

February 2024

SPOT INSPECTIONS

Summary of SPOT inspections on the handling of complaints by investment services providers.

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1. CONTEXT

The handling of client complaints is fully in line with the AMF's strategic guidelines, which place customer protection at the top of its priorities.

For their part, the five institutions on the panel all display a desire to place client satisfaction and the voice of the client at the heart of their priorities, which is reflected in particular in their willingness to deal with complaints promptly and qualitatively.

The five institutions on the panel wish to make this process part of a dynamic framework for continuous improvement by i) integrating the analysis of complaints into the ongoing product governance process and ii) examining the malfunctions revealed by the handling of complaints in order to define appropriate corrective actions. This approach corresponds to the motivations of the regulations, the obligations of which are frequently presented by panellists as commitments made to their clients. The objective of the SPOT mission was to verify how this alignment of interests (clients and institutions) was put into practice.

One of the objectives of this SPOT inspection was to take stock of existing complaint handling procedures prior to the update of AMF Instruction DOC-2012-07, which will come into force on 1 January 2024. It should be noted that the findings are based on the legislation in force during the period under review (1 January 2020 to 31 December 2022). Operators are invited to take note of the provisions that will come into force on 1 January 2024, bearing in mind that the regulatory reminders set out in this summary will continue to apply after that date.

In the course of its audit, the AMF found serious deficiencies in the compliance of panel members with the requirements for handling complaints. However, some good practices have been observed.

It should be stressed that the inspection team does not have access to mediation files in order to respect the confidentiality of the out-of-court dispute resolution process.

This document does not represent an opinion or recommendation. The practices identified as "good" or "bad" highlight the approaches observed during the inspections and analyses carried out, which are likely to encourage or discourage compliance with the rules on the handling of complaints. The regulatory reminders in the boxes in section 3 correspond to breaches found during inspections of the institutions on the panel.

2. SCOPE

2.1 PRESENTATION OF THE SAMPLE OF ISPS INSPECTED

These SPOT inspections were carried out jointly at five credit institutions or investment firms authorised to provide investment services.

The criteria used to select the institutions were as follows:

- a high number of complaints combined with a high number of non-professional clients;
- a particularly low number of complaints given the number of non-professional clients and the size of the institutions; and/or
- the number of reports received from investors contacting the AMF's public relations centre, "Épargne Info Service", for the institutions concerned.

It is worth highlighting the heterogeneity of the selected institutions in several respects:

- disparities in terms of both size and net banking income;
- some institutions operate only remotely; and

- the number of complaints received varies greatly from one institution to another and is not proportional to the volume of financial instruments marketed.

2.2 TOPICS AND APPLIED METHODOLOGY

The main topics discussed were as follows:

- the definition adopted by institutions to qualify a complaint;
- the organisation and management of complaints handling;
- the accessibility of information on how complaints are handled;
- the commitments made by institutions regarding response times and the fact that the system is free of charge;
- the information on appeal procedures; and
- the control system and continuous improvement.

The inspection team also looked at the vulnerability¹ of clients from two perspectives: i) how this criterion was considered when dealing with complaints, and ii) how the handling of complaints was likely to reveal a situation of vulnerability.

For each of the institutions inspected, the following were analysed in particular:

- complaint-handling procedures;
- how malfunctions that are detected as a result of complaints for adjustment of product management are taken into consideration;
- the complaints register kept by the institutions;
- the register of commercial gestures granted;
- the steering committees to provide detailed information on the handling of complaints to the executive management;
- first- and second-level control sheets for handling complaints;
- third-level audits, where these existed;
- information on the possibilities of recourse to mediation; and
- ongoing improvement.

In addition, in order to carry out more detailed investigations and assess the practical application of the measures, the inspection team selected a sample of thirty complaints relating to an investment service recorded during the period from 1 January 2020 to 31 December 2022 for each institution (i.e., 150 complaints). The inspection team carried out the following checks:

- compliance with the processing time announced² (exhaustive test based on the registers provided by the institutions);
- the circumstances and the justification given to the client when a response to a complaint was sent after the deadline to which the institution had committed itself (this deadline may be the same as or shorter than the 60-day deadline required by law); and
- the presence of the AMF Ombudsman's contact details and the specific procedures for lodging complaints with the Ombudsman in the event of an unfavourable response from clients³.

