



2011 ACTIVITY REPORT

NATIONAL ENERGY OMBUDSMAN



Le médiateur
national
de l'énergie

Informer, conseiller, protéger

NATIONAL ENERGY OMBUDSMAN

WHAT IS IT?

The national energy ombudsman is an independent administrative authority set up by the law of 7th December 2006 governing the liberalisation of the French gas and electricity markets. Consumers fund its activities by way of a fee levied on electricity bills. At the end of 2007, an inter-ministerial decree confirmed the appointment of Denis Merville as the national energy ombudsman for a period of six years. His term of office is irrevocable and non-renewable. The national energy ombudsman is a

unique mediation service in France and is the only public institution in the consumer sector to have the remit of seeking alternative settlements to disputes in accordance with European directives.

The ombudsman reports directly to the French Parliament.

WHAT ARE ITS MISSIONS?

The national energy ombudsman's role is to recommend solutions to disputes "arising from the execution of supply contracts" between energy market operators and their private consumer or small business clients. The legislator has also invested the ombudsman with the remit of participating in the process of informing consumers of their rights.

Founded in 2007, "Énergie-Info" is an information service funded jointly with the French Energy Regulation Commission (Commission de régulation de l'énergie - CRE). The service provides free-of-charge and completely independent information to around one million people

every year via an Internet site (www.energie-info.fr) and a call centre (French **Freephone N°: 0800 112 212**) about their procedures and their rights.

The ombudsman proposes straightforward and equitable solutions to disputes referred to it and formulates recommendations based on an in-depth legal and technical analysis, during which it may call for comments on the part of the stakeholders involved, within a set deadline. While its recommendations have no binding effect on operators, the latter are obliged to keep the ombudsman informed of their follow-up action within a maximum period of two months.

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NECESSARY CONSUMER PROTECTION

In 2011, the energy sector was marked by the Fukushima nuclear power plant explosion in Japan. This drama has had repercussions all around the world, with some countries actually deciding to halt electricity generation from nuclear sources. In France, the French Nuclear Safety Authority (Autorité de Sûreté Nucléaire - ASN) has imposed a series of measures to strengthen nuclear power plants' abilities to withstand natural disasters. These measures involve several billion euros of investments which should inevitably be passed on to French consumers in their electricity bills. As 2012 is an important year in terms of elections in France, it is certain that energy will be at the heart of the political debate, particularly as its cost has become a major concern for our fellow citizens. According to a survey conducted by the French National Consumer Institute (Institut National de la Consommation-INC), the average household budget devoted to electricity and heating has increased by 32% over the past ten years.

Unavoidable price rises

We share the view held by many experts that higher gas and electricity prices are unavoidable. These increases will affect all three energy components, i.e. supply, transportation and taxes. Since 2008, the rises in regulated electricity tariffs have been outstripping the rate of inflation, and the pace of this trend should increase over the coming years. In fact, growing energy demand, the ageing of the French generating fleet, and accumulated delays in expanding the grid will require major investments at a time when the growth in renewable energies is contributing to the surge in the Public Electricity Service Charges Contribution (Contribution aux charges de Service Public de l'Electricité - CSPE) paid by all consumers, and which actually increased by 66% in 2011. Accordingly,

the French energy regulation Commission (Commission de régulation de l'énergie – CRE) estimates that the price of electricity could soar by 30% between now and 2016.

French paying closer attention to their energy bills

Regulated gas tariffs are on an upward slope: + 25% over these past two years, + 60% since 2005. While the short-term outlook for hydrocarbon prices is somewhat uncertain, specialists are predicting long-lasting increases for the future, notably due to rising costs to meet environmental requirements. Over the past few years, the price revision formula used to set these regulated tariffs has been amended on several occasions, to the point where consumers no longer actually understand the underlying logic. Moreover, consumers have legitimate concerns, and the media is now focused on these increasingly-frequent price rise announcements. In this climate, French consumers are paying even closer attention to their bills and are becoming more demanding vis-à-vis their energy suppliers. Some consumers refer their appeals to the ombudsman to obtain corrections to estimated bills when the balance in their favour is less than 25 euros. For this reason, we believe that a straightforward and stable method for setting prices, which does not exacerbate energy poverty and encourages consumers to save energy, is absolutely indispensable.

"Energy cheque" for the poorest households

Combined with the economic crisis, rising energy prices are pushing an increasing number of French households into vulnerable situations. In the light of this development, providing better consumer information and protection is becoming a major challenge. This challenge forms part of



**DENIS
MERVILLE**

our remit, and yet again this year, we have assumed this responsibility fully by making concrete proposals. During the national roundtable on energy efficiency organised by the government, we advocated the creation of an “energy cheque”. Our proposal has obtained the support of the Fondation Abbé Pierre charity and the French consumers association CLCV. The idea is to replace the existing complex and still inadequate consumer energy bill support measures decided by the government despite the recent increases, and to offer social tariffs for electricity and gas on an automatic basis. The “energy cheque” should be made available to more destitute households and could provide them with greater financial support to pay their energy bills. The French Minister for Ecology has already voiced her support for this proposal.

Supporting energy savings initiatives

As part of the project to install smart energy meters in France, we have adopted a joint position with the Environment and Energy Control Agency (Agence de l’environnement et de la maîtrise de l’énergie - ADEME) to provide households with a remote display in their homes in order to monitor their energy consumption in real time, as part of the basic services provided by the supplier, and at no extra cost to the consumer. This is a pre-requisite for encouraging households to achieve energy savings and thereby cut their energy bills. Furthermore, during meetings of the energy regulation Commission’s consultation groups, we have argued in favour of the consumer having access to all meter data, including figures covering the quality of electricity distribution, which would be provided directly by the distribution system operator on request.

Extended remit

In 2011, the number of appeals received increased by 14%, but we did not experience the skyrocketing growth of previous years. In this area, we have to acknowledge the efforts made by operators who have become better organised in responding to their clients’ complaints. Be that as it may, our services were unable to become involved in several hundred disputes because they related to abusive energy contract sales practices, grid and connection problems, or were submitted by small businesses, associations and building residents’ management committees. At a time when consumers are becoming energy players by generating photovoltaic electricity and competition on the energy market is still a source of unfair sales practices, even though the number of complaints is in decline, we continue to hope that our remit will be extended so that we can provide a solution to all the various disputes commonly encountered by consumers.

Innovative project

We prove our usefulness on a daily basis. Our general recommendations have been a positive contribution to progress on issues such as the automatic and speedy reimbursement of excess charges, the taking into account of consumers’ own meter readings as a changeover benchmark point when switching suppliers, and access to the electricity social tariff for a greater number of underprivileged households. Other on-going projects, such as the introduction of an innovative online dispute settlement system, should contribute to improving the service rendered to consumers. It will also enable us to cope with any rise in the number of appeals we receive, including those arising from an expansion of our remit. ■



SOMNOLENT ENERGY MARKET

Four years after the energy market was opened to competition, many French consumers are still struggling to come to terms with the changed situation. For its part, the national energy ombudsman is convinced that a healthy and efficient market cannot exist unless it has consumers' trust, and is working in their interest. Accordingly, we need to work over the long term to improve consumers' understanding of their rights.

The results of the 5th annual Énergie-Info barometer published in November 2011 highlight an unchanged situation, insofar as four years after the energy market was opened to competition, French consumers are still poorly informed of the changed situation. In fact, only 42% and 37% respectively of consumers are aware that they can choose their electricity and gas providers. Despite these opportunities, the survey carried out by LH2 on behalf of the national energy ombudsman and the energy regulation Commission highlights this paradox insofar as electricity and gas costs are a major source of concern for three-quarters of French consumers, and 60% consider that these bills represent a considerable proportion of total household expenditure.

Confusion remains

Be that as it may, this concern does not prompt consumers to find out more about the new ways in which the French energy market has been operating since 2007. In fact, only 18% of consumers investigated the new situation in 2011. The reason appears straightforward: 57% of consumers state they are well-informed on the matter. The study reveals the wide gap between this perception and reality, as half of the people questioned believe that you have to pay to change your energy supplier and 78% of consumers acknowledge that they are unaware of the formalities to be completed in order to change operators. Two-thirds have never heard of regulated retail tariffs. Moreover, considerable confusion remains in the minds of consumers about France's traditional

energy suppliers as only 30% are aware that EDF and GDF SUEZ are now two separate and competing companies in the electricity and gas supply market. In its 2009 activity report, the ombudsman raised the issue of the relevance of a single contract. The liberalisation of energy markets required a clear distinction between the supplier and the distribution system operator (DSO). France has opted for a single client contract covering both energy supply and conveyance, even though two distinct entities exist, and this has only served to conceal the complex nature of the energy market's organisation from consumers. The barometer actually highlights this aspect, insofar as 19% of interviewees identify ERDF and GrDF as suppliers, and 42% were unable to explain their roles. Doubtless, the decision on the part of these DSO to use graphics charters clearly associated with their parent companies has done nothing to improve consumer understanding, and this choice of visual identity is criticised regularly by the energy regulation Commission.

