, and risk profile. This was made worse by the fact that the salespeople, who were sometimes insufficiently trained, were strongly encouraged to achieve the maximum volume of sales, whether through commissions based on this volume or by the inclusion of ambitious quantitative objectives in their evaluation."

Delmas-Marsalet (J.), "Rapport relatif à la commercialisation de produits financiers", p.10

Following the financial crises of 2007 and 2008, the European Union tightened the rules on bonuses in the financial sector. Building on this, the European Commission, through the MiFID 2 and IDD directives, implemented legal frameworks reaffirming the priority of customer interests: product segmentation, customer segmentation, pre-contractual customer information, better knowledge of the customer and their needs to offer appropriate products and, finally, transparency and control of conflicts of interest, particularly those relating to compensation. The end of individual bonuses is still perceived today by market players as a guarantee of financial probity, setting the sector apart from other forms of commerce and likely to strengthen the confidence of customers in the practices of their bankers, and therefore improve trade.

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While individual bonuses no longer exist as such, all the interviews and observations showed that the commercial pressure exerted on advisors remains strong. While individual commercial objectives have indeed disappeared, individual indicators remain, measuring, for example, the completeness of customer files, the number of appointments made per week, the appointments scheduled for the following week, the amount of capital collected, or the number of MiFID questionnaires completed each month. However, these indicators appear to be less of a priority in the eyes of institutions than **commercial objectives, which are no longer calculated by advisor but by sector**. This change, intended to avoid conflicts of interest, reactivates the commercial pressures against which it was supposed to fight because the collective objectives are then broken down into individual targets, with each advisor being required to contribute individually to the collective success.

These individual contributions to collective objectives are measured and represent a large part of bank branches daily life, revealing the core conflict of the banking business: a money-based business governed by very strict regulations, due to its essential social role and the desire of the public authorities to ensure that customers' interests are respected. Discussions between colleagues in the sector regularly address this subject. Strategies to meet the yearly target, results for the week and targets for the month are often posted in the break rooms, and bank employees regularly consult the activity charts, where everyone's activity is listed and visible to all.

Although not individual, these objectives drive the work of sales team. They receive daily messages containing the results of the previous weeks and the objectives of those to come, with rankings between branches and employees. Those constraints structure their decisions: customers likely to be interested in current campaigns are contacted first; activities not included in these campaigns – and therefore not in the annual bonuses either – are considered secondary, if not distracting.

This focus on business objectives often create tension within teams, as each employee becomes a link in the achievement of the objectives (and therefore in the size of the bonus their colleagues receive). The solidarity that could have arisen from this interdependence may instead turn into competition and fuel enmity and blame about other colleagues.

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In all the branches of the private bank in which the ethnography work was conducted, and even more so at retail banks, this atmosphere gives rise to a strong feeling of unease at work. Feelings of "running around all the time",⁷⁴ "never doing well enough", "being judged all the time" are shared by many of the bankers in the institutions where the survey took place. **This feeling has concrete effects not only on the atmosphere at work, but also on the stability of the teams.** Statistics from the French Observatory of Banking Professions show that the turnover rate in the sector is increasing. The study published last year and relating to the period before Covid-19 highlighted individual customer relationship managers as being particularly affected. In 2017, this group accounted for 22.6% of the departures of permanent employees. Almost half of these (47.9%) were due to resignations.⁷⁵ **This instability complicates the detection of vulnerability, as identifying changes in the behaviour of seniors requires time and stable interactions.**

What effects do these organisational work structures have on older customers? First, under pressure to sell, advisors do not always take the time to ascertain the customer needs and ensure that all the requisite information has been conveyed and understood. For older people who may experience hearing difficulties, for example, or a slightly slower understanding than younger people, this can lead to inappropriate sales. More generally, these customers have characteristics not well suited to this context: they may be more anxious, occasionally express incomprehension, and even have expectations coming from a world considered bygone, where commercial interactions involved more sociability and time spent between sellers and customers. These challenges sometimes slow down the productivity rate of advisors, or bring them to neglect detecting situations of vulnerability, or, if they do detect them, do not know what to do with them, as they have neither the time nor the training to act, or have not received precise instructions to do so.

- Modernisation of branches and growing isolation of financial advisors

⁷⁴ This excerpt and the following excerpts come from interviews conducted with bankers from retail banks, December 2021.

⁷⁵ Observatoire des métiers de la banque, (2017): Les métiers-repères de la banque. Contours, Paris, 2017.

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Detecting signs of vulnerability requires an in-depth knowledge of customers and their behaviour, especially to identify any changes that could trigger an alert. Acquiring this knowledge requires time, and **numerous opportunities for interaction with customers identified as frail**. However, our investigations revealed several difficulties: a heavy turnover of advisors, which prevents long-term knowledge of the customer; a cutback in the physical reception of customers due to the reduction in the number of branches and reception staff, or architectural transformations of branches, intended to limit face-to-face interactions in offices to speed up exchanges. These fundamental changes have been going on for a long time – the issue of reception in branches has been around since the sharp rise in the number of people with bank accounts in the late 1960s, and has been the subject of successive waves of modernisation (Lazarus, 2012). The idea of a multi-channel approach has been present since the 1980s and the invention of minitel. The internet and call centres strengthened the trend, even if branches in France kept increasing in number until the beginning of the 2010s, at a time when its European neighbours were closing them *en masse*. French banking networks are twice as dense as the European average (excluding Luxembourg). France had 545 branches per million inhabitants in 2020, while the European average is 285.⁷⁶ The decline in the number of branches has been extremely quick throughout Europe, accompanied by increasing digitisation. In countries such as the United Kingdom or the Netherlands, where the density of branches is particularly low, financial advice is far from being the monopoly of banks and many independent services are available, at least for customers with considerable wealth.

In France, the maintenance of a high number of branches has been accompanied by a shift in their location towards areas with the wealthiest customers. Employees are asked to focus on "value-added" activities, i.e. marketing financial products. At the same time, ATMs have been installed on a massive scale over the last 20 years, and physical reception is becoming increasingly limited. An acceleration of these transformations is underway with a new trend added in the last ten years or so: the amalgamation and closure of branches (according to the Moneyvox website, France had 41,800 bank branches in 2010, and 38,100 in 2020, including around 6,000 postal agencies),⁷⁷ due to the combined effects of a drop in branch visits and a drop in subscriptions to products during or following an appointment, driven by the rise in digital tools.

⁷⁶ Figures from Sia Partners.

⁷⁷ See <https://www.moneyvox.fr/banque/actualites/84455/exclusif-habitez-vous-dans-un-desert-bancaire>

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Less frequented and less profitable branches – whether they are in sparsely populated areas, close to another branch, or in neighbourhoods with unprofitable customers, etc. – have closed. These closures are being accompanied by a **redesign of customer contact models**. Reception staff are grouped together in a central branch, with sales staff moving from branch to branch according to customer needs. The reception areas are digitised so that customers can manage their accounts themselves and perform daily operations independently. A branch director in the West of France who we followed during our fieldwork recounted that the new "customer contact policy" has transformed the distribution of work within branches, and that **the modernisation of customer reception methods has gone hand in hand with a redefinition of the division of labour:**

Branch manager: "We have switched to a multi-site and multi-channel model. There is a central branch, the heart of the machine, here, at XXX. And we have three branches where we can settle customer appointments, allowing for a few open spots, but we generally try to keep it as lean as possible. (...)"

Q: "What is its purpose?"

Branch manager: "Its purpose is to consolidate strengths and, above all, use them wisely. It makes no sense for a highly qualified advisor to work in a branch all alone and handle three customers per day. Used wisely, the advisor can be here in the morning, and I assign them to the reception desk. And in the afternoon they can go to X for their appointments, where they can use of their skills. (...) The advisors take turns working half days at the reception desk. They work in their offices in the morning, answering emails for example, and when they see someone enter the branch, they ask the reason for their visit. In the afternoon, it's by appointment".

Q: "Why don't you work exclusively by "appointment?"

Branch manager: "It's more profitable to do so. Because what brings down our figures is day-to-day banking, like making withdrawals and transfers for the elderly; all of that needs to go digital. We preserve the skills of our bankers for complex operations".

(Branch manager of a bank branch network, September 2021)

The desire to limit the time devoted to day-to-day operations is nothing new, but recent developments have reinforced the need for customer autonomy by suppressing the clerks solely dedicated to the reception desk and who, where necessary, would help customers use the bank machines. During this interview a recurring type of customer was mentioned who banks have long sought to avoid: older adults visiting the branch to perform day-to-day transactions – who used to be dealt with at physical counters until the 2000s – and are considered to waste the precious time of "highly qualified" advisors, especially if these customers want to use the opportunity to have a chat.