¹ Source: ACPR-AMF press release, 8 April 2021 - "The AMF and the ACPR are urging insurance, banking and finance professionals to exercise extra vigilance with regard to vulnerable ageing people": "While it may be difficult to define the notion of "vulnerable ageing person" and while age alone is obviously not sufficient, a set of vulnerability indicators may allow questioning a client's ability to give informed consent".

² As the period under review runs from 01/01/2020 to 31/12/2022, the inspection team used the date on which the complaints were received by the institutions on the panel as the starting point for the deadline, in accordance with AMF instruction DOC-2012-07 in force. It should be noted that as from 1 January 2024, AMF instruction DOC-2012-07 has been amended on this point and the two-month period starts from the date on which the written complaint is sent.

³ None of the institutions on the panel had their own ombudsman, which explains why the inspection found that the contact details of the AMF Ombudsman appeared on the websites of all five institutions and in correspondence with their clients.

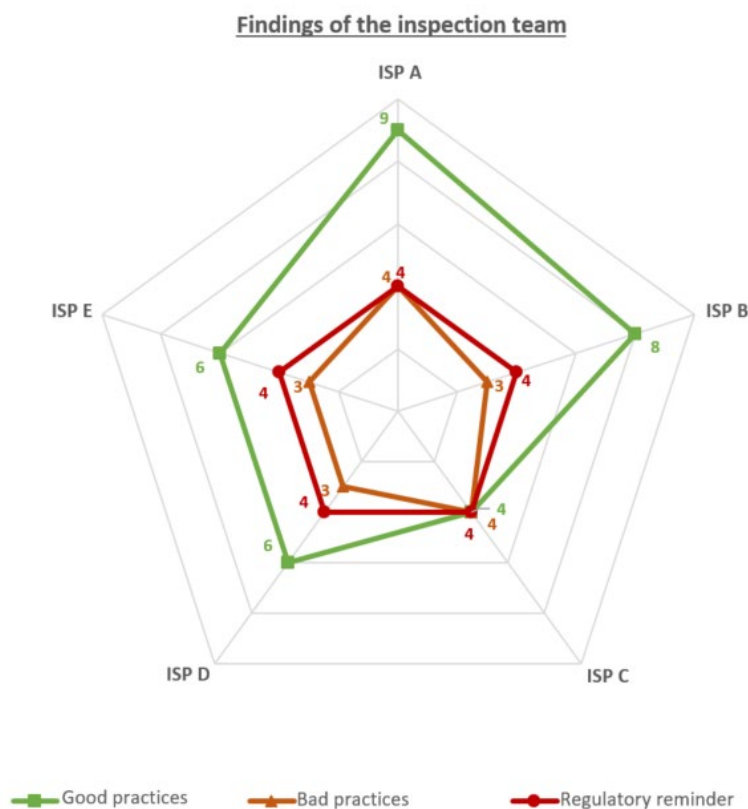
2.3 APPLICABLE REGULATIONS

The inspection team based their work on, in particular:

- Articles 22 and 26 of Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ;
- Article L621-19 of the Monetary and Financial Code;
- AMF Instruction DOC- 2012-07 on complaint handling in the version applicable during the period under review;
- Articles L.611 to L.616 and R.612 to R.616 of the Consumer Code;
- Article 14 of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR);
- FR-JC 2014 43 "*Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors*"; and
- ESMA 35-43-620 "*Guidelines on MiFID II product governance requirements*".

3. FINDINGS AND ANALYSIS

In order to illustrate the comparability of the five institutions on the panel, the inspection team produced a graph highlighting, for each of the institutions inspected, (i) good practices, (ii) bad practices and (iii) breaches of the rules covered by the "regulatory reminders" below.



3.1 DEFINITION AND SCOPE OF COMPLAINTS

Issues and focus

AMF instruction DOC-2012-07 clarifies the scope of what should be considered a complaint. The precise definition of a complaint is essential, as it determines the quality of the system as a whole and is the cornerstone of it. Depending on the approach adopted, it can minimise or maximise the number and scale of complaints. The inspection team therefore ensured that the institutions adopted a definition of complaints that did not give rise to these side effects.