Apathetic energy market

According to the survey, 8% of households indicated that they have switched supplier. In addition to a lack of understanding, this "overcautious" view of the energy market can be explained by several historical, financial and socio-cultural factors. *"In France, electricity and gas supplied to 95% of the country were provided by a single entity, EDF-GDF, as opposed to the situation in Great Britain where several similarly-sized local players existed", explains Stéphane Mialot, the ombudsman's*



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A healthy
and efficient
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without
trust.
”



services director. *“When the energy market on the other side of the Channel was liberalised in 1989, it resulted in genuine competition between these players. In France, today no other player has managed to pose a serious challenge to the former monopolies.”* As a revealing indication of the state of the French market, as opposed to numerous other sectors, the energy sector does not provide information about each player’s market shares. Due to a lack of published data, the market thereby remains disembodied, and still almost monopolistic. In fact at the end of June 2011, EDF had 30 million private clients, and the lion’s share, with 94% of the electricity market, while GDF SUEZ with its 10 million clients enjoys around 91% of the gas market.

Ambiguous sales policies

Furthermore, traditional suppliers resort to ambiguous sales policies, insofar as *“They play on the nostalgia of a single bill which is appreciated by consumers, as illustrated by the Énergie- Info barometer: 62% of French consumers prefer to have a single supplier for electricity and gas,”* observes Bruno Léchevin, the ombudsman’s chief representative. *“According to the latest figures published by EDF and GDF SUEZ, around 15% of households using both energies would have signed up for a dual offer with one of these suppliers. These dual offers raise an issue, as it is not clear whether consumers are well informed that they are changing their supplier for one of the two energies.”* Moreover, the new supplier may be more expensive than the previous one. By way of example, while at the end of 2011 GDF SUEZ was offering electricity contracts with fixed costs equivalent to the regulated tariffs, this was not the case for EDF for gas, which was between 4.8% and 43% more expensive, depending on the offer. There is also a need to be vigilant about the marketing offers from these suppliers for their historical energy, as they are generally more expensive than regulated tariffs. We sometimes forget, but free competition also offers consumers the right to pay more...

What are the consumer benefits?

The fear of encountering technical problems has also held back consumers. Few are aware, but there is almost zero risk of experiencing a cut in supply when changing suppliers, with the exception of a few rare mistakes in terms of point-of-delivery allocation. However, this is not the fundamental problem, and the main obstacle resides in the fact that private users struggle to perceive the benefits that they could derive from this new market. In contrast with the telecoms sector where competition and technological innovation have led to considerable price reductions, the differences between energy tariffs remain somewhat minimal. In the fourth quarter of 2011, the energy regulation Commission’s electricity and gas markets Observatory revealed that the best deal for electricity for a typical residential client was just 4% below the regulated tariff, and 8% lower for a consumer using gas for heating.

Changed rules of the game for competitors?

As the prospects of making savings are low, it is easy to understand why French consumers hesitate before switching from their traditional suppliers. Will this state of affairs change with the predictable rise in the regulated electricity tariffs? Very hard to tell, as alternative suppliers have limited margins of manoeuvre. For electricity, over 90% of the retail price is set by the authorities (transportation, taxes and supply via the Electricity Market New Organisation Law (loi NOME - Nouvelle organisation du marché de l’électricité), which considerably limits opportunities for differentiation based on pricing. No such situation exists in any other business sector. The energy operators’ challenge is to attract clients while being unable to promise lower bills. Therefore, they have to innovate and propose services to limit the increase, with offers that enable users to consume better and less. In this situation, the smart meter deployment plans will play a decisive role. ■

Partnership

“Energy Special” Consomag consumer affairs programme attracts 3,5 million viewers

In 2011, the ombudsman continued its partnership with the National Consumer Institute (Institut National de la Consommation - INC) for the third year running. Five clear and practical Consomag programmes, each lasting 2 minutes, were broadcast on France Télévisions channels and each one reached an audience of 3.5 million viewers. Based on the theme of the energy bill, the programmes addressed subjects such as the roles of the distributor and the supplier, taxes, meter readings, payment problems and the ombudsman’s missions. *“The results of evaluations conducted with a panel of French viewers after the broadcast speak volumes: they were surprised, they discovered”,* explains Jean-Pierre Loisel, the INC’s director of projects and partnerships. *“Just after the market opened up to competition, consumers failed to explore the new possibilities, perhaps out of fear of losing the benefits of regulated tariffs. Then the alternative suppliers stopped advertising due to their failure to attract new clients. At our modest level, we are attempting to fill the void created by the widespread lack of communication, but there is a long way to go before consumers become accustomed to the new market culture. It will require a lot of teaching and training.”* A very good reason for both the INC and the ombudsman to continue their partnership!

➔ LACK OF ENERGY MARKET UNDERSTANDING AS SEEN BY...

Viewpoint of Philippe de Ladoucette,
Chairman of the Energy Regulation Commission.

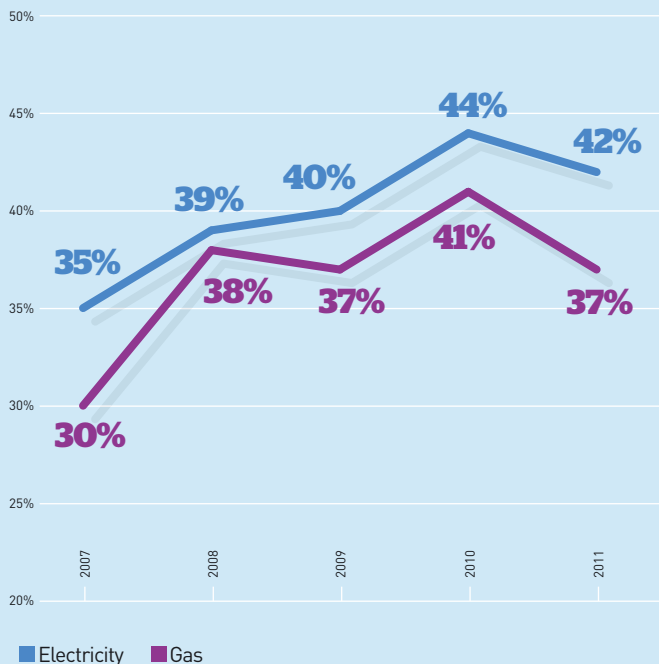


**PHILIPPE
DE LADOUCKETTE**

The fact that consumers have a poor awareness of the realities of the gas and electricity market four years after it was opened up to free competition does not come as a surprise. The authorities have not conducted any major information campaigns and neither the energy regulation Commission nor the ombudsman has been able to make up for this dearth of information, due to a lack of financial resources. The media have focused more on market abuses, such as pressure selling practices, which have only served to fuel mistrust in the minds of French consumers. However, I am somewhat

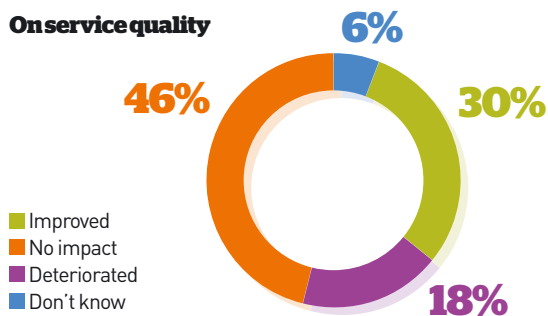
surprised about the current lack of appetite to try out other operators, as it is now easy for consumers to switch back to regulated tariffs. Over the coming years, we will experience an unavoidable increase in regulated tariffs, particularly for electricity, for which prices could rise by 30% between now and 2016. Free competition has to benefit consumers, in terms of both price levels and the services offered. To re-establish trust, consumers need to be convinced that the energy market is not being left to its own devices and that it is developing under the control of an institution, namely the energy regulation Commission, which ensures that it operates under transparent rules and regulations.