These developments pose two kinds of problems in the detection of vulnerability. First, **if banking advisors are less involved in the day-to-day account management activities, they have less frequent contact with older adults**, which makes it more difficult to detect changes in customer behaviours, especially in situations where there is high turnover. In addition, the scarcity of reception desk staff makes it harder to assess changes in older customers and the difficulties they encounter. **Banking advisors therefore find themselves alone with their customers and the management of occasionally complex situations.**

"Falling through the cracks": when organisational methods result in fewer opportunities to detect vulnerability

The detection of older persons to whom the sale of financial products may prove problematic is essentially based on bankers' experiential knowledge. To acquire this knowledge, they need time and must know their customers well. This is limited by several organisational aspects:

- **The management of financial activities by way of commercial objectives**, which result in a pace of work that allows very little time to deal with cases perceived as complex. The constraint imposed by the objectives can lead to cases being processed too quickly or without ensuring that the customers have properly understood the issues.
- Banking is characterised by high **turnover rates**. This limits the possibility of monitoring a portfolio over the long term.
- The modernisation of reception desks is leading to **fewer day-to-day interactions with customers**, which in turn means there are fewer opportunities to spot warning signs.

B. Informal customer hierarchy and rankings

With these banking organisation methods, **advisors do not always perceive older adults as the most valuable customers**. As in many institutions, there are, in fact, customers who are appreciated to varying degrees by people on the ground. Here we are aiming to characterise the

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customers who are deemed to be attractive and to whom, as a result, more banking advisor time and organisational resources are dedicated. Given that it takes time and attention to realise that a customer is no longer able to establish a business relationship with a financial institution, the ability of banking advisors to detect these problematic situations is inconsistent. The amount of attention paid to customers differs according to customers. It is therefore important to question the conditions of this differentiated detection of vulnerability (better detected in some customers than in others), and to question the individual and/or collective dimension of how different customers are perceived. To spot these **mechanisms of differential valence in terms of the attention given to customers**, we rely on the observations made during interviews between financial advisors and their customers, as well as on comments by banking advisors on older adults perceived as vulnerable.

- Vulnerable seniors – a definition through practice

Before questioning the ways in which older customers are treated, let us look at how this category is defined in the discourse of the advisors at banking establishments. **There is no fixed definition for older adults in the banking staff vernacular.** They often mention 85 years and older, in reference to the doctrines of the French Insurance Federation (FFA) concerning the marketing of life assurance. Similarly, there are few institutional definitions of seniors. **The procedures generally do not mention the age of the customers.** There are only a few references to restrictions on sales to over-85s, mostly in the marketing of structured products. The sale of such products is not prohibited but is subject to prior validation by the normal supervisory channels. In this case, the concept of age is addressed for the purpose of customer protection.

Although seniors are not a formally defined group, by analysing the practices of banking advisors, it is possible to get a sense of the informal definition constructed in practice for older customers. Older **customers fit within the categories with which financial advisors are reluctant to do business.** Firstly, due to the risks they potentially pose and, secondly, in the case of wealth management, because these customers do not match the image that advisors may have of their future clientele.

- The first justification given by the advisors relates to their apprehension of the risks of forming commercial relationships with customers whose validity of consent could be

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challenged later. Financial transactions conducted with these customers are considered to carry legal risks (being sued for lack of advice), reputational risks (appearing as an institution that takes advantage of these customers' weaknesses) and commercial risks (losing market share and, especially, causing heirs to leave).⁷⁸

- The second explanation for the lack of interest, even reluctance, of some advisors to work with older customers comes from the fact that wealth management advisors, especially the most recently recruited, have a **relatively stereotypical representation of wealth management**, consider that the typical high-net-worth customer is an active man, generally a young company executive, and with whom it is possible to set up technical and complex financial transactions. An older adult, especially if the senior is a woman and her money is perceived – correctly or incorrectly – as inherited from her husband, is conversely considered to be a cautious customer, anticipating her possible dependency, preparing the transfer of her wealth and whose commercial transactions are relatively undiversified. **These private bankers do not consider seniors to be at the core of their professional activity.**

The older customer is thus not defined by their intrinsic properties, but in a relational way; in other words by comparison with other types of clients. Ageing thus comes down to being different from the norm and specially the norm of commercial practices.

- A different reception for older customers?

Even though the characteristics of older customers do not always fit with advisors' image of their profession, how do advisors welcome them? Some say they enjoy working with these customers for the "human" aspect of the commercial relationship:

Banking advisor: "I like to take care of little grannies, it's a nice change. There's the social aspect. I find it touching. It makes me think of my grandmother. And after all, at 80 or 85 years old, they've experienced things, so there's a form of exchange that takes place. When it comes to serving older people, ultimately it's all about relationships, and I love that." (Banking advisor for a private bank, November 2021).

What therefore seems to define business practices for older customers, in advisors' eyes, is the higher weight of relational commitments. For some banking advisors, this reversal of

⁷⁸ For more details, refer to the appendix of this report.

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the organisational order is an opportunity to "take a break" or to "take my time" and even "socialise", on contrast with their usual daily routine where they are subject to direct forms of commercial pressure. Another reason why advisors may appreciate doing business with older customers is the possibility of discussing their life stories, and, in some cases, of being able to play a rewarding role, especially for older adults who are lonely. This is what one banking advisor from a private bank told us.

Banking advisor: "I like visiting the elderly. First off, it gives me a break because when I go to their house, we have coffee. And secondly, some of my clients have great stories to tell. I really enjoy listening to them. They immerse me in the history of France, and I like that. And we have great relationships with some of them. They don't see many people anymore, their children and grandchildren are far away, so we feel that we play a rather special role, and they're happy to see us."
(Banking advisor, private bank, November 2021).

Older customers can thus be presented as customers who are different from others, with whom a less commercial, more human, and affective relationship could be established. Advisors seem to suspend their usual reflexes (need for speed, profitability and so on) when dealing with these customers. This relational commitment may seem conducive to detecting customers' loss of capacity, identifying their specific needs or even identifying their difficulties in giving informed consent. But, as there is little standardisation to judge these circumstances, it can also be the source of significant differences in how customers are treated.

- Informal criteria for classifying older customers

The relational commitment of advisors to their older customers depends not only on the age of their customers, but also on the customers' social characteristics and on the advisors' attitudes to managing their wealth. Banking advisors prioritise customers and adjust the relationship they have with them according to several parameters.

The first parameter, which is not specific to older customers, relates to how much they have in liquid assets. The larger the amounts, the more the advisor will be able to diversify, sell products and meet their net banking income (NBI) objectives.

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However, this criterion is not enough in itself. Our interviews showed us that banking advisors make judgements about customers' abilities and how much interest they show them depending on their social profile and the classic dichotomy between customers judged to hold a higher social position, perceived as having a network of influence, and customers perceived as having recent wealth and therefore less importance as they bring less prestige to the bank, even if they have substantial wealth.

A third important parameter is more relational. The customers to whom banking advisors pay the most attention are those with whom they have the smoothest relations. These are customers who readily accept commercial offers or even consent to a form of "financial self-surrender". A discretionary mandate is the financial tool for this self-surrender, but sometimes, without it being adopted, customers follow the recommendations of their advisor without really questioning them or are content to sign the papers handed to them, explicitly affirming that they "trust" their banker. For banking advisors, these customers are "easier" and take up less time than customers who ask more questions. The following observation excerpt is interesting in this regard:

A customer asks the advisor to explain the composition of the recommended fund: "What's in this fund? It's not that I don't trust you, I'm just asking out of curiosity."

Banking advisor: "You're quite right to ask, sir. Let me show you."

The banking advisor then takes out a brochure and explains the composition of the fund in detail to the customer. The advisor suggests that the customer keep the brochure, then places the order. At the end of the meeting, the banking advisor explained to us that this customer is very familiar with the stock market, and who likes to closely follow rate changes. He therefore regularly asks questions. "He asks questions, but he finally signs, so it's fine."

(Observation excerpt, ethnographic report from a client appointment at a private bank, November 2021).

The customer's precautionary words ("It's not that I don't trust you") are interesting here, highlighting the dual dimension of the relationship established with the advisor. The human dimension, which enables the product to be distinguished from the person selling it. And the commercial dimension, inviting the person to focus on the product being offered. The sales situation mixes the two. The advisor's reaction is also worth noting. The advisor knows that if a customer asks a lot of questions and they remain unanswered, there is a risk of the customer

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refusing to sign, and the appointment could turn into a waste of commercial time. It is therefore understandable that advisors prefer to deal with clients who rely on their expertise rather than with anxious customers or customers who ask for time to think things over.