The notion of “reclamations” given in AMF Instruction DOC-2012-07 is comparable to the notion of complaints or claims as defined in Delegated Regulation (EU) 2017/565. The expression of dissatisfaction, which characterises a complaint, means in particular the expression of dissatisfaction or a dispute between the client (or prospect) and the professional which may relate in particular to the existence, nature, quality or cost of the products and/or services linked to the investment services which have been provided or should have been provided.

3.1.1 Complaints: definition and procedures for submitting complaints

For two institutions on the panel, the definition used was not that laid down by the AMF in Instruction DOC-2012-07, which defines a complaint as an expression of simple dissatisfaction.

For one of the institutions, a complaint was identified as such when dissatisfaction persisted after an initial unsatisfied request. For the other institution, a complaint was only qualified when the expression of dissatisfaction

was accompanied by a request from the client. As a result, the inspection revealed that the volume of complaints identified and reported to the AMF by these institutions was underestimated and that the definition used for one of them could even be detrimental to client protection, as it is not always easy for a non-professional client to make a complaint in support of their dissatisfaction. As a result, by applying a definition that has the effect of underestimating the volume of complaints, these institutions may not comply with Article 26.1 of Delegated Regulation (EU) 2017/565 and AMF Instruction DOC-2012-07.

Regulatory reminder 1:

Article 26.1 of Delegated Regulation (EU) 2017/565: *"Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients' or potential clients' complaints. Investment firms shall keep a record of the complaints received and the measures taken for their resolution".*

Instruction AMF 2012-07: *"A complaint is a statement of dissatisfaction by the client with the professional. A request for information, advice, clarification, service or provision is not a complaint".*

The inspection team also looked at how complaints from social networks were handled. For example, it was noted that four of the institutions on the panel monitored social networks to detect potential complaints and considered this to be one of the possible channels for complaints to be recorded in their register if they were able to identify the client.

Good practice:

- Monitoring social networks and considering this channel as a means of contacting the professional to make a complaint.

3.1.2 Key figures

Despite a definition of complaints in line with the AMF Instruction DOC-2012-07, two institutions reported a number of complaints to the AMF in their annual questionnaires to the Chief Investment Services Compliance Officers (QARCSI) that differed significantly from the number recorded in the registers. One of the institutions on the panel had included in its QARCSI (i) complaints relating to life insurance, even though these do not fall within the AMF's remit, and (ii) simple requests that do not fall within the scope of complaints. For another panel member, only complaints handled by the second level were reported to the AMF. As a result, these institutions may not comply with Article 26.6 of the Delegated Regulation (EU) 2017/565 because the information on complaints reported to the AMF is wrong.

Regulatory reminder 2:

Article 26.6 of Delegated Regulation (EU) 2017/565: *"Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity".*

Finally, for one Panel institution, the inspection team found that 33% of the complaints recorded in its register were described as "other", without the institution being able to provide the inspection team with any further

details as to the nature of these complaints. While the inspection team did not question the existence of an 'other' category in the complaints register, it noted that the 'other' category was included in the complaints register. However, it should be noted that this only represents a limited proportion of the complaints recorded in the register.

Good practice:

- Listing the complaints according to a sufficiently clear typology to provide a satisfactory overview of the various reasons for the dissatisfaction expressed; thus, reserving the "other" reason for a lower importance, limited to cases other than those identified in the questionnaire of the Chief Investment Services Compliance Officer.

3.2 ORGANISATION AND MANAGEMENT

Issues and focus

Complaints handling is one of the areas in which: *"In particular, it is appropriate to provide for rigorous procedures"*⁴ insofar as the European legislator wished, when drafting Delegated Regulation (EU) 2017/565, for the applicable rules to ensure *"a high degree of integrity, competence and soundness of investment firms"*⁵.

The inspection team set out to check precisely which employees were responsible for defining the complaints handling system and which employees were responsible for handling complaints.

The role and involvement of Compliance in monitoring the handling of complaints was also a focus of the inspection. More specifically, the compliance function is responsible for certain duties in relation to complaints (reporting, controls, analysis) in accordance with Articles 22.2 and 26.1 of Delegated Regulation (EU) 2017/565.