Awareness of the right to change energy supplier

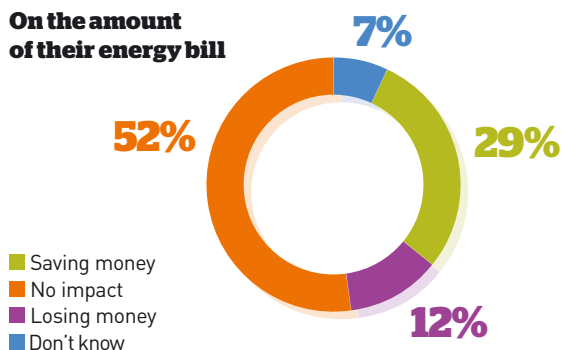


Consumers' perceived impact of market liberalisation

On service quality



On the amount of their energy bill




Source: 5th annual Énergie-Info barometer



EXTENDING OUR REMIT: A NECESSITY

By acting entirely independently, the national energy ombudsman has proved its efficacy and imposed its approach to institutional mediation. The forthcoming political elections could be the opportunity to reconsider the scope of the ombudsman's remit, to ensure that the greatest number of stakeholders benefit from its expertise.



In the four years that it has been operating, the national energy ombudsman has always defended its belief in mediation based on independence and transparency. In its early days, the ombudsman surprised some players as they were more used to mediation practices resembling an improved complaints handling system. Even though it has steadily become the norm in the sector, the ombudsman's approach is still a source of a certain lack of comprehension, and even reticence on the part of players who prefer to settle disputes in a more discreet manner in order to avoid any possible contagion. Be that as it may, the general recommendations published by the national energy ombudsman and the stances it adopts in public debates are based as much on its status as an independent administrative authority as on its dual mission of recommending solutions to disputes and informing energy consumers of their rights.

Spreading the word about rights of appeal

Widespread ignorance still surrounds such rights, including the right of appeal to an independent body to settle a dispute with an enterprise. A survey carried out by the French Research Centre for Living Conditions Studies and Observation (Centre de recherche pour l'étude et l'observation des conditions de vie - CREDOC), in September 2011 on behalf of the Consumer Affairs Mediation Commission (Commission de la médiation de la consommation), reveals that 69% of French consumers do not follow up a complaint regarding any aspect of their life, even if they are dissatisfied with the response provided in the first instance. Only 3% have contacted an ombudsman and only 3% have taken their case to court. The European Charter on the Rights of Energy Consumers, introduced by way of a European Parliament resolution in June 2008, states that all suppliers must respect the consumer's "right to complaint

**69%**
of French consumers do not follow up their complaints.

handling and alternative dispute resolution.” Be that as it may, it has to be said that, in far too many cases, operators only pay lip service to these requirements, even though they were restated in the 2009 European energy market directives. Obviously, consumer law requires operators to indicate the existence of the national energy ombudsman in their contracts, but very few actually mention the latter's contact details. Moreover, operators should logically mention the existence of this legal appeal system on every letter in response to a complaint, but in the main they prefer to indicate only the contact details of their internal mediation system, when it exists. This is an additional source of confusion for consumers, which has already been highlighted by the CEER (Council of European Energy Regulators). In June 2011, the European energy regulators called on enterprises with a mediation service not to give it the same name as the independent sector body, as the regulators consider that consumers should have a clear understanding of the respective roles of the various entities they contact, namely the department in charge of handling their complaints at the supplier, or the alternative dispute settlement system which is necessarily independent of the parties. In this context, the ombudsman applauds the future version of the decree on energy bills which should require every supplier to mention the contact details and the conditions for referring disputes to the national energy ombudsman on every energy bill.



Transparency, pillar of trust

“Mediation requires trust, trust that is based on transparency”, states Bruno L chevin, the ombudsman’s chief representative. The online availability of our general recommendations on our Internet site energie-mediateur.fr contributes to meeting this transparency challenge. Focused on the best interests of all stakeholders by prompting operators to improve their practices, these recommendations are accessible to everyone and offer visibility on the institution’s activities. In 2011, the frequency rate for posting information slowed somewhat for a very simple reason, namely that a host of malfunctions within the industry have been identified and are now the subject of debate by the consultation bodies set up under the aegis of the energy regulation Commission (Commission de r gulation de l’ nergie - CRE). In addition, since the end of 2011, the ombudsman has been taking care to distribute recommendations at regular intervals, while naturally rendering them anonymous for all stakeholders, in order to present the public with a view of the entire spectrum of issues addressed, and to enable stakeholders to check the quality of the investigation process applied to the various dossiers. The need for confidentiality should not constitute an obstacle to an in-depth review of the legal and technical basis of an ombudsman’s written opinions, as they would have no legitimacy whatsoever unless they were based on verifiable commitments. Since November 2011, consumers can also consult a jurisprudence database which lists legal rulings within the sector on the Internet site. As the ombudsman, Denis Merville explains:

(1) This limit only applies to business and non-business consumers. For domestic consumers, there is no limit on annual consumption.

“We are fulfilling our role of informing the public. In this manner, the consumer can see how the law is applied in a given dispute, and we are correcting an information imbalance which primarily benefits energy businesses rather than consumers. We must also bear in mind that court rulings are a safeguard for mediation which should afford at least the same level of consideration to consumer rights as the law in all circumstances.”

The institution has proven its effectiveness

While it has taken some time to achieve success in certain instances, the positions advocated by the ombudsman in its general recommendations since it came into being, are now acquired rights for consumers. These new rights include reversibility, i.e. the French Parliament extended the possibility of switching back to regulated tariffs immediately in all cases to gas users in 2010. Moreover, the ombudsman’s analysis of the decree of January 2005 which introduced the basic needs tariff (tarif de premi re n cessit  - TPN) has resulted in the social electricity tariff being made available to a greater

“Extending the ombudsman’s remit to settling connection disputes can be considered as a complementary mission.”

Pierre-Fran ois Racine, Chairman of the Disputes Settlement & Sanctions Committee (CoRDIS - Comit  de R glement des Diff rends et des Sanctions)

number of low-income households. When changing suppliers, consumers now receive quick and automatic reimbursements of any overpayments, irrespective of the amount involved. Moreover, the institution had to fight long and hard to achieve progress in terms of widespread acceptance by operators of consumers’ own meter readings as the switchover benchmark value when changing to another electricity operator. Another success can be seen in the improved transparency provided by energy operators in explaining how they calculate estimates on energy bills. In addition, the already marked improvement in complaint handling procedures is due to action on the part of the ombudsman, even if certain operators would only reluctantly acknowledge that this improved the situation.

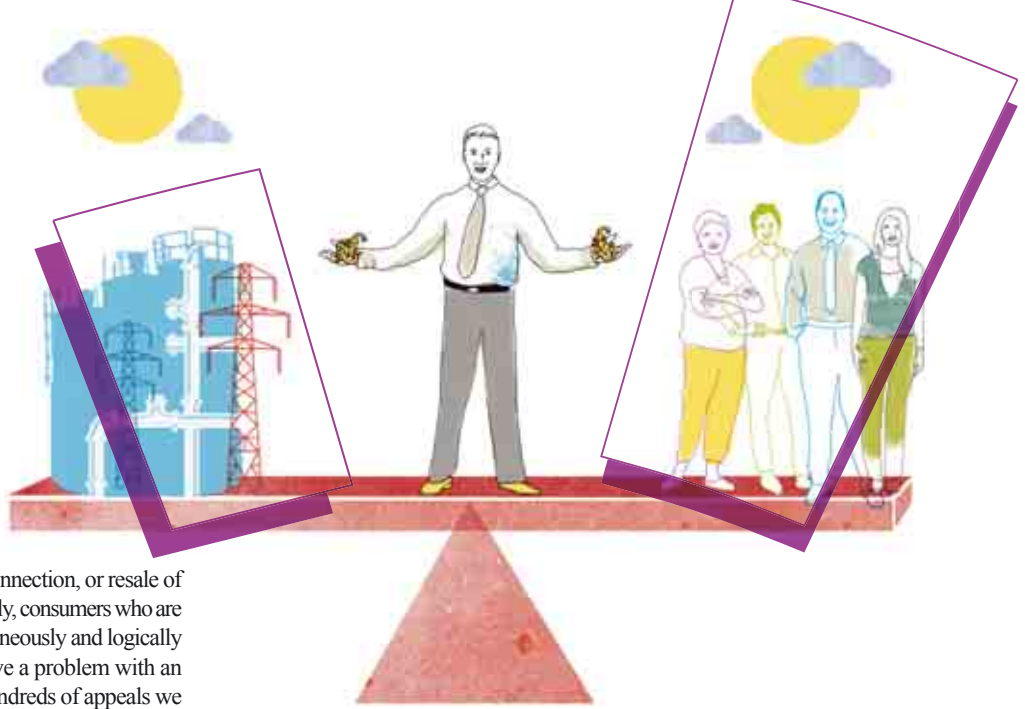
Expertise serving a greater number of consumers

