

*Consumer protection in banking sector and
financial stability over the long term: a
call for action for banking Supervisors*

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București, October 23 2015

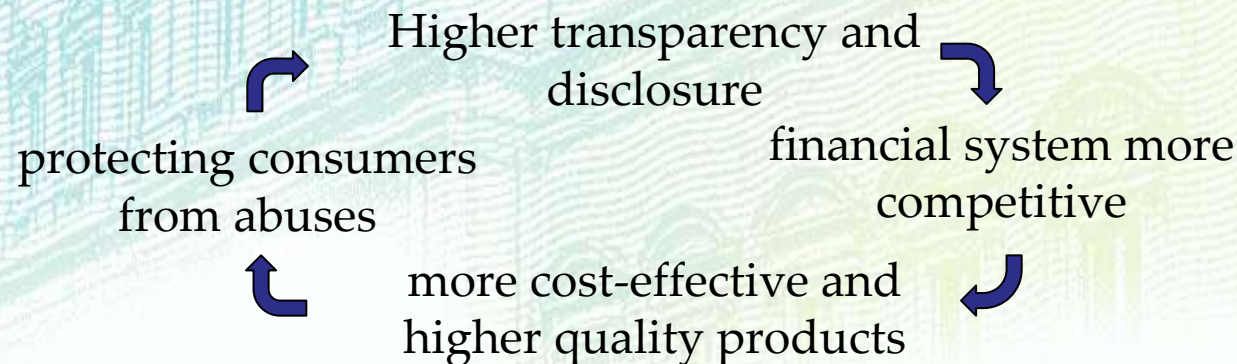
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Some introductory thoughts...

- ✓ Financial consumer protection as a specific mandate for banking supervisors

Lessons from the crisis...

- ✓ *policies that protect the interests of consumers of financial products and services contribute to enhanced risk management by households, more competitive financial markets, and greater financial stability (2011)*



International projects

✓ The G-20 High-level Principles on Financial Consumer Protection (2011)

1. *Legal, Regulatory and Supervisory Framework*
2. *Role of Oversight Bodies*
3. *Equitable and Fair Treatment of Consumers*
4. *Disclosure and Transparency*
5. *Financial Education and Awareness*
6. *Responsible Business Conduct of Financial Services Providers and Authorized Agents*
7. *Protection of Consumer Assets against Fraud and Misuse*
8. *Protection of Consumer Data and Privacy*
9. *Complaints Handling and Redress*
10. *Competition*

Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorized agents internal dispute resolution mechanisms