3.2.1 Identification of employees involved in the complaints handling system

For one of the institutions, the Legal Department was responsible for the various aspects of the complaints system, even though the regulations reserve some of these responsibilities specifically for the compliance function (reporting, controls, analysis). As a result, Articles 26.1 and 22.2 of Delegated Regulation (EU) 2017/565 may not be complied with.

Regulatory reminder 3:

Article 22.2 of Delegated Regulation (EU) 2017/565: *"Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities: (c) to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken; (d) to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities".*

Article 26.1 of Delegated Regulation (EU) 2017/565: *"The compliance function at investment firms analyses complaints and complaints-handling data to ensure that they identify and address any risks or issues".*

In addition, the reports drawn up by the compliance function must provide management with a comprehensive overview of the main issues and areas of risk relating to the handling of complaints. For one of the institutions, the reports intended for the management bodies were too often limited to statistical information and a brief description of the controls carried out. As a result, the latter may not comply with Article 22.2 of Delegated Regulation (EU) 2017/565.

⁴ DR 2017/565 - Recital (29): "It is necessary to specify concrete organisational requirements and procedures for investment firms performing such services or activities. In particular, rigorous procedures should be provided for with regard to matters such as compliance, risk management, complaints handling [...]"

⁵ DR 2017/565 - Recital (28): *"The rules for the implementation of the regime governing organisational requirements for investment firms performing investment services and, where appropriate, ancillary services and investment activities on a professional basis, for regulated markets, and data reporting services providers should be consistent with the aim of Directive 2014/65/EU. They should be designed to ensure a high level of integrity, competence and soundness among investment firms and entities that operate regulated markets, MTFs or OTFs, and to be applied in a uniform manner"*

Regulatory reminder 4:

Article 22.2 of Delegated Regulation (EU) 2017/565: *"Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities: c) to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken [...]"*

In addition, Regulation (EU) 2017/565 states that *"Investment firms shall establish a complaints management function responsible for investigating complaints. This function can be performed by the compliance function. In the course of its investigations, the inspection team noted that all the institutions on the panel had staff responsible for handling complaints. In addition, it was noted that four institutions had employees and/or a department whose sole and exclusive remit was to deal with complaints, thereby harmonising the responses given to clients, ensuring consistency in the way complaints were handled and improving the capitalisation of cases encountered and the corrective action taken.*

Good practice:

- Having qualified staff and/or a duly identified department, accessible to the client, whose sole remit is to deal with complaints, thereby improving the quality of this process.

In the case of particularly complex complaints involving a high reputational and/or financial risk, three of the institutions on the panel noted that a specialised department or the compliance function could support the operational departments by providing technical and legal expertise in dealing with such complaints.

Good practice:

- Providing for the involvement of experts to assist the departments in charge of handling the complaints, particularly in the case of complex and/or high-value complaints.

3.2.2 Resources and tools made available to employees responsible for handling complaints

For each of the institutions on the panel, the inspection team analysed i) the procedures in place for handling complaints and the maintenance of a dedicated register, and ii) the training and qualifications of the staff in charge of handling complaints.

In this respect, it was noted that one of the institutions on the panel did not have a single register centralising all complaints, but rather three registers kept according to the channel through which complaints were received.

In one institution, the staff responsible for handling complaints had not received any training on the subject during the period under review, despite the fact that this activity is central to their work. The other four institutions offered regular training to their employees who were directly or indirectly involved in handling complaints, including employees who received letters and were responsible for directing them to various departments. In addition, one of the institutions required all its customer-facing staff to undergo a minimum knowledge test (AMF certification), including staff dedicated to handling complaints. Another institution had included complaints handling training in its annual plan of mandatory regulatory training courses from February 2023.

Good practices:

- Having a single, centralised register of complaints, regardless of the channel through which they are received.
- Providing regular training on this subject to staff in the departments responsible for handling complaints, given that this activity is at the heart of their job.

Bad practices:

- Not extending the minimum knowledge test (AMF certification) to all client-facing staff, which includes staff dedicated to handling complaints.
- Not including complaint handling training for relevant staff in the mandatory annual regulatory training plan. The version of instruction DOC-2012-07 in force during the period under review stipulates *"a level of qualification required for the employee(s) in charge of the complaints handling function, including a good knowledge of the professional's products, services, contracts, tools and procedures"*.