The ombudsman is convinced that the legislator need to extend its remit in order to enable all consumers to benefit from its proven expertise. Currently, the ombudsman can only intervene in disputes “arising from the execution of supply contracts” on behalf of consumers with a contract below 36 kVA and who consume less than 30,000 kWh of gas (1) per annum. These limitations on the ombudsman’s scope of intervention have no equivalent anywhere else in the world of mediation, the consumer affairs sector in general, or in the energy sector in Europe in particular, where mediation bodies are empowered to resolve any dispute whatsoever with a supplier or a DSO concerning

Photovoltaic energy

In a mediation “black hole”

In 2011, we received 105 inadmissible appeals about disputes involving photovoltaic installation connection and feed-in tariffs contracts for generating this renewable electricity. Mr G. referred his case to the ombudsman in October as, since March, he had been waiting for payment of one year’s production, whereas his contract stipulates that payment will be made within 20 to 30 days. A small company that invested 120,000 euros one year ago to generate photovoltaic electricity is unable to bill its output as it has yet to receive its feed-in contract, and this situation is putting the future of this business in danger. Mr C. disagrees with the feed-in tariffs applied by EDF. Even though he installed his panels in 2009, a delay in activating his contract means that he can no longer benefit from the higher feed-in prices applicable at the time. He has submitted his case to the French Prime Minister, whose department forwarded the dossier to the national energy ombudsman. Even at the highest level of government, it appears quite natural to turn towards this institution for any energy-related dispute.



the formation or execution of a supply, connection, or resale of renewable electricity contract. . . Accordingly, consumers who are aware of the institution's existence, spontaneously and logically call upon its services as soon as they have a problem with an energy operator. In 2011, we received hundreds of appeals we were unable to handle because they concerned disputes arising from contract subscriptions or connection problems, because they came from small businesses or residents' associations with a contract for a subscribed capacity higher than the cap set by the law. These consumers find it hard to understand that the ombudsman is unable to recommend solutions to their dispute, even if our services strive, while abiding by the law, to help them by providing advice and explaining the means of appeal open to them, or by forwarding their dossier to their contacts at their operators to support their complaint.

Few pressure selling cases actually get to court

However, the reasoning that prevailed to confine the institution's ability to act in terms of consumer protection is now showing its limitations. In fact, resolving problems associated with contract formation, which is a natural source of dispute in a competitive market, have been excluded from the ombudsman's remit on the grounds that unfair trade practices

are covered by legal action or sanctions on the part of the French Directorate general for competition consumer affairs and combating fraud (Direction générale de la concurrence, de la consommation et de la répression des fraudes - DGCCRF). In reality, very few of these cases actually come before the courts, particularly as the DGCCRF has to demonstrate the existence of an established practice; something which is often long and hard to prove. The ombudsman's services director, Stéphane Mialot argues that *"We have a powerful leverage effect based on our ability to centralise disputes and our ability to speak out. Of course this does not prevent us from informing the relevant body of any criminal practices that we come across with a view to sanctions, and this is something that we do already. In fact, in our capacity as an independent administrative authority, we consider it our duty. It is in this way that our genuine impartiality is acknowledged, and this represents a guarantee of security for consumers."*

➤ OMBUDSMAN'S ROLE AS SEEN BY...

Viewpoint of François Brottes, MP, Joint Chairman of the Parliamentary Energies Studies Group.

The national energy ombudsman has carved out an indispensable role in an energy market that is still seeking its way. The institution does not just act as a sounding board and a disputes handling centre. Over and above the individual solutions it provides for energy consumers, it is making an active contribution to achieving progress with collective problems by

placing them in the public spotlight. With regard to energy poverty, the ombudsman has provided a clear and no longer disputed view of the actual situation. Accordingly, the ombudsman actively contributes to cutting through the sector's "hub-bub". I am in favour of an extension to its remit and its powers so that its expertise becomes accessible to the greatest number of stakeholders,

including small businesses that are experiencing the same problems as private consumers. With more coercive powers, the institution could achieve even further success in terms of implementation of its recommendations, notably in the areas of operator response times and consumer compensation.



FRANÇOIS BROTTE



Consequences of the photovoltaic boom

The sustained growth in the number of photovoltaic installations in private homes raises the question whether it would be worthwhile extending the ombudsman's remit to the settlement of disputes about electricity grid connection and purchase contracts. Would this be a simple duplication of the services offered by the Disputes Settlement and Sanctions Committee (Comité de règlement des différends et des sanctions - CoRDiS) run by the CRE, and which is a quasi-judicial entity tasked with handling disputes with network managers? Certainly not as, in practice, only businesses call on the CoRDiS' services and disputes are settled in open hearings with cases argued by specialised lawyers representing the parties. This dispute settlement system would not be suitable for settling a large volume of disputes. The underlying trend of a major rise in the number of disputes regarding electricity generating installation connections to the grid, could even paralyse the CoRDiS' way of working. According to the CoRDiS Chairman, Pierre-François Racine, *"The committee could not absorb an excessively high number of cases. The four committee members, namely two government advisers and two Appeal Court advisers, have full-time occupations and have to make time available for handling settlement requests. In 2011, over 200 cases were referred to us as a result of the bursting of the photovoltaic bubble. Expanding the ombudsman's remit to grid connection-related disputes could be considered if it fulfils a complementary need in terms of proposing amicable solutions, whereas we rule on disputes with legally-enforceable verdicts. However, referring a case*

to the ombudsman should never be made an obligatory step before any approach to the CoRDiS."

Appeal system for small businesses?

In order to strengthen consumer protection, for several years the ombudsman has considered that it should be able to take charge of disputes between SME/SMIs and their energy suppliers. The European directives contained in the third energy package would allow for its remit to be extended without any problems to cover enterprises employing fewer than 50 employees and with a turnover below 10 million euros. With this in mind, several amendments have already been filed, both during the discussions on the French electricity market reform law (loi NOME) in 2010, and as part of the draft law on consumer rights.

More clout behind its recommendations?

The ombudsman is also wondering whether it would be worthwhile to make its recommendations more binding. By its very nature, mediation is generally a voluntary process. However in the energy field, the legislators require industry players to participate in the national energy ombudsman's dispute settlement process. Moreover, industry players are bound to submit their observations to the ombudsman within a maximum timeframe set by the latter. Be that as it may, the actual effectiveness of these provisions is neutralised somewhat by the non-binding nature of the ombudsman's recommendations. The operators do abide by a high proportion of the solutions it recommends, i.e. in 77% of cases in 2011, but is this sufficient?

In a similar manner to its British counterpart, the ombudsman questions whether businesses should be required by law to abide by its recommendations. It would certainly be worthwhile opening the debate. *"Operators are legally bound to inform us within a maximum deadline of two months of the follow-up given to a recommendation. They devote considerable energy to deciding whether or not to follow our recommendations and to inform us of the outcomes. We then have to register and analyse their follow-up action. This represents so much lost time in terms of administration, while the amounts involved in many cases are no more than 50 euros! Simple and immediate compliance with all our recommendations would save time for all concerned and would be in the genuine interest of the consumer who would know the final outcome straightaway, instead of having to wait two months"*, explains Stéphane Mialot.

Furthermore, this obligation would make sound sense as the ombudsman has set up alternative dispute settlement methods, other than written recommendations, in the form of the "second chance" procedure, which gives businesses the opportunity to reconsider a complaint not handled by their customer relations department, or offer an "amicable settlement" based on reconciliation between the two parties under the ombudsman's aegis. For instances when all hopes of reconciliation have been exhausted, binding recommendations would be the final stage in the amicable dispute settlement process, before moving towards legal action if one of the parties should decide to follow this course. ■

Electricity Market New Organisation law (Loi NOME)

Law has a pernicious effect

Small businesses with a supply contract in excess of 36 kVA or consuming over 30,000 kWh of gas per annum are prevented from having recourse to the ombudsman. Since December 2010, the NOME law which reforms the electricity market also explicitly excludes "non-business users", under the same eligibility conditions, from the ombudsman's remit. Non-business users covers property management associations, civil real estate companies, associations and farms. Nevertheless, many of these energy clients refer their cases to the ombudsman, such as the real estate company which is disputing a bill for arrears after four years without any meter readings, and based on 2011 energy tariffs. The company is asking for a reimbursement of 5,000 euros but the supplier is turning a deaf ear. A kindergarten association in Collonges (69) is questioning a bill for 13,000 euros which does not correspond to its normal gas consumption: *"We are counting on you to find a solution to our problem."*

➤ OMBUDSMAN'S ACTION AS SEEN BY...