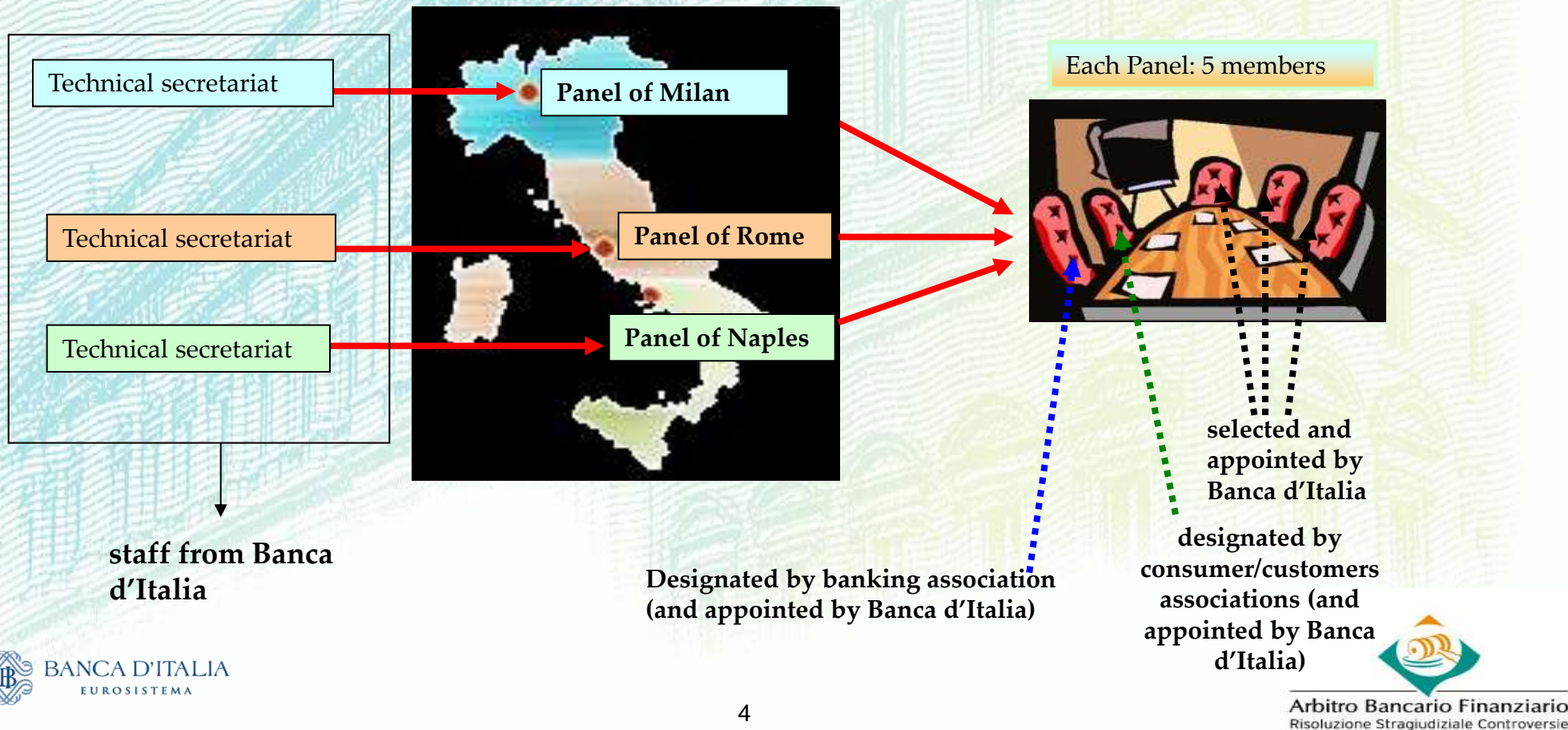
To enhance the financial services providers' participation in the ADR schemes, regulators/supervisors require the financial institutions under their supervision to become a member of such schemes ()*

(*) Report on Effective Approaches to Support the Implementation of the G20 High Level Principles on Financial Consumer Protection (2013)