Being older can have two contradictory effects here. The first is a detachment from these questions, a form of disengagement (we look more closely at this term below), which, when excessive, can lead to a lack of customer vigilance and risks of inappropriate sales. By contrast, the second is increased anxiety associated with comprehension difficulties, and customers who are seen by advisors as requiring a lot of time for an uncertain – commercial outcome.

Like all customers, older customers are viewed by banking advisors through the prism of their own professional, administrative and economic perspectives. Customers must be part of the workflow and allow banking advisors to fulfil the objectives assigned to them by their supervisors. Significant differences are worth highlighting between retail banking and wealth management, because net banking income (NBI) is not acquired in the same way. In wealth management, NBI is based on the amounts invested and transactions executed, while in retail banking, especially when customers have little wealth, NBI is based on transactions, means of payment and fees. Customers who take up too much time are often laughed at or even shunned, either because they lack autonomy, do not understand quickly enough or do not provide the necessary documents, or because they put too much pressure on the advisors to complete financial processes (by calling their advisor too regularly or frequently coming into the branch to ask for advice or help). They are consequently described as too costly and not in line with professional realities. This is even more true in retail banking when the customers do not have any wealth.

A final parameter assessed by advisors is customers' ability to use digital tools. Banks have significantly developed the use of these tools, allowing documents to be signed remotely, but some customers – notably older customers – do not wish to use them or are unable to use them properly.

All of these criteria create a hierarchy among the clientele, from customers who advisors consider "need to be looked after", either because they have significant financial wealth or because it is easy to deal with them as they understand quickly, ask few or no questions and

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accept the proposals made to them, to customers who, conversely, are shunned as they take up time and energy when the advisor has to defend a commercial proposal or explain something that the customer does not fully understand. Discussions with this latter group are more uncertain: appointments do not always lead to them purchasing the financial products and therefore achieving professional objectives. What are the effects of this implicit hierarchy on the treatment of older customers? Customers who are identified as being less interesting are those who, because of less frequent contact and therefore the reduced attention paid to them by advisors, are most likely to escape the vigilance of bankers if their ability to do business begins to deteriorate. Although this situation is not problematic if new products are purchased, it can become a problem if the customer's needs evolve, requiring a review of the nature or the diversity of their investments (to make them more liquid, for example).

By contrast, customers considered more interesting risk being contacted more often with commercial proposals, which can sometimes be beneficial for their savings but which is also, in certain cases, primarily done with the intention of meeting advisors' diversification and NBI objectives.

Consequently, customers considered less interesting are less protected but less exposed, while customers considered interesting are more protected but more exposed.

Informal banking practices for identifying and classifying older customers

Aside from a few oblique references to the 85-year-old threshold in certain texts and discourses, seniors do not make up a formally identified group within financial institutions. This weak institutionalisation allows banking advisors to apply their own classification.

Older customers are perceived as posing several risks (legal, reputational, commercial), which do not have the same consequences. The first two provide grounds for exercising caution when marketing financial products to this public, while the latter risk is an incentive for prioritising investment profitability:

- Legal risk: possible lawsuits for abuse of weakness.
- Reputational risk: poor image linked to a possible public accusation of inappropriate sales.
- Commercial risk: loss of older high net worth customers in the event they are dissatisfied with the results obtained, in a context of increased competition.

Customers are ranked informally based on how interactions with them fit into the workflow and help to achieve the objectives imposed by the bank's management. The most interesting customers for bankers have significant wealth and are extremely likely to accept the proposals made to them. These are the customers whose vulnerability can be detected most easily, but who are also exposed to a greater risk due to increased commercial pressure.

Overall, banking advisors do not have a specific relationship model for interacting with older customers, even though their needs and practices differ from those of other customers. Advisors expect older adults to adapt to their existing modes of interaction rather than offering them a specific service.

C. How do seniors do business? The intricacies of defining "informed consent"

While the possibilities of detecting potential cases of vulnerability are socially distributed, assessing the ability of older customers to engage in a commercial relationship is an exercise that bank advisors all describe as complex and delicate. The observations and interviews conducted made it possible to identify the outlines and different dimensions. The process of detection is based on an assessment of the soundness of the customer's consent and, therefore, on the validity of the commitments made by the customer, notably by means of their signature. Advisors must identify anything in the customer's behaviour that gives the impression that their consent is not voluntary and informed, and hence whether their consent is valid. The issue is therefore the definition of consent, which is a source of tension and uncertainty.

- Production of consent: the opinion of those involved in consumer protection

To begin examining these definition processes, we propose taking a close look at the analyses conducted by consumer associations. These associations describe older adults as individuals whose **need for social ties and recognition render vulnerable**. Their family and entourage are seen as a source of potential danger:

Researcher: "In your opinion, how does an older adult become vulnerable?"

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Association manager: What we see with the situations that come to our attention is that the elderly are people who need social ties and who are ready to accept anything to maintain these ties. Especially with family. So they're "prepared" to be robbed, if that is what it takes for their children to keep in touch. (...)

Researcher: You mean they become vulnerable because of their children?

Association manager: I don't want to generalise, but that is often the case. They're so insecure that they accept things that go against their interests."

(Association manager, April 2020).

The French Banking Federation's (FBF) mediator also highlights the role of the family circle in her 2020 annual report. She outlines the problems caused by relatives of vulnerable older adults, who abuse the prerogatives linked to power of attorney or exploit the opportunities offered by the development of digital services.

"The number of cases involving vulnerable people – minors as well as the elderly – is continuing to increase (...) Uncontrolled (uncontrollable) access to online banking services by the relatives or acquaintances of these customers, sometimes resulting in considerable damage (emptying of children's savings accounts when their parents separate, use of online transactions by relatives of the elderly, etc.), remains a major concern."

(The mediator. French Banking Federation mediation service, *Activity Report 2020*, FBF, p. 5)

Consumer associations are also attentive to interactions with banks. According to these associations, the need to maintain social ties could lead some older people to accept proposals from banking advisors without sufficiently understanding them or taking enough time to think. When this occurs, it is even more problematic as it takes place in the context of an unequal relationship, where the older adult is face to face with someone they believe knows best for them and who they should listen to. Even when the consent is legally valid, it is possible, in these cases, to question the quality of the advice and whether some of the products offered are suited to the customer's needs. People can even find themselves in an extreme situation of abuse of weakness, which renders the consent invalid.

Association manager: "We regularly see older adults who prefer to say yes to their financial advisor so as not to argue with them and maintain the ties. This happened the other day. A lady explained to me that her father had taken out life assurance. She found the papers on the dresser in the living room. She asked her father what they were and he said he didn't know. In fact, he had signed the paperwork at the bank and, according to his daughter, only did so to keep his advisor happy. This gentleman is very lonely, his children live far away, and almost all of his friends are dead. He doesn't have much of a social life, so as soon

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as he establishes a relationship with someone, it's so important to him that he'll do anything to keep it."
(Head of a consumer association, April 2020).

Isolation and the need for social ties are described as situations where older adults risk agreeing to certain actions, sometimes almost despite themselves. Among other things, this may involve purchasing financial products. A subtle shift can be observed, **where the consent is not expressed specifically with regard to the financial product, but is rather an expression of assent to the person offering that product, in order to maintain the relationship. The advisor therefore needs to act with the utmost professionalism to better detect this risky behaviour.**

- What is the customer consenting to? Conflicts and uncertainties in the determination of informed consent

These mechanisms, highlighted by consumer associations, are an indication of why situations of vulnerability are particularly complex. The accounts given by advisors mention the issue of the unequal relationships in which vulnerable seniors sometimes find themselves. They make it possible to identify the specific conditions under which these asymmetrical relationships emerge: situations where the elderly customer is **isolated or maybe lonely, and places too much importance on certain social ties.**

Banking advisor: "To be honest, isolation among the elderly is something I've discovered, as it's not something that we necessarily expect. They might still have heirs and everything, but in their day to day lives, they don't see anyone. The number of customers whose only contact during the week is with the doctor and the bank is incredible. The other day, I had an appointment with a lady. She has two daughters, but she's fallen out with them. She refuses to see them for Christmas. She tells them she's been invited round to see friends in town so they don't come to her house. But it's not true, she has no more friends. They're all dead. So she's alone, and she's become friends with a neighbour, who's younger. He takes care of her a bit, he does her shopping. In return, she pays for things for him. Quite large amounts too, for clothes, a telephone. So it's sad, as she's buying affection, it's clear to me. What am I supposed to do, sound the alarm and tell her she's being conned? And then what? She ends up completely alone?"
(Banking advisor, private bank, western France, September 2021).