In addition, as part of its investigation into the vulnerability of clients, the inspection team noted that vulnerable clients are one of the segments of the institution's client base that allows it to pay particular attention to the complaints expressed by these clients, which are included in the various reports.

Bad practice:

- Not paying particular attention to complaints expressed by vulnerable clients, in particular by not including them in the various reports.

3.3 ACCESSIBILITY OF INFORMATION ON HOW TO HANDLE COMPLAINTS

Issues and focus

In the context of the digitalisation of practices, and in particular for certain operators who operate only by dematerialised means, the provision of the procedure for lodging a complaint via their website represents a major challenge. It is essential for the protection of client interests that complaint procedures are transparent and easily accessible. The inspection team therefore focused on the visibility, accessibility and clarity of this information on the institutions' websites and in the responses given to clients.

During the period under review, the five institutions in the panel had made the procedures for handling complaints available to clients on their websites. In three cases, the link to this information was found to be placed directly on the home page of the website. In addition, on one institution's website, under the heading "Contact the AMF Ombudsman", clients were told: "*If you have a dispute about your investment services, you can also contact the AMF Ombudsman.*" The inspection team noted that this wording was not sufficiently clear for non-professional clients, who are not all supposed to understand what is covered by the notion of "*investment services*".

Good practices:

- Including a direct and explicit link on the home page of the website for quick and easy access to the complaints handling procedure.
- Providing a clear and specific description of what is meant by investment services in the "complaints" section of the website, so that clients can clearly understand the complaint.

3.4 COMMITMENTS MADE BY INSTITUTIONS

Issues and focus

The regulatory obligations imposed on institutions may be presented to their clients in the form of commitments, which may in particular lead institutions to offer better complaints processing times than those prescribed in Instruction DOC-2012-07 in order to satisfy their clients.

Article 26 of Delegated Regulation (EU) 2017/565 states that *"Investment firms shall enable clients and potential clients to submit complaints free of charge"* and that *"When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay"*. In addition, AMF Instruction DOC-2012-07 states that *"The professional puts in place a complaint handling organisation which: [...] allows the handling times communicated to the client to be respected, that is: - a maximum of ten business days from receipt of the complaint⁶ to acknowledge receipt, unless the response itself is given to the client within this time period; - a maximum of two months between the date of receipt of the complaint and the date on which the response is sent to the client, unless duly-justified special circumstances occur"*.

Accordingly, the inspection team analysed the various commitments made by the institutions in the light of those presented to their clients and which could present substantial discrepancies with the applicable regulations.

3.4.1 Processing deadline

One of the institutions on the panel set itself a more demanding deadline for handling complaints than the 60 days required by AMF Instruction DOC-2012-07. Although this initiative may be favourable to clients, provided that the quality of processing is preserved, the latter did not comply with the announced deadlines and could, as a result, contravene Article 26.4 of Delegated Regulation (EU) 2017/565 and AMF Instruction DOC-2012-07. It should be noted that another institution had identified and solved this problem by modifying the processing time to coincide with the 60-day period stipulated in AMF Instruction DOC-2012-07 before commencing the inspection.

In addition, two institutions did not systematically notify clients when they were unable to meet the 60-day deadline set out in AMF Instruction DOC-2012-07 and did not systematically provide a justification for exceeding the deadline. As a result, these institutions may not comply with Article 26.4 of the Delegated Regulation (EU) 2017/565 and with the AMF Instruction DOC-2012-07.

Regulatory reminder 5 (failure to comply with the 60-day time limit) **Regulatory reminder 6** (failure to inform the client if the deadline is exceeded):

Article 26.4 of Delegated Regulation (EU) 2017/565: *"When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay"*.

Instruction AMF 2012-07: *"The professional puts in place a complaint handling organisation which: [...] allows the **handling times communicated to the client to be respected**, that is: - a maximum of ten business days from receipt of the complaint to acknowledge receipt, unless the response itself is given to the client within this time period; - a maximum of two months between the date of receipt of the complaint and the date on which the response is sent to the client, unless duly-justified special circumstances occur [...]"*.