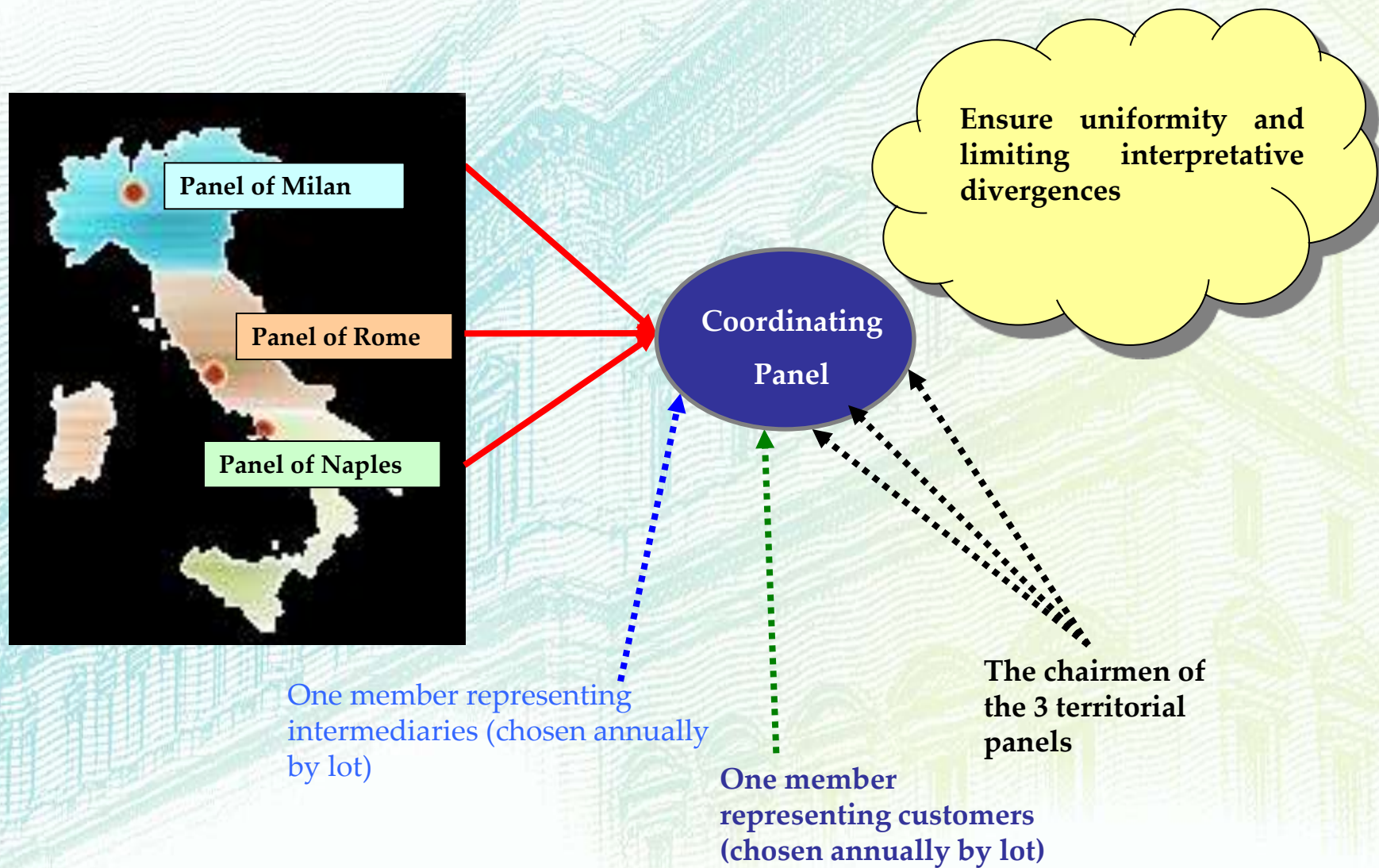


The Italian Arbitro Bancario Finanziario (ABF)

- ✓ October 2009: establishment of a dedicated scheme for deciding clients claims against banking and financial institutions, covering banking and financial contracts and services (including payment services), not disputes involving investment services.



The ABF Coordinating Panel (operational since april 2012)



The ABF main features

- ✓ a **statutory** dispute resolution system
 - Article 128-*bis* Legislative Decree no. 385/1993
 - Deliberation of the Inter-Ministerial Credit Committee 29th July 2008 no. 275
 - Regulation on alternative dispute resolution issued by Banca d'Italia 18th June 2009

- ✓ an **independent** scheme:
 - ABF is not an office or a department of Banca d'Italia
 - members of the deciding panel are not hierarchically subordinated to any official of the Banca d'Italia

- ✓ a **second level response** for customers (actions before the ABF can be brought only by customers):
 - before presenting a claim to the Ombudsman, the customer is supposed to send a written complaint to the institution; if the intermediary does not answer (within 30 days) or its response is unsatisfactory, the customer may file within 12 months

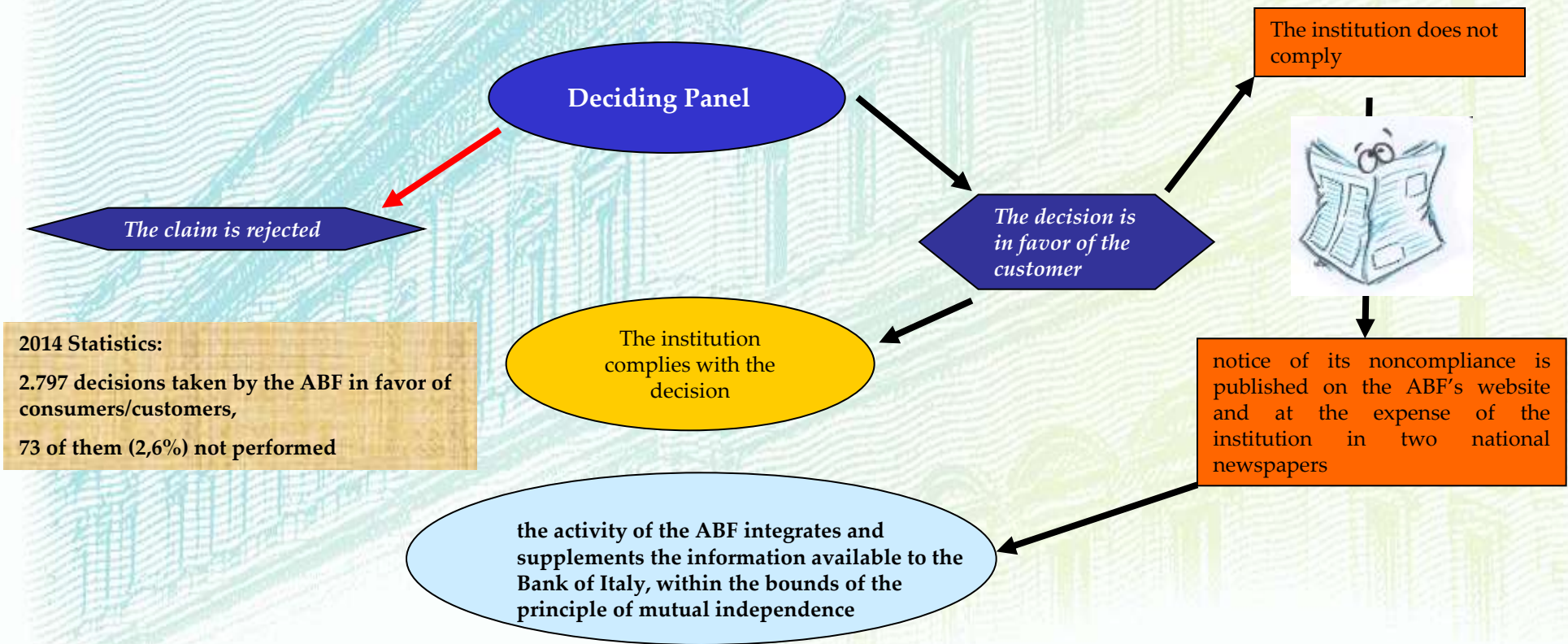
- ✓ based on the **mandatory participation** for banks and financial institutions (not for customers)