This banking advisor's account highlights the complexity of cases of isolation and the advisor's own difficulty in positioning themselves when faced with situations considered difficult.

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Customer isolation could therefore be a criterion for increased vigilance on the part of advisors, or even for asking for a second opinion. These situations were described by all the banking advisors we met at private banks, as well as by staff at retail banks and wealth management advisors. These situations create uncertainty as to how the consent of older adults can be identified and interpreted. It is a major concern for advisors. However, some points are worth emphasising:

- Just because a customer's decisions are not in their economic interest, it does not mean their consent is not free and informed.
- However, it is essential that:
 - o (i) the customer is well informed and understands the information provided as well as the product;
 - o (ii) the professional delivers the appropriate level of quality for the investment service provided (MiFID or IDD) and is in compliance with their obligations, and therefore understands and has clearly identified these obligations, explains them clearly to the customer and implements them;
 - o (iii) the customer can make financial decisions in the field of investment, and their consent is well formed. In the event of doubt, the banking professional must be able to rely on internal processes allowing them to perform their work.

The isolation of an elderly customer facilitates the establishment of a relationship of dependence with a relative, for whom the person is prepared to perform financial transactions that are not necessarily in their own interest. **Without knowing what exactly the customer is agreeing to or which of their interests they want to preserve (their wealth or their social ties), the issue may seem complex. The characterisation of consent becomes problematic.**

The advisors we met handle situations that call for increased vigilance and it is essential for them and especially for the customers that the institutions provide them with rules on which to base their judgements and action. The challenge is finding how to combine two potentially contradictory requirements. First, the autonomy of customers, who have the right to make decisions that are not in their economic interest and, second, their protection, or at least the establishment of safeguards, when they find themselves in a vulnerable situation.

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To get to the heart of this type of mechanism, we describe below the case of the customer of a private bank at which the ethnographic study was conducted. This case is typical of the type of questions that bankers can ask themselves when faced with a situation where the customer's consent cannot be identified by the same means as in ordinary situations. In other words, **even when an advisor detects a case of potential vulnerability, even when they identify elements making it difficult to finalise a transaction, their difficulties assessing the customer's attitude can lead them to consider that the customer has indeed expressed their informed consent.**

Mrs JE

Mrs JE is 87 years old. She is a widow, has two children and lives at home. She has significant financial wealth (more than EUR 1 million in assets invested at this bank) and owns several properties. "In total, Mrs JE may not be far off from being a billionaire." Mrs JE has a conservative risk profile. She mainly invests in euro funds. Today's meeting has been organised by her banking advisor, who encourages her to diversify a small part of her wealth in order to generate "a little return", "given that euro funds aren't great".

At the start of the meeting, the advisor asks Mrs JE how she is. She replies "The same as usual". She explains that she spends her weeks alone and that she no longer sees many people. Her children live far away. "They haven't come to see me since they moved to Luxembourg. Maybe I'll see them at Christmas." While the advisor fetches coffee, I ask Mrs JE who she sees during an ordinary week. She replied, "Not many people. My neighbour sometimes, and my doctor". The cleaner comes in the morning and a home help does her shopping, but she "doesn't like them very much". "That's why I was happy to see that the bank called me, it's a chance for me to get out, it's nice."

The banking advisor proposes an investment plan. Mrs JE answers "But I don't understand any of it. Are these shares? Because my husband managed all that". The advisor continues to explain. Mrs JE replies, "Yes, yes, come on, let's do it, I'll sign. I can see that it makes you happy".

(Ethnographic report of an appointment between a customer and a banking advisor, private bank, western France, September 2021)

This situation is typical of the difficulties that an advisor may experience in certain specific situations. In principle, the informed consent of a customer is given by means of their signature, which materially attests to the choice they have made. For Mrs JE, the question that arises is that of the conditions under which this choice was made: was it for reasons related solely to the management of her wealth, or was it due to problems related to isolation? Even though, legally, the concept of consent does not consider the customer's motivations, and the consent must

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simply be free and informed in order to be valid, the banking advisor nevertheless explained after the appointment that they felt uncomfortable with this situation.

"Formally, the client has signed, so legally it's fine. But it raises questions from an ethical perspective. I'm playing it safe, we aren't putting a large share of her assets at stake. She holds enough to turn things around. But I don't really know if she properly understood."

(Ethnographic report of an appointment between a customer and a banking advisor, private bank, western France, September 2021)

Uncertainty about customer consent can be compounded by the importance that customers place on maintaining ties with close friends or relatives around them. Sometimes financial transactions are not in the interest of the management of customers' wealth, but instead allow them to maintain social or family ties. This was the case, for example, with a customer from the private bank at which the ethnographic phase of the survey took place, who asked their banking advisor to cash out part of their life assurance to cover the financial needs of one of their neighbours.

"I don't know if it's an abuse of weakness. I don't think so. The customer asked me to arrange the withdrawal and I have no evidence to document abuse of weakness. At the same time, I tell myself that if it's to maintain this relationship, which is pretty much the only one this customer has, I don't see why I should oppose it. It certainly isn't an easy situation. It raises questions in any event."

(Banking advisor, private bank, South-East France, November 2021).

In all these cases, advisors themselves are isolated. They do not seem to refer to a particular process tailored to vulnerable customers or discuss the issue with colleagues or a specialised service.

Signing for consent? What does informed consent mean? While the informed consent of the customer is mainly assessed during meetings, based on the agreement expressed by the customer to *sign* an investment proposal (for example), the structure of the social relationships in which the customer is involved also has an impact on the process leading up to the signature. The advisor, as a financial professional, may find themselves in an uncomfortable situation, have doubts as to whether their customer understands the information provided, and possibly question whether the customer's consent is indeed real. This exercise is even more complicated when the customer is isolated or socially frail. In this

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case, issues relating to wealth management conflict with aspects relating to the preservation of social ties.

Advisors are often alone in addressing these questions, do not have appropriate processes to lean on and rarely discuss this subject with their colleagues.

III. What are the solutions?

The previous section showed that the detection of vulnerability is faced with organisational and interactional challenges. The role of the advisor is key: they are the ones who meet the customers and can witness their difficulties, but at the same time they struggle to position themselves as their professional role is based on advice and sales. Advisors must answer two questions. Can they apply the same advice and sales methods to older customers as they do to others? What should they do when they witness problematic situations? Isolation and a lack of guidelines create great uncertainty. Our observations and interviews show that older adults are not subject to regular bad banking practices because of the individual ethics of the advisors, but that there are areas of risk. The regulations stipulate that the customer's free and informed consent must be sought and ensured by means of appropriate information, tailored cooling-off periods and the possibility of withdrawal. **But what keeps practices within the scope of this framework is not only the regulatory obligation, but rather the issue of reputation and the ethical standards shared by banking staff.** The following developments will show that the assessment of consent stems less from compliance with formal rules (i.e. adjustment to an external constraint) than from a process of self-regulation by advisors (i.e. subjective considerations, regulated by professional ethics and by the desire to preserve the reputation of the establishment). In addition, some banking establishments are willing to take care of the specific needs of this type of customer and are developing innovative solutions.

A. The adequacy of existing consumer protection arrangements: MiFID 2 rules put to the test

Customer protection is a major issue in the regulation of the financial sector. One of the tools that helps to achieve this objective is the questionnaires derived from the MiFID and IDD directives, designed as tools to limit excessive marketing. These questionnaires require banking advisors to assess their customers' financial knowledge and the risks they are willing to take, and to adjust their commercial proposals to the established risk profiles. The aim of these directives is to prevent customers from signing up for products that they do not need, in particular, by means of questionnaires intended to assess these needs. The survey conducted shows that compliance with these directives conflicts with the realities of the banking practice. These legal provisions appear to be more of an obstacle to commercial activity than an aid in

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ensuring that the products offered meet customers' needs. Banking advisors are torn between their role as salespeople and at the same time as advisory professionals, and between the contradictory demands of their sales targets and the regulations. Investor questionnaires are sometimes subject to modifications and workarounds that mean that they no longer serve their original purpose.

- The production of questionnaires: legalisation and quantification

When customer questionnaires are implemented by banking establishments, there are several trends that make them poorly suited to operational realities and difficult to use in practice.