⁶ It should be noted that as from 1 January 2024, AMF Instruction 2012-07 has been amended on this point and the time limit runs from the date on which the written complaint is sent.

3.4.2 Free-of-charge system

During its investigations, the inspection team found that all the institutions on the panel complied with the requirement that the complaints handling system should be free of charge.

3.5 INFORMATION ON THE POSSIBILITIES OF RECOURSE TO MEDIATION

Issues and focus

AMF Instruction DOC-2012-07 states that "*when the professional(s) participate(s) in online sales or service contracts, they shall inform their clients [...] of the existence of the online settlement platform for consumer disputes and include, on their website(s), a link to this platform, under the conditions set out in Article 14 of EU Regulation 524/2013 of 21 May 2013 on online dispute resolution (ODR)*".

The online dispute resolution platform is provided by the European Commission to help settle disputes between consumers and professionals. If the professional agrees to settle the dispute via this platform, the two parties will agree on an approved settlement body chosen from a list proposed by the professional⁷. The selected organisation will be responsible for assisting the client and the professional in resolving the dispute in a non-confrontational manner. The European Commission conducted a study⁸ in 2017, which showed that only 28% of the professionals concerned mention the link to the ODR platform on their website, which is consistent with the rate revealed by the SPOT inspection.

The instruction also states that "*In all cases, the professional is obliged to inform their clients, in a visible, legible and equivalent manner, of the contact details of the Ombudsman(s) likely to be competent, as well as the address of the Ombudsman's website: on their website [the professional's website]; on any appropriate medium: financial instruments account opening agreement, investment service provision agreement, advisory engagement letter and fee brochure*". Providing consumers with clear, non-misleading information about the remedies available to them in the event of continued dissatisfaction is a fundamental element in protecting their interests. The inspection team therefore analysed the various means of redress available to clients and prospects.

The inspection team looked at the outcome of client complaints. For 2022, this analysis shows that 31.3% of the responses sent to clients by institutions were favourable. The inspection team also looked at the opinions issued by the AMF mediator (without access to the mediation files as such) during the period under review:

	PSI A	PSI B	PSI C	PSI D	PSI E
Nombre total réclamations	116	11 352	5 128	653	1739
Nombre de réponses positives	68	1 673	2 659	245	840
% de réponses favorables	58,6%	14,7%	51,9%	37,5%	48,3%
Dossiers en médiation	6	172	191	30	55
% de dossiers en médiation / total réclamations	5,2%	1,5%	3,7%	4,6%	3,2%
Dossiers pour lesquels le client a eu gain de cause	3	12	25	5	20
% de dossiers pour lesquels le client a eu gain de cause	50,0%	7,0%	13,1%	16,7%	36,4%

Except for PSI A⁹, the collected data can be compared. The systems of other institutions appear qualitative insofar as a small proportion of complaints received result in referral to the AMF mediator. This is particularly true for PSI B, for which this proportion is very low (1.5%) and even more so as this is also the institution whose opinion the ombudsman follows the most (only 7% of customers were successful).

For the other PSI, the proportion of cases that enter mediation remains low (maximum of 4.6% for PSI D) which, in addition to the qualitative aspect of their system, would be likely to highlight the insufficiently established nature of clients complaints. Moreover, even if the quality of complaint handling cannot be fully correlated with the satisfaction provided to clients, there is nevertheless a high percentage of favourable responses provided by PSI C and E to their clients' complaints (around 50%).

⁷ <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>.

⁸ <https://www.inc-conso.fr/content/la-plateforme-de-reglement-en-ligne-des-litiges>.

⁹ The data provided by PSI A in terms of percentage of favorable responses are not comparable with the data of the other institutions in the panel to the extent that PSI A only counts them for responses sent by one of its services in charge of complaints handling.

3.5.1 Mediation system

As part of its checks on the disclosure of the AMF Ombudsman's contact details to clients, the inspection team requested a sample of 30 complaints from each of the institutions on the panel. In this respect, deficiencies in the traceability and retention of complaints were found in two institutions:

- one institution was unable to transmit the entire sample selected by the inspection because it considered that i) the time required to retrieve the files was too long and ii) the complaints selected from the register were not complaints as defined in AMF Instruction DOC-2012-07; and
- the second institution informed the inspection team in writing that it did not have access to the complaints archives managed by one of the departments in charge of handling complaints for 2020.

