

CHAPTER VI

Customer complaints

Analysis of customer complaints handled during 2000

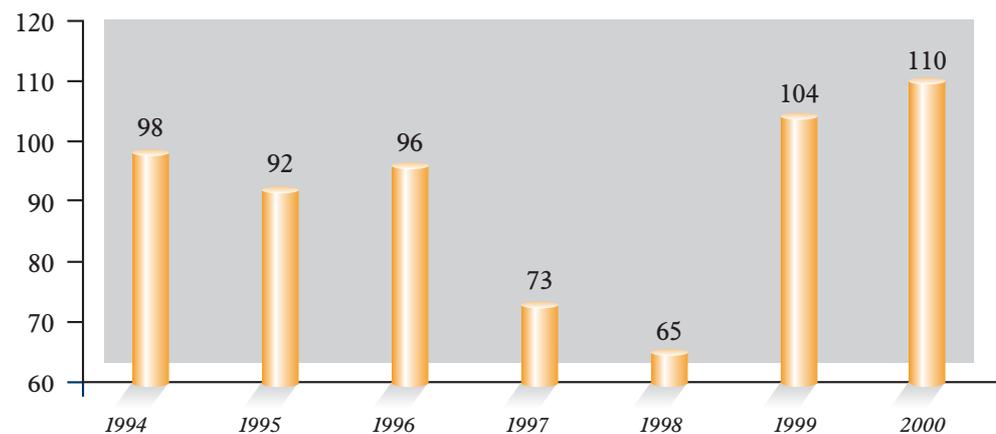
Analysis of customer complaints handled during 2000

The Law confers on the CSSF the task of mediating between customers and the institutions it supervises. Under the terms of article 58 of the amended law of 5 April 1993 on the financial sector, the CSSF “is competent to receive complaints from clients of the persons subject to its supervision and to take action vis-à-vis these persons with a view to reaching an amicable settlement of the dispute.”

This analysis shows the complaints lodged with the CSSF against banks and other financial sector professionals and handled by its litigation unit.

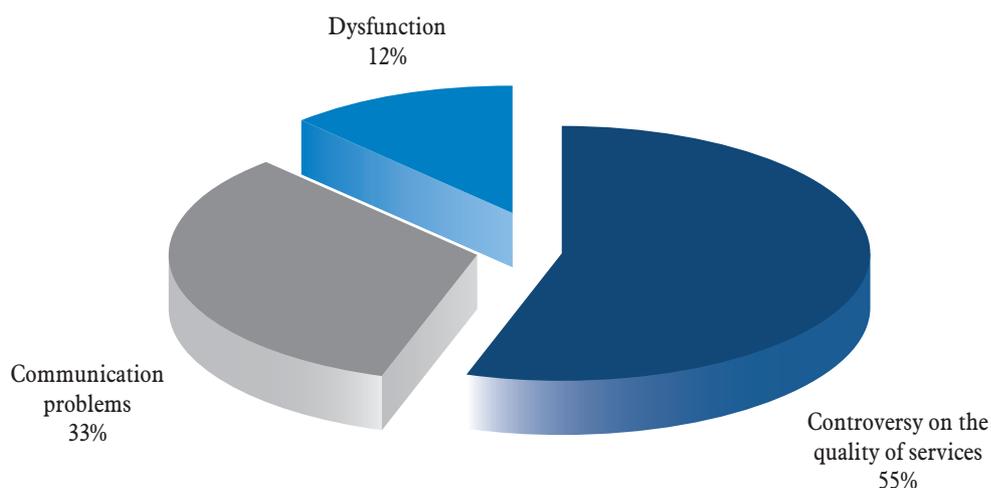
Among the 110 complaints received by the Commission in 2000, 102 concerned banks and 8 concerned other financial sector professionals. 108 were from private persons and 2 from legal entities.

Number of complaints



The total number of banks that were the subject of complaints is stable compared with the period previously studied, numbering 38 against 40 in 1999. A classification of complaints by subject is shown in the diagram below, it being understood that a single complaint may cover several subjects.