The ABF main features

- ✓ **open** not only to consumers but more generally to customers
 - in 2014, more than 10% of claims have been presented by non consumers (businesses and professionals)
- ✓ **professionally qualified** mechanism:
 - specific requirements of expertise, independence and impartiality
- ✓ **decision-making** scheme:
 - any dispute is resolved through the decision issued by a panel which examines the case in the light of the documents filed by the parties and decides according to law, by applying the statutory and regulatory provisions that govern the matter of dispute)
- ✓ **informative**: all the decisions taken by the ABF are public (with the complete elimination of any reference to the names of the litigants, both the consumer and the bank)

The ABF main features

- ✓ **enforced** through a mechanism of “**reputational measures**” (naming and shaming “sanctions”):
 - ABF decisions are not binding on either party
 - ABF decisions do not affect, in any way, the possibility for both litigants of submitting the dispute to a civil court



The ABF main features

Authoritative
elements

+

Persuasive
elements

A1

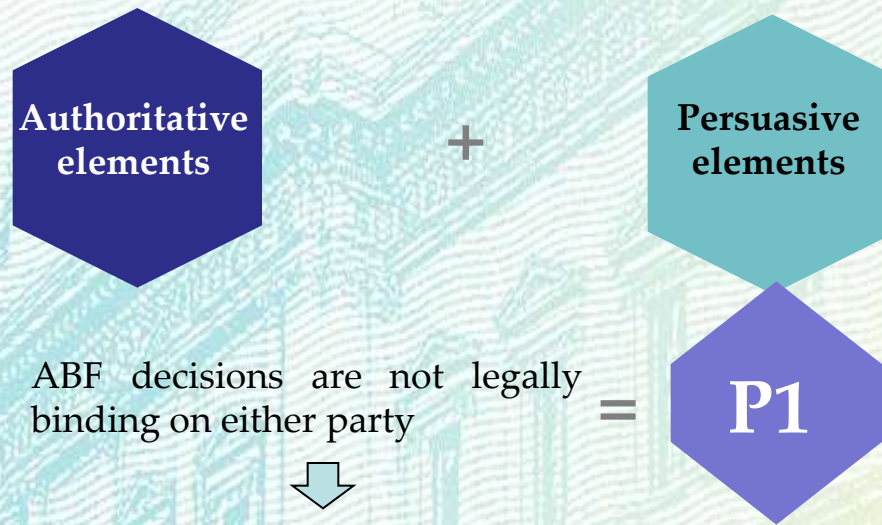
= mandatory participation to the
ADR procedures for financial
and banking institution

A2

= mandatory insertion into the
contracts with customers of a
specific clause referring to the
ABF and to his/her
unconditional right to file a
claim before the Arbitro