This problem of data retention does not only affect the mediation system, but could also have repercussions on the quality of the checks conducted by the institutions. As a result, these institutions may not comply with Article 26 and Annex 1 of the Delegated Regulation (EU) 2017/565.

Regulatory reminder 7:

Annex No 1 to Delegated Regulation (EU) 2017/565 which refers to Article 26 of this Regulation: *"Minimum list of records that investment firms must keep depending on the nature of their business: [...] Complaints handling records: Each complaint and each measure taken to deal with the complaint [...]"*.

In addition, during the checks conducted on the selected samples, the inspection team found that one institution did not systematically inform its clients of the means of redress available to them in the event of an unfavourable response to their complaints. In fact, 50% of unfavourable responses were not accompanied by the AMF Ombudsman's contact details. As a result, this institution may not comply with Article 26.5 of the Delegated Regulation (EU) 2017/565 and AMF Instruction DOC-2012-07.

Regulatory reminder 8:

Article 26.5 of Delegated Regulation (EU) 2017/565: *"Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and the Council (1) on consumer ADR or that the client may be able to take civil action"*.

Instruction AMF 2012-07: *"If the complaint is rejected or dismissed in whole or in part, the professional shall indicate in the reply given to the client the possible means of redress, in particular the existence and contact details of the ombudsman or ombudsmen who may be competent"*.

3.5.2 Online dispute resolution

Three institutions were found not to provide a link to the online dispute resolution platform on their websites, which meant that clients did not have access to all possible means of redress. As a result, these institutions may not comply with Article 14 of Regulation (EU) No. 524/2013 in light of AMF Instruction DOC-2012-07.

It should be noted that one institution on the panel was not affected by this scheme, as it did not provide an online contract or service.

Regulatory reminder 9:

Article 14 of Regulation (EU) No 524/2013: *"Traders established within the Union engaging in online sales or service contracts, and online marketplaces established within the Union, shall provide on their websites an electronic link to the ODR platform. That link shall be easily accessible for consumers. Traders established within the Union engaging in online sales or service contracts shall also state their e-mail addresses".*

It should be noted that on 17 October 2023, the European Parliament announced that it was considering abandoning the ODR platform, following a proposal from the European Commission¹⁰.

¹⁰ https://www.assemblee-nationale.fr/dyn/16/eurodoc/116e18290_document-europeen-art88-6.pdf.

3.6 CONTROL AND CONTINUOUS IMPROVEMENT SYSTEM

Issues and focus

Spot checks are particularly important, as complaints statistics can be difficult to interpret. Thus, a high number of complaints does not systematically indicate an efficient complaint detection system if it is designed in such a way that simple requests for information, which cannot constitute a complaint, are classified as complaints. On the other hand, a low number of complaints may mean that there are deficiencies in the system that prevent genuine complaints from being identified and dealt with properly. The inspection team analysed the various controls put in place by institutions to deal with complaints in order to assess their efficiency.

3.6.1 Control system

Two institutions had adopted a risk-based approach which led them to consider that the client complaints process presented a low risk during the period under review, with the result that no second-level controls were performed in this area for (i) four consecutive years in the case of one institution and (ii) two consecutive years in the case of the other institution. The inspection team did not dispute the principle of adopting a risk-based approach to determine priority controls, but in this case did not agree with the conclusions drawn by these institutions, which led to the assessment of a low risk.

One institution has not prioritised this issue in its control plan because, according to the plan, i) an audit conducted in 2021 found the system to be 'adequate' and ii) the publication of ACPR Recommendation 2022-R-01. However, ACPR Recommendation 2022-R-01 does not apply to financial instruments. In addition, like the inspection, the audit noted that the volume of complaints was underestimated. Lastly, this inspection was launched in 2021 following a sharp increase in the number of clients, which justified prioritising the handling of complaints.