Viewpoint of Alain Bazot, Chairman of the consumer association UFC-Que Choisir.

We are not in favour of alternative dispute settlement procedures as a replacement for a justice system that shies away from its obligations. The right to refer one's case to a judge is a basic right for consumers and is necessary for developing jurisprudence. We believe that resorting to mediation is possible

if it is independent and not solely impartial. By way of its status, the national energy ombudsman is one of the rare bodies that can actually claim this independence. In addition, the institution plays a worthwhile role in terms of revealing and monitoring more general malfunctions. The institution knows how to anticipate problems.



**ALAIN
BAZOT**

In itself, the deployment of smart meters does not yet represent a subject for mediation, but nevertheless the ombudsman has promised that consumers will not be forgotten in the Linky project, and we can only applaud this standpoint.

➤ OMBUDSMAN'S REMIT AS SEEN BY...

Viewpoint of Ladislav Poniatoski, Senator, Chairman of the Senate Energy Studies Group.

The national energy ombudsman perfectly fulfils its role of providing information and recommending solutions to disputes between consumers and electricity or natural gas suppliers. The ombudsman's success depends on its ability to be identified by the public as being involved with a well-defined set of issues. I fear that any extension of its power might

harm its ability to fulfil its current missions. We would have to ensure that the same disputes would not be submitted to several competing institutions, as this would make the ombudsman's position less clear in the eyes of the public and would therefore harm its effectiveness. Recently, as part of the draft law on consumer rights, the Senate voted an amendment to introduce a fast-track referral process (one



**LADISLAV
PONIATOWSKI**

month) for the ombudsman to settle disputes relative to energy billing overcharging. If this proposal is adopted, one wonders to what extent it will increase the ombudsman's workload?

➤ OMBUDSMAN'S POWERS AS SEEN BY...

Viewpoint of Elsa Cohen, Head of the Economy-Consumer Affairs Section of the consumer defence organisation, the Confédération Syndicale des Familles (CSF).

The National Consumer Council called for the creation of an energy sector ombudsman and we applaud its existence. Nevertheless, we regret the limited nature of its scope of intervention and that it cannot be called upon to address all the problems currently encountered by consumers. Giving the organisation powers

to settle all disputes involving energy, from contract formation to connection issues, would be a coherent step forward. Should its recommendations be more binding? Not necessarily. If compliance with the ombudsman's decisions were to become mandatory, there would be a risk that consumers no longer take their cases to court and



**ELSA
COHEN**

this would deprive us of future jurisprudence. Moreover, these ombudsman decisions already carry considerable weight. Their publication makes them accessible to all consumer associations which then pass on the malfunctions they highlight to the relevant authorities.

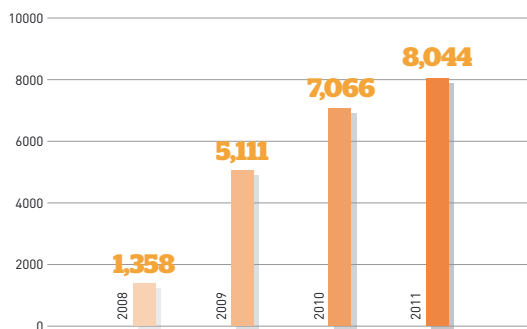


OMBUDSMAN'S ACTIVITY IN FIGURES

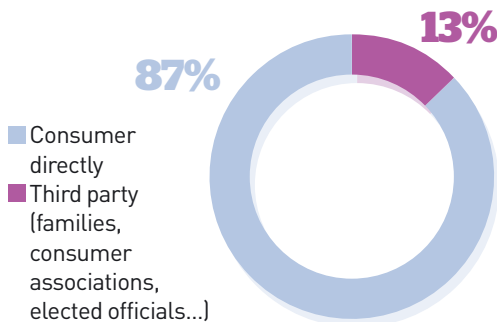
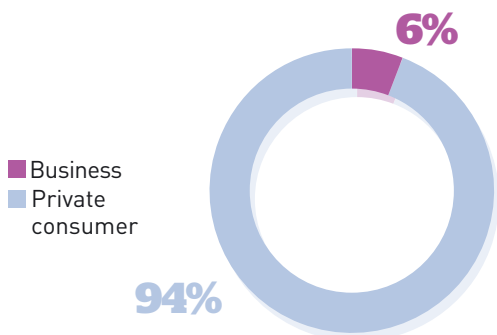
8,044

written appeals received by the ombudsman in 2011

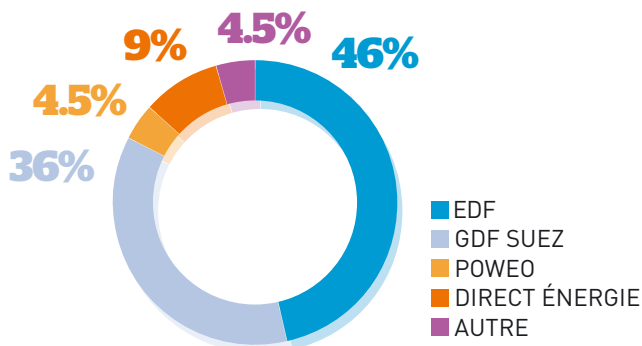
Annual number of appeals received since 2008



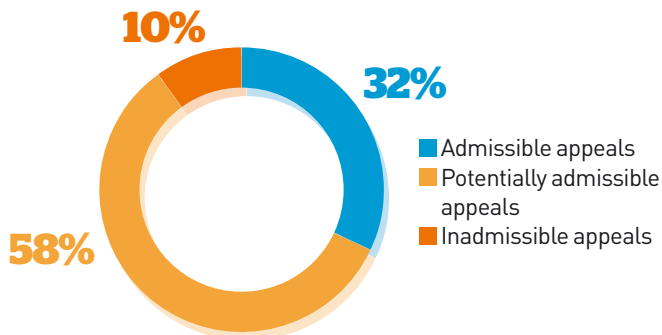
Who appealed to the ombudsman in 2011?



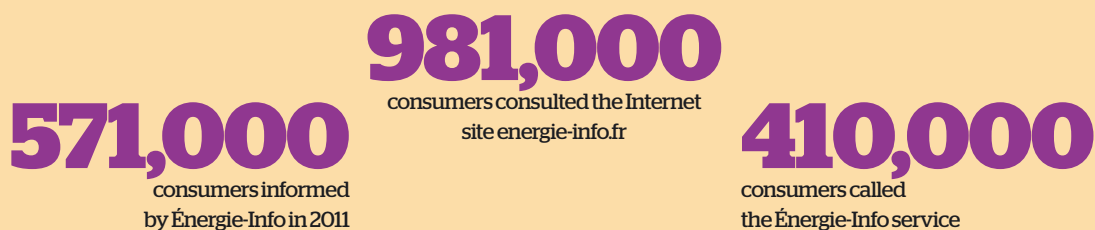
Appeals received by supplier in 2011



Admissibility of appeals received in 2011



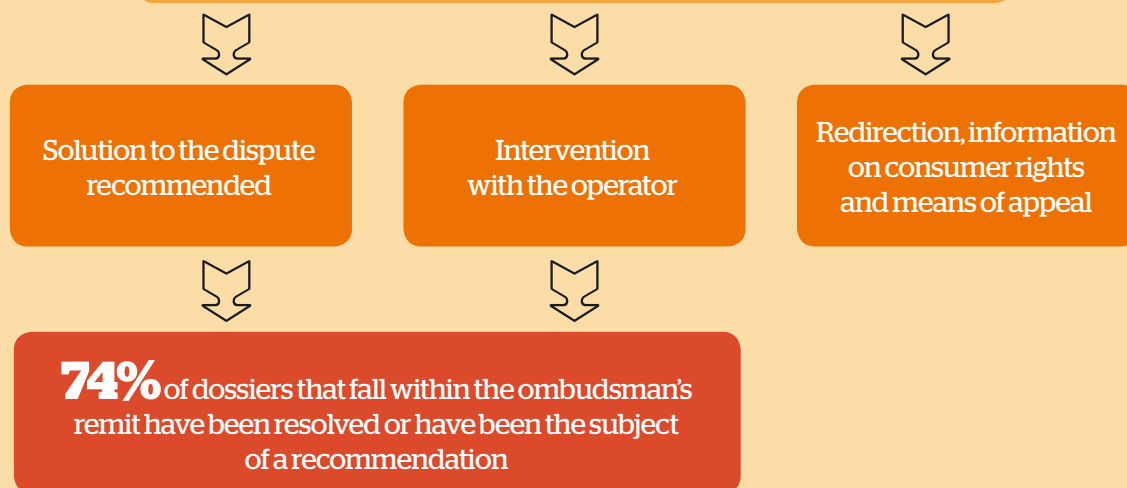
Information services



Dispute handling procedure



Acknowledgement of receipt and admissibility vetting analysis





27,600

letters sent in 2011

37,728

contacts made as part of case handling procedures (excluding Énergie-Info calls)