One of these trends can be described as legalisation: external regulations have been strengthened to protect investors. At financial institutions, this trend is embodied by investor questionnaires. Although this is a regulatory obligation, there is no standardised questionnaire. Created by the local compliance services, it includes lots of technical questions that are sometimes formulated in a complex way and difficult for uninformed customers to understand. In addition, the questionnaires produced are usually long, consisting of up to 30 or more pages.⁷⁹

These questionnaires are sometimes perceived as long, tedious and likely to cause **customers to feel incompetent** when they have to answer questions that they do not understand. This can reinforce the imbalance in favour of the banker in the banker-customer relationship. This is demonstrated by the following discussion between two banking advisors at a retail bank.

Banking advisor 1: "The questionnaire is complicated because it makes the customer think they don't have sufficient knowledge to be able to access financial products."

Banking advisor 2: "You think so? Yes, in fact there was one time when I had to tell a lady not to worry and that I'd explain the history of emerging countries to her. This stressed her."

Banking advisor 1: "That's it. You do your job, you make an investment proposal. Then you must do the MiFID questionnaire. And the customer panics because all of a sudden they feel incompetent. There are better ways of beginning a commercial relationship."

(Two banking advisors from a retail bank, June 2020)

⁷⁹ However, the AMF's observations on the subject conclude that there are a wide variety of practices, with some institutions opting for decision trees, thus limiting the questions.

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As their practices are guided by productivity goals, advisors perceive questionnaires as a hindrance to commercial transactions, especially since the administrative work involved can sometimes take a long time. For customers, the questionnaire turns the banking interaction into something very formal, which may go against the relational and human expectations they have of the banking advisor. These expectations seem to be particularly high among older customers who may face greater relational problems and even isolation. Completing the investor questionnaire can also impede the planned financial transactions, as it raises doubts and questions on the part of the customer, and even a feeling of incompetence, and confusion over what is expected from the banking interaction (commercial expectations on the part of the advisor and human expectations on the part of the customer). This diminishes the protective role of the questionnaire, as it is viewed as problematic by both the advisor and the customer: it is time-consuming, disrupts the interaction and neither party considers it useful.

Banking advisor: "It's laborious, you see. Once I know that the MiFID questionnaire has been saved, I can get on with sorting out the customer's transactions, without worrying about it, sometimes even just over the phone. Off it goes into the system and we can continue. As soon as you must go through the MiFID questionnaire, it's a nightmare. So yes, the customer can fill it out on their own at home via the app and everything, but we know it will take longer. And when you're selling products, you must keep things moving – you can't let 23 pages of questions grind things to a halt, it's not possible."

(Banking advisor, private bank, Paris region, October 2020).

Bankers thus see the completion of questionnaires as an obstacle to the practice of selling, one that makes customers feel incompetent and uncomfortable and that adds to the conflict between regulatory and commercial time. In addition, **another trend reduces the effectiveness of MiFID questionnaires: their quantification.** Regulators regularly assess compliance with European regulations. Institutions, especially those that have lagged in applying the law, conduct MiFID campaigns in order to be compliant: advisors then have quantified objectives for completing the questionnaires, which, in practice, means that less attention is paid to quality and to the meaning of this regulatory obligation.

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Banking advisor: “We're instructed to do lots of them. So I keep doing more and more of them, like a machine. It serves no purpose, I don't even know why I keep doing them, but I do. Ultimately, it's stupid and, above all, it takes up our time, so I just get on with it like a chore.”
(Banking advisor, private bank, south-east France, September 2021)

To "complete the MiFID questionnaires", this banking advisor regularly schedules appointments with customers whom she has not seen for a few months. Her aim, she says, is first of all to "do the MiFIDs", and also to "take stock" of the customers' situation. Another strategy to "do the MiFID questionnaires" is for advisors to get all customers that they meet to complete them, even if there is no chance of selling financial products to them.

As a result of this quantification of MiFID questionnaires – which can nevertheless be considered as temporary until the establishments become compliant – advisors perceive them as a **an “invalidating” obligation, in other words one that calls into question their professional advisory skills**. They regard their advisory activities as fundamental, valued and rewarding, as they correspond to their professional and educational choices. Quantified targets prevent them from choosing the right moment to assess the financial profile of their customers. Beyond that, the very principle of the questionnaire, which standardises the assessment of customers' financial needs, calls into question one of the foundations of their professionalism.

Banking advisor: “In fact, the MiFID really limits what we can do. I know it's to protect the customer, which is good. But personally, I don't need something like that to know what my customer needs! It's my job at the end of the day!”
(Interview excerpt, banking advisor, private bank, September 2021)

The completion of MiFID questionnaires is therefore part of a dual trend of legalisation and quantification, and, in practice, conflicts with commercial priorities. As a result, banking advisors deploy strategies to create room for manoeuvre in the application of regulations, to harmonise the contradictory demands placed on them.

- The banker's room for manoeuvre

To assess the room for manoeuvre available to banking advisors in the MiFID questionnaire stage, we propose taking a close look at the intricacies of completing one of these questionnaires during an appointment at a branch of a private bank in south-east France.

Doing, redoing and undoing the MiFID questionnaires

Mr F is 88 years old. A former plumber who sold his business as well as some houses, he became "rich later in life". He is one of the top 20 customers of the banking advisor who takes care of him, earning EUR 40,000 in NBI per year. Mr F has a small pension of EUR 18,000 per year, supplemented by EUR 17,000 that he receives in rent. He has financial assets of EUR 500,000, which has increased by EUR 176,000 in four years.

It is a struggle for Mr F to speak, he has difficulty moving around and his clothes are worn out. The advisor speaks very loudly, as if she knows that Mr F cannot hear her well. When he arrives at the branch, Mr F does not recognise the banking advisor. She insists. "Oh, you've cut your hair," he exclaims.

The appointment begins. Mr F asks what needs to be replaced this time. "There's a fund to be reinvested, sir. It's reached maturity and has performed very well, we're going to have a very good year." To replace the fund that is reaching maturity, the advisor must reassess the customer's knowledge. The banking advisor explains to Mr F that "she'll do it quickly" so as not to waste too much of his time. She asks him a few questions "Is ecology important for you?". Mr F replies, "Yes, nature is important". The advisor continues without looking at the customer and continues to click on several questions "I'll note down what you have, Mr F, like we usually do". " Ah, stocks, you know what that is, Mr F?" Mr F replies, " Yes, but I don't want any, very few for me". "But you already have some, Mr F. I can't put 'no', as you have some. Otherwise we'll have to start over again. So I'll put 'yes!'" The advisor continues and stops asking Mr F questions. "So, emerging countries, I have to put 'yes' because there are some in the fund. And structured products, yes, yes, there are some of those. Okay, it's finished."

While she waits for the questionnaire to print out, the advisor asks Mr F how his children are doing. Mr F is a widower, all his children live in the Paris region. He no longer sees them.

The banking advisor asks him to sign the questionnaire and proceeds to the request for the asset transfer. "I noted down what you have, Mr F. Sign there." And then says to me: "I hope it'll be okay. I put him down as medium risk". Mr F is having trouble understanding where he should initial the document. The banking advisor stands up and shows him, then looks at

me and says discreetly: "I hope I'm good in terms of the profile because otherwise we'll have to sign everything again".

"So, Mr F, we're going to take this fund, it's good. If it's positive after a year, you come out with 6%. 6% is really good at the moment." Mr F agrees and asks if it is a SICAV. The advisor tells him yes it is. She fills out the request for arbitration and says to him "We just need to do this and then we're done. I put the same SICAV as before. I removed the money market part and we'll go with a SICAV again, as usual."

"And there we go, it's come out as overexposed. I thought it would. Well, Mr F, it's not right so we have to start the questionnaire again. We'll do it again."

(Ethnographic report, customer appointment, branch of a private bank, September 2021).

This report shows that advisors play an important role in how data is collected. They complete the questionnaires directly and can redo them if they “come out overexposed” (during our observations, the bank being studied was promoting a fund containing emerging countries, and we often witnessed difficulties with the questionnaire on this specific point). Beyond that, it shows the limits of the questionnaire alone as a protection tool. This customer displays several signs of vulnerability (his unkempt appearance, the fact that he does not recognise the advisor, his poor hearing), but the advisor interacts with him in the same way as with any other customer. She suggests a new fund, and hands him the investor questionnaire. When the customer expresses reluctance towards stocks, she quickly brushes it off “you already have some”.

This is something we often observed. Advisors often feel it would be too time consuming to explain the content of the questionnaires in detail to their customers, particularly if they are elderly and perceived – rightly or wrongly – as less demanding and less able to understand. This means that the assessments of the customer's knowledge, experience, objectives and risk appetite recorded in investor questionnaires should be viewed with caution.