In the case of the second institution, the issue of "customer complaints" was assessed as a "low" net risk in the risk map, mainly because i) a complaints management policy is in place, ii) internal audits are conducted, and iii) level 1 controls are in place. The inspection team did not agree with this assessment, as the definition used by the institution as part of its complaints management policy differs significantly from that of the AMF, resulting in a minimisation of the volume and scope of complaints. In addition, the audit of the client complaint management process conducted in 2021 concluded that the inherent risk was high and the residual risk medium. Lastly, the inspection team noted that level 1 controls had not been formalised by the institution, making it impossible to assess their relevance. As a result, this institution may not comply with Article 22.2 of Delegated Regulation (EU) 2017/565.

In addition, one of the institutions on the panel was found not to be conducting Level 2 controls in 2022, due to an assessment that takes into account the results of Level 1 controls, even though the latter do not cover investment services. This institution could be in breach of Articles 22.2 and 26.7 of Delegated Regulation (EU) 2017/565.

Lastly, in two institutions, the inspection team noted the absence of level 2 checks to ensure that the complaints recorded in the registers were exhaustive. By way of illustration, these two institutions do not conduct cross-checks on the commercial gestures granted, which would make it possible to ensure that certain requests do not conceal complaints that have not been recorded as such.

Regulatory reminder 10 (risk-based approach); **Regulatory reminder 11** (absence of level 2 controls);
Regulatory reminder 12 (absence of cross-checks):

Article 22.2 of Delegated Regulation (EU) 2017/565: *"Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities: (a) to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations; (b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2014/65/EU; (c) to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken; (d) to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities".*

Regarding the extraction of complaints data, one of the institutions was using a process that did not ensure the accuracy as well as the reliability of the items reported to the AMF in relation to complaints and might not comply with Articles 26.1 and 26.6 of the Delegated Regulation (EU) 2017/565.

Regulatory reminder 13:

Article 26.1 of Delegated Regulation (EU) 2017/565: *"Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients' or potential clients' complaints. Investment firms shall keep a record of the complaints received and the measures taken for their resolution".*

Article 26.7 of Delegated Regulation (EU) 2017/565: *"Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution entity".*

The inspection team also verified that the institutions included the quality of the responses given to clients in their inspections to ensure that complaints were dealt with effectively and appropriately. In three institutions, for example, it was found that the qualitative criterion of complaint handling had been included as a control point within the first-level controls. For one of the institutions in particular, a hierarchical control covered this point and was the subject of detailed feedback, making it possible to regularly raise awareness among the employees concerned.

Good practice:

- Carrying out checks to ensure the quality of responses to complaints, to avoid standard responses and to provide the necessary explanations and, ultimately, client satisfaction.

In addition, the inspection team noted that one institution used an external service provider specialising in performance management and consultant evaluation to listen to telephone calls. These were random and conducted i) twice a month for client-facing staff and ii) four times a month for junior staff. The evaluation form used when listening to these telephone calls included a checkpoint on complaints. The assessor had to tick a box if the consultant had not provided an explanation of the complaints handling process where necessary.

Good practice:

- Using an external service provider, conducting assessments of telephone calls using an evaluation grid that considers the problems associated with verbal complaints, and checking that the employee complies with the presentation of the procedure in such cases, subject to compliance with the provisions of the General Data Protection Regulation (GDPR).

One of the institutions on the panel carried out level 2 checks on complaints for each year of the period under review. This institution considered the risk related to client complaints to be strategic and therefore required annual coverage in its permanent control plan, without considering the effectiveness of its system, the measures implemented, etc., thus adopting a "zero tolerance" approach to this risk.

Good practice:

- Adopting a "zero tolerance" approach to the risk of client complaints and therefore renewing controls on this subject for each year of the period under review.

3.6.2 Continuous Improvement & Product Governance

The regulations themselves make the complaints handling system part of a continuous improvement process, requiring institutions to learn from complaints and the problems they identify in order to take the necessary corrective measures. This is also required by product governance rules that include a complaints component, in that the analysis of client complaints must be considered in the periodic review of products and services. The inspection team focused on verifying compliance with regulatory obligations relating to the learning of lessons from malfunctions identified through complaints and the implementation of the resulting corrective actions. The inclusion of complaints in the product governance system was also an area of investigation.

None of the institutions included complaints in the annual review of their product governance system. However, one of the institutions identified this deficiency prior to the start of the inspection and formally included this reinforcement in the 2023 review.

Bad practice:

- Not including complaints in the annual review of the product governance system.