1,205

recommendations issued in 2011

118 days

average time to reach a settlement for an admissible dossier in 2011

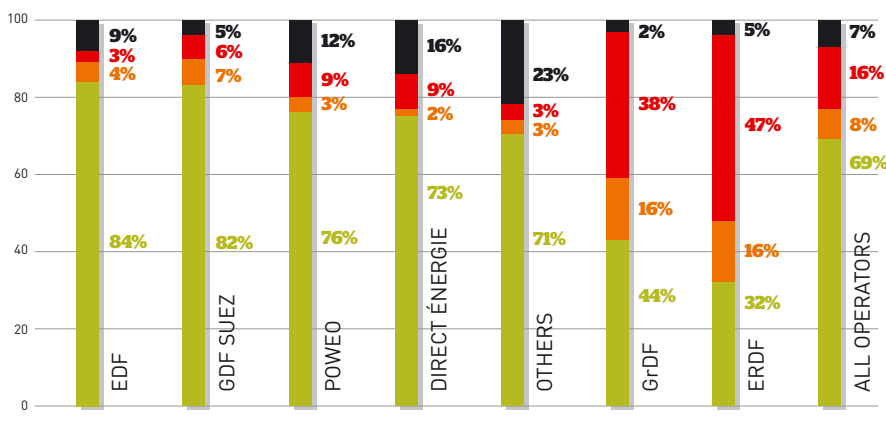
2,998

appeals investigated as part of the "second chance" process in 2011

5.5 days

average time taken by Énergie-Info to answer complicated questions and complaints in 2011

Recommendation follow-up in 2011



- No information on the follow-up provided
- Dispute settlement recommendations not followed
- Dispute settlement recommendations partially followed
- Dispute settlement recommendations totally followed

The ombudsman's recommendation for a solution to a dispute can comprise several different proposals (e.g.: corrected bill, compensation).
The follow-up of recommendations is analysed by individual proposal.

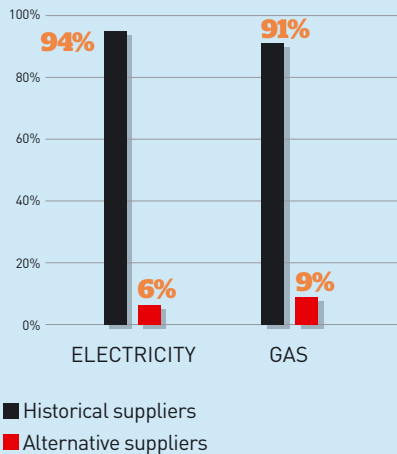
Energy market overview

Number of delivery points at 31/12/2011

29,621,936
for electricity

10,320,000
for gas

Market shares at 31/12/2011



Number of new connections in 2011

3,987,100
for electricity

920,000
for gas

Number of supplier changes in 2011

239,205
for electricity

204,600
for gas

Cutting off energy supplies: disturbing statistics

Until now, energy operators have avoided publishing statistics about their practices in response to unpaid bills, and in terms of cutting off supplies and reducing available capacity, or about the number of contracts terminated at their initiative.


In the national energy ombudsman's view, this information represents a relevant indicator of the payment problems and energy poverty trends and should be made available to the public.

According to our estimates, at least **500,000 consumers** had their supplies curtailed or cut off by energy operators in 2011.



COMBATING ENERGY POVERTY

The energy poverty phenomenon has been aggravated by the economic crisis and the rise in energy costs. Many low-income households are turning to the national energy ombudsman for help and the institution is actively pursuing its questioning of the current situation by putting forward concrete proposals.



According to figures published by the French National Statistics Institute (INSEE) in May 2011, 3.8 million households devote more than 10% of their budget to their energy expenditure. The ombudsman is well acquainted with these French citizens who live in energy poverty, as many of them call upon its services when the time comes to pay their bills. This is the case for Mrs F. who lives on a pension of 750 euros per month and whose gas supply has been cut off: *“I am contacting you in order to explain the distress I am suffering due to a lack of dialogue with GDF”*. Then, there is the case of Mrs P. who is calling for the ombudsman’s “kind help”. She lives in a small, poorly-insulated property and cannot meet the direct debits of 90 euros per month for electricity on an income of 720 euros, whereas at the outset EDF estimated that the payments would be 42 euros per month. Mr. K. is threatened with having his supply cut off and has called on us for help because he is unable to obtain the basic needs tariff (tarif première nécessité - TPN) from a supplier even though he has been receiving unemployment benefits for several months.

Worsening situation

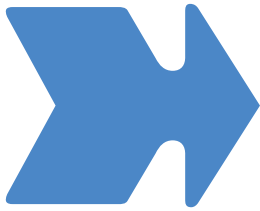
In 2011, over 15% of the appeals received by the ombudsman involved payment problems, with an average debt of 1,900 euros for all types of problems. The economic crisis and the rise in energy prices, with regulated tariffs for gas increasing by 25% in two years and those for electricity by 8% over the same period, are placing further pressures on the fragile financial situation of single-parent households, retired consumers with low pensions, and people burdened with excessive debt. *“Other types of consumers are now coming to us, and particularly employees made redundant who have no rights to any support”*, notes Marie-Claude Lassadi,

➔ **“In 2011, 15% of appeals concerned payment arrears problems, with an average debt of € 1,900.”**

head of the ombudsman’s appeal admissibility department. *“Because of the crisis, suppliers have granted some flexibility in payment schedules, but despite this they are based on the best for the operator, and are not necessarily related to the level of consumers’ actual revenues. Moreover, if the latter do not meet their commitments, the payment schedules become null and void and consumers face the risk of having their energy supplies cut off immediately.”* According to the barometer published in September 2011 by the national Union for community welfare action centres (Union nationale des centres communaux d’action sociale - UNCCAS) on the impacts of the crisis on requests for financial support, day-to-day expenditure has become the main reason for requests for help. In fact, requests for help with paying electricity and gas bills represent 97% of new demands, compared with 92% in 2010 and 2009: *“Energy is a very major cause for concern”*, stresses Daniel Zielinski, the UNCCAS chief representative. *“Within the space of one year 20% more community welfare action centres have observed this state of affairs, on which we share the energy ombudsman’s view. We are also all in favour of improving access to rights for social energy tariffs and increasing the amounts of the latter.”*

Shortcomings in granting social tariffs to the needy

In reality, we are observing a major gap between the 2 million people with the right to this benefit, namely households with an income below the universal complimentary health insurance



(couverture maladie universelle complémentaire - CMUC) limit of 648 euros per month for a single person and 971 euros for a couple, and the actual number of beneficiaries of the basic needs tariff (TPN), the social electricity tariff. Among these beneficiaries, only 300,000 are eligible for the special solidarity tariff (tarif spécial solidarité - TSS), the social gas tariff. As of January 1st 2012, a decree is in force to ensure that these tariffs are awarded automatically on the basis of records held by welfare organisations, without consumers having to fulfil any formalities. The French government claims that these changes will result in another one million households benefiting from this support. After the increases in 2011, the average discount on an annual electricity bill when the consumer benefits from the basic needs tariff for electricity is 95 euros, and the special solidarity tariff for gas provides a reduction of 142 euros. The measures introduced by the government are a step in the right direction, but they still fall short of the challenges posed by energy poverty. Whereas the special solidarity tariff is proposed by all gas suppliers, only EDF and historical suppliers

have the right to distribute the basic needs tariff. This poses a problem for around 2 million clients who have switched to alternative operators and who are therefore deprived of access to the basic needs tariff.

