



CUSTOMER COMPLAINTS

CHAPTER

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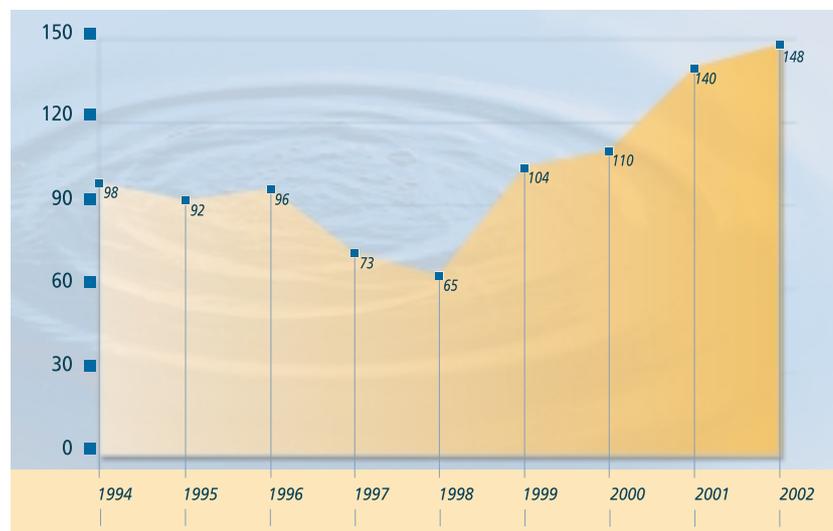
1. Analysis of complaints handled during 2002

The Law of 5 April 1993 on the financial sector as amended confers on the CSSF the task of mediating between customers and the institutions it supervises. Under the terms of Article 58, 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”.

Within the CSSF, these disputes are handled by the General Secretariat.

The analysis of the complaints received by the CSSF during 2002 shows that among the 148 complaints received in 2002, 140 concerned banks and 8 concerned PFS. 137 complaints were lodged by private persons and 11 by legal entities. In comparison with the figures of the previous year, there has been no noticeable increase in the number of complaints.

Number of complaints



The complaints received by the CSSF can be classified into three categories:

1. Private portfolio management

These complaints concern discretionary management (management mandate really existing or not, non-compliance by the professional with investment profiles, disputes concerning charges and commissions, lack of customer information as regards investment risks), as well as the problems relating thereto. This category also includes disputes relating to lack of customer information on risks inherent in certain financial products as well as issues relating to incorrect execution of customer orders and asset transfer.

2. Banking operations

The issues in question concern problems arising from daily banking operations (excluding private portfolio management), i.e. disputes regarding charges, commissions or interest rates, closure of accounts, fund transfers, requests for documents, compliance with general conditions and cross-border payments.

3. Various

Certain complaints lodged with the CSSF concern issues relating to false cheques, inheritance or failure to respect the bank secrecy.

The classification of complaints by subject is shown in the diagram below.

Classification of complaints by subject



Among the 148 complaints received during 2002, 87 were settled in 2002. Twelve other files having been settled by 1 March 2003, 49 files are still under review.

Among the 87 disputes settled in 2002, 26 were settled in favour of the client. In 19 cases, settlement could not be reached due to the irreconcilable positions of the parties concerned. In 25 cases, the CSSF did not detect any incorrect behaviour from the professional. The review of 17 files was not finalised, the reason being either the withdrawal of the complaint by the client, or the fact that the CSSF was not competent to intervene.

The following is an example illustrating the mission of the CSSF.

A bank subscribed shares of an investment fund constituted under the legislation of the British Virgin Islands, on behalf of several of its clients. The shares were held by the bank on accounts opened at the clients' names.

The fund then lost almost its whole assets due to bad management. The promoter took on to bail the fund out by his own means and offered to acquire the shares at a purchase price equal to the initial price plus the guaranteed yield. The offer was subjected to the condition that the bank indicated the identity of the beneficial owners of the shares.

However, the bank declined the offer despite the clients' instructions. The bank put forward that the condition imposed by the promoter, obliging it to reveal the names of the beneficial owners, was unacceptable, as it would force the bank to breach its professional secrecy.

Faced with the bank's inertia, the clients addressed the investment fund. However, the fund could not accede to their demand without having received the corresponding instructions from the bank, as the bank was listed as shareholder in the fund's register.

The CSSF considered that the bank's argument did not justify the refusal to execute the instructions of the clients concerned. Indeed, the clients had authorised the bank to ask for the redemption of the shares held by the bank at their behalf and they had expressly authorised the bank to reveal their identities to the fund. The bank, by refusing to execute its clients' orders, did not comply with its obligation to act loyally and fairly in the best interest of its clients in accordance with CSSF Circular 2000/15 concerning the rules of conduct of the financial sector.

Finally, as a result of the CSSF's intervention, the bank accepted to fully reimburse the clients concerned.

Some clients, having received no response at all to their complaints from the banks or PFS, had to refer to the CSSF. It has to be noted that as soon as the CSSF intervened, the issue could be quickly resolved by the professional without any further mediation of the CSSF. If the professional is aware that a problem submitted by a client can be quickly resolved, he should immediately respond, without waiting for clients to turn to the CSSF.

It has also to be noted that a high number of complaints concern issues relating to private portfolio management. A number of disputes arise from the fact that the clients lack information regarding the risks inherent in investments they agreed on at the conclusion of the management contract. Many disputes could be avoided if banks and PFS first informed their clients about the risks or ensured that the clients fully understand the risks in question, in particular as regards those inherent in shares and derivative products.

Furthermore, the CSSF is competent to intervene in disputes concerning cross-border payments. This competence is specifically laid down in Article 41-10 of the Law of 5 April 1993 on the financial sector as amended, introduced by the Law of 29 April 1999 transposing Directive 97/5/EC concerning cross-border payments. In this context, the CSSF may intervene in disputes between the originator and the institution or between a beneficial owner and his institution.

Moreover, banks and PFS should inform the CSSF, after it expressed its opinion, of the possible follow-up of the dispute, e.g. amicable settlement or referral of the case to a court.

2. FIN-NET network, the cross-border out-of-court complaints network for financial services

The FIN-NET network held two meetings in Brussels (1 February 2002 and 17 September 2002) under the aegis of the European Commission, gathering the bodies responsible for the out-of-court settlement of cross-border disputes relating to financial services within the European Economic Area, among which the CSSF.

These meetings particularly aimed at taking stock of the functioning of the network after one year of co-operation on the basis of the memorandum of understanding agreed between parties, as well as recent developments in the field of out-of-court settlement of disputes. The network keeps expanding and the number of participating bodies amounted to 40 in 2002.



Departments "General Secretariat" and "IT" - staff members recruited in 2002.

From left to right:

Nadine ESCHETTE (IT department),

Ngoc Dinh LUU - Christiane TRAUSCH - Carine CONTE (General Secretariat)

Absent: Natasha DELOGE