B. Informal standards and banking reputation: what does consumer protection depend on?

While the effectiveness of customer protection regulations is sometimes reduced by operational realities, the marketing of financial products to older adults is governed by an **informal normative framework which, nevertheless, provides customers with uncertain levels of**

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protection. This protection is based on the individual actions of advisors who, in the absence of organisational tools that they can use, deploy their own standards, in the sense that they define themselves what they consider to be appropriate conduct in the marketing of financial products. These standards are collective and circulate within the teams to become a flexible and informal frame of conduct.

- "Fear of the regulator": reputation as the only sanction

While institutions do not especially fear the risk of financial sanctions as they are relatively small in amount, they are more concerned about the impact on the institution's reputation as a result of an AMF or ACPR sanction, especially with regard to the quality of advice and product suitability. Reputational issues are undoubtedly one of the major incentives leading institutions to comply with the regulations. **Competition to gain market share in this customer segment is fierce and customers are essentially recruited through co-optation, leading banking establishments to pay especially close attention to their image.**

One of the banking advisors at the private bank at which the ethnographic study was undertaken explained to us that it is more "strategic" to take care of customers because "in the long term if we want to work with a nice client portfolio, with people who don't question our professionalism, we have to work on our reputation".⁸⁰ The reputational issue is particularly salient for private banks, but also for retail banks, despite the higher number of customers and inflows.

While banking reputation issues are nothing new, if publicised, they become more serious. The Bettencourt scandal – which was a legal issue and did not relate to investments – has become a common cultural reference, acting as a deterrent that is easy to use and understand. It therefore regularly serves as a reminder and is used to provide a local framework for banker practices. The duty to preserve the institution's reputation is therefore extended to the teams of advisors and is transformed into an essential requirement for the smooth operation of commercial activities. **This issue is also supported by individual objectives, which are directly tied to it.** Although individual objectives include achieving a rate of new customers in the client portfolio, these are supplemented by other objectives relating to advisors' behaviour and the

⁸⁰ Excerpt from interview, banking advisor, private bank, Ile-de-France, June 2020.

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quality of their relationships with customers. This makes it possible to stress the importance of the bank's reputation and keep up the pressure in this regard. This is what a branch manager of a retail bank explained to us.

Branch manager: "I still test the water. There are plenty of clues that enable us to know if the advisor is friendly with their customers and treats them properly. So, yes, we have onboarding statistics, which are a good indicator. And then, we always find out if something's wrong. Customers also contact me if things are not going well, so I'm up-to-date. And this affects the calculation of the bonus. Not the major part, for sure, but it affects the portion that depends on my decision, where I have my say. I take this into account."

(Branch manager, retail bank, November 2021).

- Local ethical standards

Within the teams, the advisors distinguish between "serious bankers" and "used car salespeople". Examples of bad practices involving relatives or professionals acting unscrupulously towards older adults circulate from one bank to another and from one team to another, acting as a deterrent.

During our visits to various bank branches (whether private banks or retail banks), after announcing the subject of our inquiry, the advisors gave accounts of individual practices described as malicious, as if they needed to be reminded that no one and no institution is immune to better guard against such practices.

In these accounts, bankers describe an **archetypal character which they deploy strategies toto distinguish themselves**. It is a way of demonstrating to the investigator how things should not be done. This archetypal character is often a home help, presented as the most obvious example of malevolence, who takes advantage of the fact that the elderly person is isolated to rob them and their heirs of their wealth. It should be noted that, to our knowledge, there is no evidence to show that home helps are more likely than other close family members, friends or institutions to exploit elderly victims. This representation seems to be more metaphorical. It is easy to use insofar as it is far removed from the banking world and is based on characterised and binary situations of theft. The following interview excerpt, conducted with an independent wealth management advisor, is representative of the ways in which this archetypal character is constructed.

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Wealth management advisor: "For instance, a person aged over 85, who regularly has a home help. She has his internet code. At home, his code and all his account statements are on a table. They're on the table. If someone takes them, they have his username and internet code. Once they get back home, they can type in the username, the internet code and empty the account. (...) The classic case is the cleaning lady. This happens a lot. And the flaw here is the online banking code. Aside from abuses of weakness in the strict sense, there are life assurance clauses. These are also typical. Putting the cleaning lady on the life assurance contract. Well, why not? But frankly, it raises questions doesn't it?"
(Wealth management advisor, June 2020)

Banking advisors can then assert that they, in contrast, do not behave like this, and have ethics and values leading them to treat their customers differently. Accounts of bad practices are thus immediately followed by discourses on banker values and how important it is to them that they treat the most vulnerable customers in their portfolio "with respect".

Banking advisors therefore have the impression that the only thing preventing them from treating older customers maliciously are **their personal ethics** ("It's a matter of values, I believe, the way we were raised. My parents always taught me the value of hard work and effort, so I'd feel bad about stealing another person's work.") **and professionalism** ("It's a matter of professionalism, too. We're here to give customers advice, to help them manage their wealth. So if we want to do our job properly, we need to act ethically. Otherwise, we'd be like used car salespeople, ordinary salespeople.").⁸¹

Being a "good banker" means **positioning yourself at the top of the symbolic hierarchy of salespeople**, thus distinguishing oneself from "used car salespeople". In other words, salespeople who supposedly only think about money and do not really care about the needs of their customers.

The protective virtues of the symbolic hierarchy of commercial practices

Nested symbolic hierarchical systems perform a protective function with regard to older customers. First, there are the hierarchies that are established within the marketplace according to the reputation of the banking institutions. This hierarchy system leads to the

⁸¹ Excerpt from collective interview, private bank, September 2021.

implementation of controls (formal and informal) for banking advisors, who are responsible for protecting the image of their bank. There is also a professional hierarchy established among bankers. It contrasts simplistic, mythicised images of "bad bankers" who supposedly behave like "used car salespeople" and whose practices resemble those of the archetypal cleaning lady (mentioned above), profiting from the fortune of an elderly customer; and images of those who have "values" and treat customers with respect.

C. Initiatives and good practices

While the moral and professional standards of bank employees are real, the challenge is knowing how to apply them despite the pressure to sell and in the absence of tools tailored specifically for older adults. This conflict can sometimes be intense for banking advisors who are dissatisfied with their practices.

Some financial actors **have developed systems to meet the identified needs of this group of customers**. Below are some examples.

- Training

Some institutions offer **training sessions adapted to the problems encountered by older adults**. With this in mind, partnerships have been forged with specialised associations to shed light on the ageing process and encourage banking advisors to be alert to a certain number of signs indicating a loss of autonomy (a person who asks the banking advisor to repeat their sentences more than usual or whose appearance is more unkempt than usual, etc.).⁸² Other institutions have established links with training organisations offering courses tailored to older customers and their specific problems.⁸³ The advantage of these different training courses (which can be either relatively short, spanning a few hours, or longer and leading to forms of certification) is that they supplement the banking advisors' initial training and give them the keys to understanding the links between **lifecycle and wealth management**. Advisors learn

⁸² Some of these organisations have been part of local working groups organised by the AMF and the ACPR, such as the Mederic Alzheimer Foundation.

⁸³ Here too, we can mention AUREP (French University Association for Research and Teaching in Wealth), present during these working groups.

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content allowing them to understand the **specific characteristics of older customers** as well as instructions on how to develop their practices. Although these training courses increase the general level of understanding and expectations by raising awareness of this issue, they cannot be the only measures. It is essential to make sure this type of solution does not make banking advisors solely responsible for developing good practices regarding seniors. During the interviews conducted, the banking advisors explained to us that they considered the training time to be valuable and profitable. However, they regretted that once they returned to work, the institution did not continue to support them, leaving them alone with the knowledge they had acquired and the challenges related to implementing this knowledge. Furthermore, these training courses do not resolve the organisational conflicts resulting from the paradoxes inherent in engaging in a commercial profession within a structure that is commercial in nature, whose constraints relating to production, speed and results could mean that the characteristics of older customers are not considered. Thus, while commercial objectives are maintained, banking advisors find themselves with additional, conflicting demands to manage. This is what one banking advisor who had completed a lengthy training course told us in an interview:

"It's good to do the training, it did me good. I was finally able to put words to a lot of things that I didn't necessarily understand. But it has to be said, the time spent training is time suspended. Afterwards, you find yourself with all the usual stuff to manage again, and leopards don't change their spots. I really feel as though I haven't done anything with the training because, in fact, I don't have the time, and plus it would require collective team thinking. If I'm just by myself, it'll cause setbacks. I also don't want to miss out on sales."