Energy supplies cut off, a dramatic reality

According to Nathalie Kosciusko-Morizet, France's Minister of Ecology, 1 out of 10 French citizens, i.e. 6.5 million people, suffered from the cold during the winter of 2010-2011. In December 2011, a 54-year-old unemployed man died in Orleans in a fire in his apartment, as he was using candles for light since his electricity supply had been cut off due to unpaid bills. The national energy ombudsman receives regular requests from consumers threatened with being cut off, or whose energy supplies have been suspended due to unpaid bills. We note that suppliers resort to this practice too systematically, whereas energy is a basic necessity. Before the market was opened up to competition, and as an interim measure adapted to consumers with payment problems, energy suppliers simply reduced capacity in more instances, rather than disconnecting supplies. The charges for visits to disconnect supplies have also increased significantly. For gas, the DSO increased its disconnection charges by 76% in the summer of 2010! Consumers have to bear these extra costs which further increase an already intolerable debt. In the light of this, surely there is a case for the government to intervene and regulate the costs borne by consumers with payment difficulties, along the lines of the system imposed on banking establishment authorities? Furthermore, households whose supplies have been cut off continue to be billed for fixed charges and even for estimated consumption. Mrs F. was "cut off" in June 2011 and wrote to the ombudsman this summer to illustrate this situation: *"I have received my latest estimated bill which does not take account of the fact that the meter is now longer turning."*

Limited winter truce

The government has introduced measures to create a winter truce between November 1st and March 15th during which operators are forbidden to cut off supplies to consumers who have received certain housing benefit (Fonds de solidarité pour le logement - FSL) during the past 12 months. However, this measure has a somewhat limited reach insofar as only 300,000 households received this housing benefit in 2010. EDF and GDF SUEZ have extended the measures spontaneously to beneficiaries of social energy tariffs. But for those who are ineligible for welfare benefits and yet are unable to pay their

Electricity Public Service Contribution

Rising tax

The electricity public service contribution (Contribution au service public de l'électricité - CSPE) is a tax intended to fund public services, and represents an ever-increasing cost borne fully by all consumers via their electricity bills. The energy regulation Commission estimates that in 2012, this contribution should represent an annual extra cost on the electricity bill for an average household consuming 5 MWh of 19 euros inc. VAT for island tariff adjustments, 24 euros to cover photovoltaic electricity subsidies, 22 euros for other renewable energies and cogeneration, 1.5 euro for the social tariffs and 10 centimes for the national energy ombudsman's budget.

bills, having their energy supplies cut off remains a stark reality. Mr. C. called Énergie-Info on January 20th 2012 as, within the coming week, he knew would not be able to comply with the arrangements made with EDF to pay 20% of his 2,300 euros in arrears to avoid being cut off the same day. Based on an in-depth analysis of his dossier and his income, the ombudsman then requested EDF to reconsider the possibility of granting him some more time, but met with a refusal: *“Fortunately, the mayor of the community agreed to pay the amount demanded by EDF”*, explains Stéphane Mialot, the ombudsman’s services director. *The problem for us is not the supplier’s refusal as such, but the reasons given. In fact, our contacts at EDF actually stated that they were not inclined to “alter an agreement reached with social services.” The latter would doubtless be surprised to learn that EDF hides behind an agreement with them to proceed to cut off supplies... EDF, just as any other business, is responsible for its payment deadline policy and should assume this responsibility.”*

Cooperation with community welfare action centres

The ombudsman is involved in this cooperation on a daily basis to help consumers in energy poverty, by intervening with its special contacts at suppliers in order to obtain payment deadline extensions and/or to reconnect energy supplies, providing information about social energy tariffs and housing benefits, offering advice on the most suitable tariff offers and the needs of destitute consumers, etc. The ombudsman also engages at other levels and participates in the national energy poverty observatory (Observatoire national de la précarité énergétique) founded on March 1st 2011. In 2012, this one is going to launch a major study to compile an exhaustive status report on France. In 2011, the ombudsman also worked closely with the national Union for community welfare action centres (Union nationale des centres communaux d’action sociale - UNCCAS) and boosted its cooperation to develop greater understanding of social tariffs and support systems for energy clients in arrears. *“The ombudsman’s expertise is very useful for us and, in exchange, we act as an additional source of information feedback about the realities in the field,”* considers Daniel Zielinski. *“We pool our forces to come up with new ways of addressing these difficult situations”.* The institution fully intends to pursue its work in terms of not only asking pertinent questions, but also of coming up with concrete proposals. ■

➔ ENERGY POVERTY OBSERVATORY AS SEEN BY...

Viewpoint of François Loos, Chairman of the Environment and Energy Control Agency (ADEME).



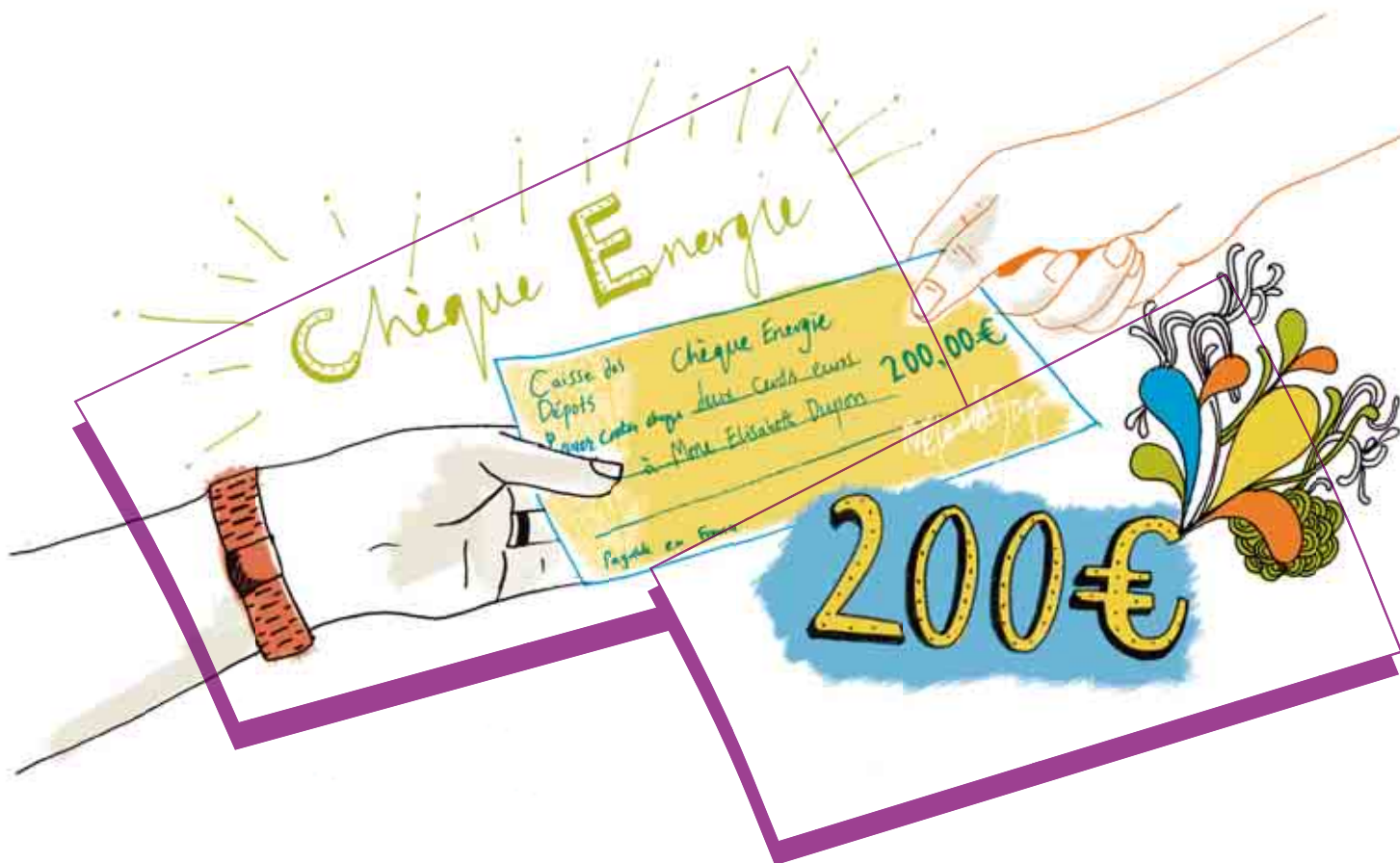
**FRANÇOIS
LOOS**

The ADEME is responsible for managing the national energy poverty observatory (Observatoire national de la précarité énergétique). Its action aims at improving understanding of the energy poverty phenomenon in France, in both the housing and transport sectors, and contributing to the direction of government policies. In addition, in 2012, the ADEME will continue to distribute widely a set of guides detailing the actions it has undertaken over the past years. For 2012, our action in terms of energy poverty is primarily focused on the introduction of widespread training aimed at

social workers and local authority department heads. In fact, at the end of 2011, the ADEME signed an agreement with the National Centre for the Territorial Civil Service (Centre National de la Fonction Publique Territoriale - CNFPT) to train 30,000 social workers employed by local authorities on how to combat energy poverty. The complementary expertise offered by the ADEME, as the leading player in the field of energy control, and the CNFPT, a body which trains over 720,000 students every year, will be mobilised in this way to improve the service provided by local authorities and their staff.