Banking
supervisor
role/action

The ABF main features



ABF decisions are not legally binding on either party =

↓
a sort of *early neutral evaluation*

A2

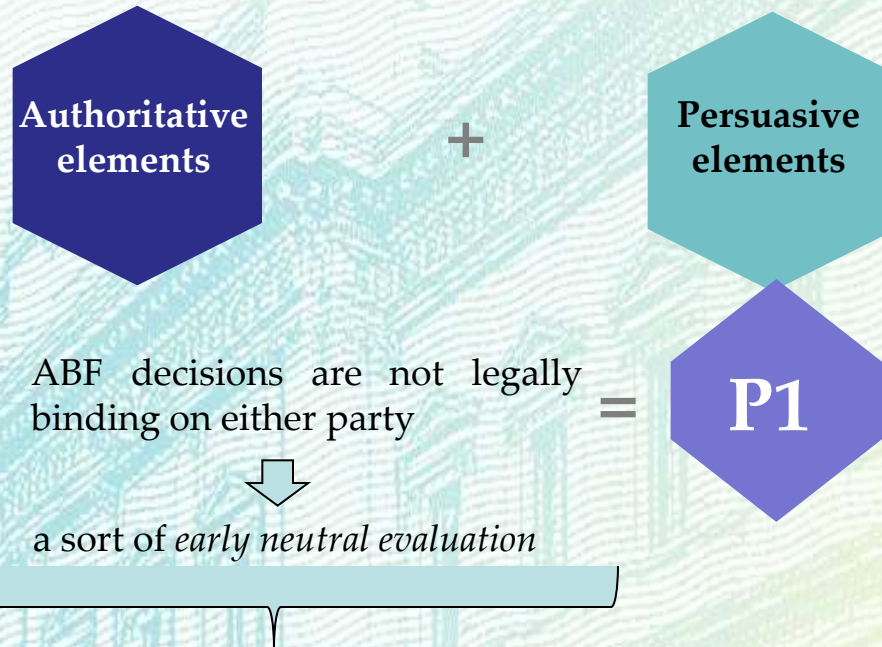
Constitutional constraints:

Article 102 of the **Italian Constitution**: *Judicial proceedings are exercised by ordinary magistrates empowered and regulated by the provisions concerning the Judiciary. Extraordinary or special judges may not be established. Only specialized sections for specific matters within the ordinary judicial bodies may be established, and these sections may include the participation of qualified citizens who are not members of the Judiciary*

Article 111 of the **Italian Constitution**: *Jurisdiction is implemented through due process regulated by law*

Corte Costituzionale, decree 21 July 2011, no. 218: *«the Arbitro Bancario Finanziario is not a court»*

The ABF main features



the interconnection between **Banca d'Italia** and ABF is an incentive for banks and financial institutions for a responsible compliance with the decisions issued by the panels

- ✓ **the fact that an institution does not comply with an ABF decision does not go as far as an infringement of any law, regulation which the Banca d'Italia can/has to punish with administrative fines or by adopting other supervisory measures**
- ✓ the fact that a bank or a financial institution does not repeatedly (frequently) comply with ABF decisions could be indicative of organizational deficiencies in the bank/institution or of underestimation of the relevance of transparency and fairness issues

supervisory issue

The ABF main features

- ✓ Banca d'Italia role has been confirmed, at a statutory level, by the Italian Government (and Parliament) when transposing the directive 2013/11/EU
- ✓ the Italian Consumer Code provides now that the Banca d'Italia is the national competent authority for the control of ADRs in the banking sector (and of sure of the ABF) and their alignment to the requisites dictated by the EU directive



Potential side-effects:

- In June 2013 Banca d'Italia has been sued before the Tribunal of Naples by a small financial institution, requesting to the judge to ascertain the illegitimacy of a decision issued against it by the Arbitro Bancario Finanziario, on the basis of the wrong assumption that the ABF is an office of Bank d'Italia
- Tribunal of Naples dismissed the action by observing that the ABF decision is not legally binding and consequently there is not legal interest for the financial institution in bringing the action.

The ABF main features

Why not a simple mediation scheme?



- ✓ banking activity is probably one of the most regulated
- ✓ making credit institutions concretely respect rules is extremely important
- ✓ we need someone sufficiently skilled and professionally equipped, able to identify the relevant rules for the specific case and to say **who is right and who is wrong**

If a bank has abused of its bargain power, we want the bank repay the customer (consumer) until the last cent



Potential **alignment effect**:

banks – through their complaints offices – are required to analyze on a regular basis the outcomes of the ABF and take note of them during the complaints-handling stage

Thank you for the attention



Time for debate....