(Banking advisor, retail bank, December 2021)

- Regulatory committees

Some financial institutions have created **regulatory committees to collectively discuss situations detected by banking advisors and discuss the best courses of action**. These procedures make it possible to talk about complex situations and get the perspectives of different types of professionals (salespeople and lawyers, in particular). It **means that banking advisors no longer have to face complex situations by themselves, as decisions rest with the institution rather than being the sole responsibility of the banking advisors**. However, certain limitations were noted in the various institutions at which the survey took place. First, banking advisors are sometimes reluctant to reveal their difficulties to their colleagues or even their superiors. This is all the more true for employees who are less integrated into the work

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collective, such as new recruits or salespeople who feel their position with the institution is at risk because they have been poorly evaluated by their line managers. In addition, these procedures have not always been fully rolled out to the networks, as banking advisors in the regions do not all have equal access to the committees. Finally, it is the banking advisor who chooses whether to present a situation to a committee, which means it is not always possible to avoid mistakes in the detection of the problematic situations mentioned in this report.

- Appointing a lead advisor

Another good practice is to **appoint and train a lead banking advisor on the issue of older customers who is responsible for answering questions from colleagues**. The benefit of this method of peer resolution of problems is that, like regulatory committees, the banking advisor can step away from the banking relationship and obtain an external opinion on the customer's situation. Another benefit of this type of approach is that advisors feel less inhibited than they do when they must reveal professional difficulties to their superiors. However, banking institutions are organised in a way that encourages competition among colleagues, thus reducing, on a different level, the incentive to use this type of solution to address difficulties with older customers. In addition, with this type of procedure, responsibility for dealing with potentially problematic situations – from their detection and resolution – continues to lie with the banking advisors, as they conduct the entire process.

- Improving the marketing conditions

Other types of good practice relate to the **procedures for dealing with vulnerable situations**. They consist in ensuring **the security of certain key stages in the marketing of financial products that present specific risks for vulnerable older customers – from the moment the sale takes place and throughout the entire life of the contracts**.

A first technique is to **tighten security around accessing online accounts, to ensure the customer is who they say they are and that they consent to the execution of transactions conducted on the internet**. These measures include, for example, extending cooling-off periods or strengthening the identity verification procedures. While these procedures are useful for providing a stricter framework for changes in marketing methods, they cannot resolve all

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the difficulties related to the provision of consent using digital tools, and customers are still left to perform their financial transactions on their own.

Another good practice is to **involve a line manager in uncertain situations involving seniors**. This requires the development of systems for alerting and dealing with problematic situations with older customers. These procedures create a safety net downstream from the banking advisors and the chance for a possible second opinion on the choices made. In some of the institutions surveyed, these procedures are implemented almost automatically at a defined age threshold (80 or 85 years for example). This means that the detection of problematic situations is less random. Nevertheless, as the line manager who is called upon to confirm or reject the proposed transactions does not know much about the customer, it is difficult for them to closely assess the situation. Furthermore, the evidence they rely on to assess the customer's ability to do business comes from the banking advisors themselves, therefore the problems referred to in this report with respect to detecting vulnerable customers are not eliminated. On the other hand, the line manager often has more experience in the field, and a certain distance from the customer, which is useful when analysing difficult situations. Without relieving the advisor of their responsibility, the line manager can pass on their own expertise acquired through experience.

More occasionally, other more technical good practices are used to play a preventive role. These include procedures for systematically verifying the identity of those that have proxy access to accounts, or even carrying out detailed account reviews to identify unusual movements of a customer's assets.

Finally, banking institutions are calling for the **strengthening of partnerships with other players in the protection of older adults**, particularly with notaries, supervisory bodies and associative structures. These partnerships make it easier to exchange information (while complying with banking secrecy) and to collectively reflect on which best practices to adopt.

Associative actors who are involved in the management of older adults assert that tools exist to protect vulnerable older adults, and that these need to be deployed on a wider basis. For example, they stress that it is possible to report a "vulnerable person" to the public prosecutor, or alert a general practitioner to the situation (GP). The GP is regularly mentioned, especially

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since the law on adapting society to the ageing population⁸⁴ has relaxed the conditions for lifting professional secrecy. However, at present, the financial sector cannot use these measures. The banker is simply required to report a suspicious transaction to the prosecutor, but there is no graduated alert system for situations relating to people. Therefore, a system enabling banking establishments to get in touch with **a trusted third party**, indicated by the customer before they encounter any problems, or with a health professional, to discuss one of their patients, would allow the banker to concentrate on their advisory role and transfer to the appropriate parties any matters not within their sphere of competence.

Finally, the associations refer to **the future protection mandate**, which has been around since 2007 and through which one or more people are designated in advance by the principal to represent them in the event of guardianship or curatorship measures. These mandates are not drafted by the banks but under private signature or by means of notarial deed. However, the associations believe that the banks should promote them more.

⁸⁴ Law No. 2015-1776 of 28 December 2015 relating to the adaptation of society to the ageing population, Article 77.

IV. Recommendations

This report shows that traditional marketing methods can be poorly tailored to the specific characteristics of older adults and that, faced with problematic situations, banking advisors are often left on their own with no specific directives from their superiors on how to detect or respond to any difficulties. We identified the following problems:

- Commercial proposals are not always suited to the needs of older customers, due to a lack of specific consideration.
- Advisors may find it difficult, due to a lack of time and inadequate training, to consider customers' comprehension problems, be they related to cognitive decline, hearing difficulties or a lack of knowledge of banking products. This difficulty can:
 - o Lead them to dismiss older customers who are perceived as too time-consuming.
 - o Create a risk of inappropriate or even abusive sales when customers misunderstand and place their trust in advisors.
- The isolation of older adults increases their vulnerability and exposes them to the risk of being exploited by those close to them, be they family or not, and very rarely to the risk of malicious acts by banking advisors.

To meet the needs of older adults, commercial transactions therefore need to be more tailored to their specific characteristics. Their needs are technical (in terms of the financial products and services they require), and relate to how they interact with the bank (there is a need to think about how specifically they should be attended to). They can be summarised as follows:

- **Length of interaction.** In some cases, seniors need longer appointment slots, allowing them to feel comfortable during the interaction. This time is also necessary for the banking advisors so they can detect any signs of difficulties in the person's ability to do business.
- **Stability and continuity of the banking interaction.** Since wealth management is often part of a story linking several generations of the same family, it is important to be able to take this into account to best meet the needs of seniors and detect any signs of possible vulnerability. Banking customers often complain if banking advisors are changed on a frequent basis, and this is even more true for older customers. One solution could be to set up systems that make it easier for successive advisors to continue

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handling cases (in institutions where there is a high turnover of staff) and/or to reserve specific slots for certain older customers.

- **Adaptation of information and communication tools.** A certain amount of vigilance is required in terms of older customers' ability to make use of a range of bank services, ranging from access to information on financial products or the means of contacting the financial institutions. Beyond the issues of passwords and digital consent, older customers, more so than others, need "human" alternatives to digitised services – by telephone or face to face.
- **Specific financial tools.** Anticipating dependency and the transfer of assets are not the only needs of senior customers. They also have daily or exceptional consumption needs, sometimes want to help their children and grandchildren, but also want to grow their wealth like all other customers. Therefore, certain standard financial products are indeed suitable for this group of customers. However, it is important that all their needs are covered, specially their liquidity needs. It would be useful, therefore, to design products that cover all the challenges.

- **Proposal 1: "Financial disengagement". Elements for an operational definition**

The notion of "disengagement" comes from the sociology of ageing. It is defined as the "process of reorganising one's life" (Clément and Mantovani, 1999) which leads to a relinquishment of pre-existing social commitments (Caradec, 2001) with the aim of preserving, as far as possible the person's social identity despite the changes they face.

We suggest using the concept of "financial disengagement" to characterise the situation where a customer "let's go" of certain aspects of their life (such as examining the suitability of such or such investment) to better "win" on others, such as their relationship with other people or their daily life (getting rid of worries, strengthening their relationships with people they trust, gaining a sense of security, continuing to preserve their autonomy, etc.). Using the concept of disengagement, it is possible to describe older customers' behaviour as an adaptation strategy rather than being passive. However, this strategy is potentially risky, as delegating decisions to friends and family or to the advisor exposes an individual to choices that are not in their interests and even to exploitation. To understand the behaviour and therefore the needs of older adults, it is important to keep this "disengagement" phenomenon in mind. It can be more or less

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pronounced depending on the person, and is a source of vulnerability, in some cases independently of any cognitive or physical problems.

To help put this notion into practice and tailor it to the challenges encountered in marketing financial products, we list some of the types of disengagement that we were able to identify in the course of our survey:

- Disengagement from banking practices: reduction in the use of means of payment and in contact with institutions.
- Interactional disengagement: reduction in interpersonal skills, isolation.
- Financial disengagement: reduction in interest in investment activities, tendency to "self-surrender".