Classification of complaints by subject



For the year under review, certain cases drew our particular attention:

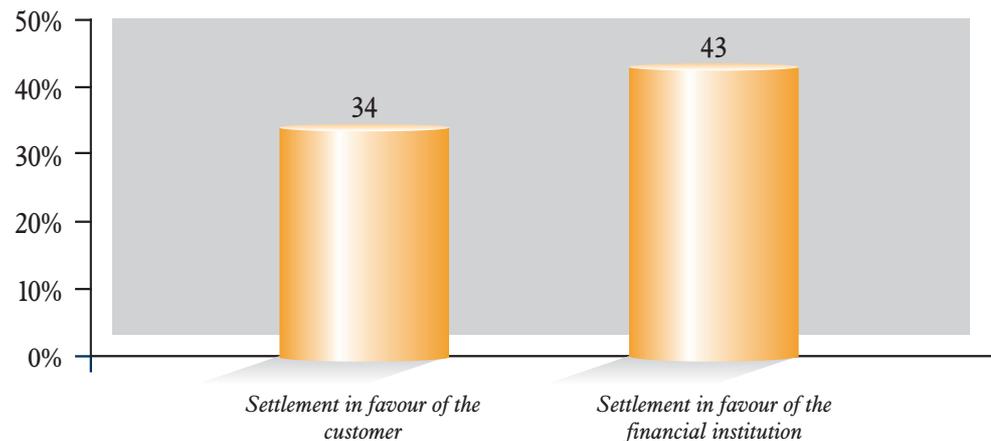
The problem of orders given by telephone, already examined in the previous year, has become particularly acute insofar as the use of telephone and fax were at the centre of cases of embezzlement, whose victims were certain banks and a number of customers of Argentinian nationality. Basically, the scenario varied from case to case but followed an identical plan. Managers received orders from persons presenting themselves as the Argentinian holders of accounts that were either dormant or of limited activity. These orders required the transfer of considerable sums to foreign accounts. Whatever the precautions taken by each of the banks to check the identity of the customer, and in spite of the fact that every bank required a confirmatory fax, each bank subsequently received a complaint from the account holder, denying that he or she had given the transfer order and requiring the immediate restitution by the bank of the amount transferred. Faced with an increase in cases of this type, the CSSF judged it necessary to write to the ABBL advising it to warn its members and reminding them of the precautions to be taken. We note here that special supervision must be implemented for dormant accounts. The execution of a transfer order received for this sort of account must be authorised by a senior manager. Wherever possible the bank should try to contact the customer to verify the order in question, and in any case, given the impossibility of verifying the signature on a fax, it would be prudent for the bank to require confirmation of the order by letter.

During the year under review, there was also a resurgence of complaints based more or less directly on the departure of a manager who then tries, often by exerting pressure, to persuade the customers in his care to follow him to his new employer. The problem occurs in two different forms:

- 1) The customer who does not wish to leave the financial organisation in question complains of being solicited against his will by his former manager and complains that the latter is using confidential data concerning the customer, to which he had access during his period of employment.
- 2) The customer who wishes to follow his manager to the new employer complains that the financial organisation is unnecessarily delaying the transfer of his assets.

Here we consider it helpful to recall that on this point financial sector professionals are required to adhere to the principles set out in circular CSSF 2000/15.

Results of mediation by the CSSF



77 of the complaints received during the period under review were settled; in 34 cases, the dispute was settled in favour of the customer. 33 files are still under review. We must point out that financial sector professionals do not always comply with the considered opinion of the CSSF.

Thus, in the following case:

The manager of a company, wishing to ensure before delivering his goods abroad that payment would be made, asked the advice of his local bank. The bank recommended obtaining confirmation of the transfer of funds from the buyer's bank. The customer took this advice and presented the document to his bank for verification. On receipt of which, the customer made the delivery, only to find that the document received was a forgery. The bank refused to indemnify him, on the grounds that the bank was in no way obliged to provide such service, which was free of charge. Now, while recognising that banks are only obliged to provide general information and advice, and in no way obliged to provide free legal assistance, we consider that, insofar as the bank agrees to provide such assistance, it engages its responsibility and must acquit itself thereof taking all necessary precautions. Although it agreed to make a gesture in this affair, the bank nevertheless refused to fully indemnify the customer.



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European co-operation in out-of-court mechanisms for redress: public launch of a Cross-Border Out-of-Court Complaints Network for Financial Services

Two meetings were held in 2000 to discuss the Memorandum of Agreement intended to facilitate co-operation between the different out-of-court settlement schemes.

A meeting of the national out-of-court bodies responsible for the settlement of disputes in the financial sector was held in Brussels on 31 January 2001 under the aegis of the European Commission marking the launch of a Cross-border Out-of-Court Network for the settlement of disputes between consumers and providers of financial services.

The initiative taken by the European Commission aims to establish a database of the out-of-court settlement bodies for disputes in the different member states in order to assist consumers in effectively exercising their rights in day-to-day affairs. The Commission is of the opinion that this database will furthermore help to promote the networking and effective collaboration of these bodies with a view to resolving cross-border disputes. On 31 January 2001, 36 bodies were party to the Memorandum of Agreement.

For Luxembourg, the CSSF and the insurance ombudsman established and managed jointly by the *Association des compagnies d'assurances* (ACA) and the *Union luxembourgeoise des consommateurs* (ULC) will participate in this cross-border network.