- **Proposal 2: Know your client**

To guarantee a professional framework that limits bad practices, we propose ways of improving the use of investor questionnaires (MiFID and IDD). One structural problem stems from the fact that these questionnaires are done with the advisors who are responsible for marketing a product. It should be noted that the improvements we propose would benefit all customers. Review the wording of the investor questionnaires, considering the needs of these customers and adapting them for everyone. Opt for "clear", non-technical language and less jargon, with questionnaires that everyone can read and understand.

- Tailor the conditions in which investor questionnaires are conducted: Online questionnaire or conducted in the branch? Questionnaire completed by the banker or by the customer alone? In all cases, the results must be shared with the customer and explained. These are not the practices that were observed. Taking inspiration from the Accessibility Directive, comply with the obligation to take disabilities and the effects of ageing into account in the formal presentation of the questionnaire.
- Make sure the questionnaires have a qualitative value, in addition to the quantitative objective of completing them. Beyond the regulatory obligation stipulating that each customer benefiting from advisory services or RTO investment services (reception and transmission of orders) must have completed an investor questionnaire – MiFID or IDD – demand that advisors make sure the questionnaires are completed and/or validated by the customers.

- **Proposal 3: Adjust the internal organisation**

One of the important conclusions of our report relates to the isolation of banking advisors with regard to their older customers. If appointments between bankers and customers involve meeting face to face, we believe it is essential to better equip banking advisors (best practice guidelines, training) and create collaboration spaces where they can report suspicious situations and share thoughts with colleagues and/or experts on the decisions that need to be made. It is also important to think about designing specific marketing methods adapted to older customers.

Recommendations:

- Create **spaces for collegial discussions** at local level on banking practices for potentially vulnerable older adults, in the form of regulatory committees. The aim of this would be to discuss collectively, among peers and with a neutral facilitator, the situations detected by the advisors and arrive upon the best course of action. These spaces must be neutral, confidential, free of time constraints, and based on duty of care. This is a cultural issue: replacing individual cultural norms with collective and unified norms and practices based on the experiential knowledge acquired by the advisors.
- In all establishments, appoint a **vulnerability advisor** in charge of setting up and managing these systems. The vulnerability advisor could provide a second opinion (e.g. in addition to the line manager's opinion) in the event of doubt regarding vulnerable people in general. Set goals for this new role.
- Ensure **regular training** concerning customers with specific needs by trainers who may be third parties to the financial establishments. This measure would aim to remove the taboos surrounding this issue, and encourage understanding and uniform vigilance for all people in contact with this group of customers. It is not self-sustaining and, to have a lasting effect, must be relayed through collective measures (such as those mentioned above) as well as through a good understanding of financial services and products and their characteristics for the customer and the advisor.

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- Develop **regular, second-level**, internal, a posteriori controls to better detect bad practices. This measure will allow corrective action to be taken vis-à-vis the customer, if necessary, and enable the range of internal tools to be used for better prevention. Education of staff, first, followed by the entire range of disciplinary measures, if necessary, to prevent a feeling of impunity from developing. Thus, the standards will no longer depend on the overly narrow range of personal or professional values, but rather on a foundation of clear and explicit principles of action defined by the institution.
- Develop, in addition to MiFID or IDD guidance, **a very operational service** that would give customers perceived as vulnerable or at-risk easier access to the advisor, to better manage their financial affairs. This could entail a right to more appointments with the advisor, access to a dedicated and personalised advisor and greater administrative support, particularly in a context of digitalisation. The economic model should be adapted to cover the additional cost of this service.

- **Proposal 4: Detection of disengagement and prevention of conflicts of interest**

The approaches that we propose consider the fact that the bank is a commercial environment with employees who have (collective) sales objectives. We attempt to see how these imperatives can be adapted to the specific needs of older adults, to protect them from the potential vulnerable situations in which they find themselves due to the phenomenon of disengagement.

- Adjust objectives to different types of customer portfolios and ensure a weighting according to the percentage of older customers covered, considering the longer time that is needed for older customers, especially the most vulnerable.
- Make qualitative goals more objective and review the scope of quantitative goals, which are still too close to the ground, to prevent advisors from falling into the trap of selling specific products under the pressure of marketing campaigns. Include the consideration of customer disengagement in bankers' professional objectives.

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- While banking networks are undergoing a complete transformation, think about how to ensure a second opinion on customers in specific categories – something which was ensured until now by the presence of reception staff.
- Examine the possibility of making it mandatory to involve a notary in risky financial transactions (especially changes in beneficiary clauses).

V. Appendices

A. List of interviews

	Structure	Position	Date
1	Consumer association	Lawyer	8 April 2020
2	Gerontology association	Project manager	21 April 2020
3	Finance association	Project manager	23 April 2020
4	Finance association	General delegate	9 April 2020
5	Gerontology association	Manager	10 April 2020
6	Gerontology association	Manager	10 April 2020
7	Finance association	General secretary	8 May 2020
8	Gerontology association	Chairperson	11 May 2020
9	Finance union	Union representative	17 March 2020
10	Prime Minister's Office	Advisor	7 May 2020
11	Prime Minister's Office	Advisor	7 May 2020
12	International Federation of Associations of the Elderly (FIAPA)	Office of the chairperson	27 April 2020
13	Financial Markets Authority (AMF)	Management of investor relations and protection	11 May 2020
14	French Banking Federation (FBF)	Mediation service	30 September 2021
15	French Prudential Supervision and Resolution Authority (ACPR)	Joint unit	9 October 2021
16	ACPR	Joint unit	27 October 2021
17	AMF	Joint unit	28 October 2021
18	Private bank	Compliance management	31 March 2020
19	Private bank	Compliance management	3 April 2020
20	Wealth management advisor	Wealth management advice	30 March 2020
21	Retail bank	Banking advisor	29 April 2020
22	Wealth management advisor	Wealth management advice	27 May 2020
23	Retail bank	Assistant general director	5 July 2020
	Retail bank	General director	1 September 2020
24	Wealth management advisor	Wealth management advice	9 October 2020
25	Retail bank	General management	18 June 2020
26	Wealth manager	Organisational and wealth strategy consulting	19 May 2020

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27	Assurer	General management	26 August 2020
28	Assurer	General management	6 July 2020
29	Private bank	Compliance department	20 October 2020
30	Private bank	Compliance department	13 November 2020
31	Customer service department	Director	7 July 2021
32	Marketing department	Director	6 November 2021
33	Customer service department	Assistant director	6 November 2021
34	Customer service department	CSR manager	20 January 2021
35	Customer service department	Project manager	21 January 2021
36	Management	General director	25 January 2021
37	Management	Assistant general director	25 January 2021
38	Commercial management	Director	8 February 2021
39	Customer relations management	Manager of ultra-high-net-worth customers	23 February 2021
40	Customer relations management	Director of specialised customers	24 February 2021
41	Commercial management	Director of performance	9 February 2021
42	General secretariat	General secretary	9 February 2021
43	Compliance department	Legal manager	8 March 2021
44	Legal department	Manager	8 March 2021
45	Management	Deputy general secretary	9 March 2021
46	Commercial department	Wealth engineer	10 March 2021
47	Marketing department	Data engineer	26 April 2021
48	Compliance department	Risk manager	5 May 2021
49	Compliance department	Operational risk manager	5 May 2021
50	Marketing department	Assistant director	6 May 2021
51	Customer service department	Local manager	12 May 2021
52	Compliance department	Compliance officer	12 May 2021
53	Compliance department	Compliance officer	28 May 2021
54	Customer service	Regional customer manager	6 July 2021
55	Customer service	Regional customer manager	18 August 2021
56	Customer service	Deputy regional customer manager	19 August 2021
57	Customer service	Regional customer manager	28 September 2021
58	Customer service	Relationship manager, private bank	5 October 2021
59	Customer service	Regional customer manager	1 October 2021
60	Customer service	Banking advisor	8 September 2021
61	Customer service	Banking advisor	9 September 2021

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62	Customer service	Banking advisor	8 September 2021
63	Customer service	Banking advisor	10 August 2021
64	Customer service	Banking advisor	8 September 2021
65	Customer service	Banking advisor	9 September 2021
66	Customer service	Banking advisor	8 September 2021
67	Customer service	Banking advisor	14 September 2021
68	Customer service	Banking advisor	8 September 2021
69	Customer service	Banking advisor	23 September 2021
70	Customer service	Banking advisor	28 September 2021
71	Customer service	Banking advisor	28 September 2021
72	Customer service	Banking advisor	28 September 2021
73	Customer service	Banking advisor	2 November 2021

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