➔ €95

average annual electricity bill discount for a household benefiting from the basic needs tariff.



Concrete case

Lack of bill causes heavy consequences

Mrs D. living in Imphy (58), is a single parent bringing up her three-year-old child. She earns 960 euros per month as a part-time care assistant. Between May 2008, when she moved into a poorly-insulated flat, and July 2010 she did not receive any gas and electricity bills from GDF SUEZ and her request to pay her bill monthly remained without response. Her first bill

amounted to 2,400 euros. A payment plan at 76 euros per month was suspended as she was unable to meet the payments after a few months. After receiving a reminder letter for the outstanding arrears of 1,500 euros, the young mother requested cash support from a social worker at the Nièvre County Council, who also wrote to the energy ombudsman.

Mrs D. is seeking a new repayment plan to clear her debts via regular payments. When informed of this situation that is causing serious financial problems for Mrs D., the supplier agreed to a new payment plan and offered 350 euros in compensation for its billing practices failures.

ENERGY CHEQUE AND WINTER TRUCE ON DISCONNECTIONS

The national energy ombudsman puts forward proposals, some of which have been included in the report compiled by the “Households” working group as part of the national roundtable on energy efficiency launched on June 17th 2011 by the Minister of Ecology, Nathalie Kosciusko-Morizet. Explanations by Bruno Léchevin, the ombudsman’s chief representative.

How can we help low income households cope with the rise in energy expenditure?

In order to increase the number of beneficiaries and the amounts they receive, we propose to replace the social tariffs by an “energy cheque” distributed by a specialised body, the family allowances Fund (Caisse d’allocations familiales - CAF). The amount would be based on the criteria used for awarding housing benefit, and on specific energy criteria such as the region of residence and the property’s energy performance. Once completed, any work to improve this performance would result in a reduction in support as households would face lower energy bills due to the drop in their gas or electricity consumption. This system should also be available to owner-occupiers who do not receive family allowance from the CAF.

Can you quantify the cost of this measure?

Funded by the electricity public service contribution (CSPE), the basic needs tariff cost 50 million euros in 2010. The special solidarity tariff for gas funded by a contribution on gas bills cost 21 million euros. An “energy cheque” available for six times more beneficiaries than the basic needs tariff, at an amount three times higher, i.e. 270 euros per annum and per household, would represent around one billion euros. This is the same amount funded by consumers in support of photovoltaic electricity feed-in tariffs, or the contribution to tariff adjustments for island communities. We are faced with simple societal choices.

How could payment arrears procedures be improved?

We have suggested that the government should introduce a winter truce on energy disconnections for all consumers, similar to the one that exists for evicting tenants. It is unacceptable to deprive people of good faith who are unable to pay for their heating and light during this period. In a competitive market with several suppliers, disconnection for non-payment, which is a form of pressure and a debt collection measure, should only be used in exceptional cases. As the contract is maintained, it prevents clients from changing operators and becomes a source of considerable extra costs for the existing



**BRUNO
LÉCHEVIN**

supplier. Therefore, we recommend that suppliers take the initiative to terminate contracts. This is a free-of-charge service and the 30 days’ notice period provides time for negotiating payment plans or switching to another supplier. Under this system, the distribution system operator (DSO) could inform consumers of the forthcoming supply disconnection and of the solutions open to them.

Would this procedure not create a risk of suppliers being left with numerous unpaid bills?

This is what they fear and so they are opposed to this proposal, whereas DSO are in favour because they will no longer have to intervene in terms of disconnections and re-connections. A CoRDiS (1) ruling of October 22nd 2010 could alter the situation as it stipulates that, to pay to the DSO the sums due for transportation services, the supplier must have recovered them previously from the end user. If this is not the case, the cost of the unpaid bills would be split between the two operators. We do not wish to encourage cheating or create chaos, but are advocating more favourable procedures for consumers experiencing financial difficulties, or refusing to pay in advance when they have a legitimate dispute over an energy bill.

Are there any other possible avenues?

We advocate the creation of a supplier of last resort for consumers who are unable to subscribe an energy supply contract. A similar system exists in Belgium where the DSO act as energy suppliers of last resort. Furthermore, we favour the introduction of a minimum service for the most underprivileged in society, the operation of which could be entrusted to the supplier of last resort. We could base such a system on the universal banking service introduced in 2006, whereby an establishment is appointed by the authorities and it is possible to open an account but with a reduced number of services available. As part of the minimum energy service scheme, the contract would provide access to a limited capacity of 3,000 watts for example, but sufficient to cover basic needs such as lighting, a cooking appliance, a refrigerator and for heating one room. ■

(1) - Disputes Settlement and Sanctions Committee

➔ ENERGY POVERTY AS SEEN BY...

Viewpoint of Bertrand Lapostolet, Programme Manager at the Fondation Abbé Pierre.



**BERTRAND
LAPOSTOLET**

When we started to take action in 2006 with the Manifesto against energy poverty, the phenomenon was in its infancy. Now it affects 8 million people, and not only those excluded from society. The initial reflex to avoid the risk of being unable to pay or even being cut off, is to do without energy. However, this fuels the energy poverty spiral: a poorly-heated dwelling deteriorates,

becomes increasingly costly to heat, which leads to further financial difficulties as well as problems with personal health, safety and social withdrawal. Due to its position, the energy ombudsman acts as a pathfinder highlighting the challenge presented by this issue. At the national roundtable on energy efficiency, we put forward the same approaches in terms of increasing support to households

to cope with growing energy expenditure and, at the same time, focusing on improving building quality to reduce the 3.7 million "thermal sieve" dwellings in France. Associations feel less alone in their fight when they know they are backed by the weight of an institutional and legitimate player such as the ombudsman.



Funding

Solidarity policy funded by the consumer and the taxpayer

A social sector player recently confessed to the ombudsman, *"It is an absolute scandal that alternative suppliers refuse to grant the basic needs tariff to their clients"*. However, there is nothing abnormal in this situation as EDF and historical local suppliers actually have the monopoly on offering the social electricity tariff. In fact, any lost revenues are made up entirely by the electricity public service contribution (Contribution aux charges de service public de l'électricité - CSPE) paid by all clients as part of their bills. According to the energy regulation Commission, in 2012, EDF should receive 80 million euros for granting social tariffs, including 6.4 million euros to cover management costs. Moreover, on its Internet site, EDF also describes itself as the *"main financial contributor, after local authorities"* to the housing benefits funds (Fonds de solidarité logement - FSL). In 2010, it actually paid in 23 million euros, of which 16 million euros were reimbursed to it via the CSPE. In the end, EDF's actual contribution of 7 million euros is only a little higher than that of GDF SUEZ with its 6 million euros, although the latter has three times fewer clients. Furthermore, under the FSL system for granting support to pay energy bills, at the end of the day, energy suppliers actually receive an amount between two and three times higher on average than their contribution. Accordingly, in 2010, EDF received between 50 and 60 million euros from the various housing benefits funds in settlement of its clients' unpaid electricity bills.

“Mitigating the impact of rising prices and reducing household energy consumption.”

Interview with Nathalie Kosciusko-Morizet, Minister of Ecology, Sustainable Development, Transport and Housing.

Energy policy is affecting an increasing number of French households. What do you consider to be a relevant response to this complex problem?

Every year, 3.8 million households devote more than 10% of their budget to pay their energy bills. These are mainly home-owning households living in rural areas, and fragile households in terms of income and sometimes from the social standpoint. This situation means that they can find themselves unable to pay their energy bills, and before reaching this point they may make decisions that are dangerous for both their safety and health, for example by depriving themselves of heating or sealing up air vents in their homes.

We are focusing on two courses of action to cope with this challenge: mitigating the impact of price increases and reducing energy consumption for these households. We are achieving this by means of the social tariffs introduced in 2005 for electricity and 2008 for gas. In addition, the “Habiter mieux” programme with a budget of 1.35 billion euros is being used to attack the causes of energy poverty. This programme has an ambitious target as it aims to renovate the homes of 300,000 low-income owners by 2017. This will provide residents with lower energy bills in future. It also represents an investment for local authorities whose return on investment will be in the form of lower costs for handling public health and social risks cases.

Only around 1 million households benefit from social gas and electricity tariffs. What other possible courses of action are available to reduce this gap?

For a great number of households encountering major social problems, until recently the administrative formalities involved in obtaining support represented a genuine obstacle to gaining access to social tariffs. This situation was unacceptable and therefore we decided to simplify

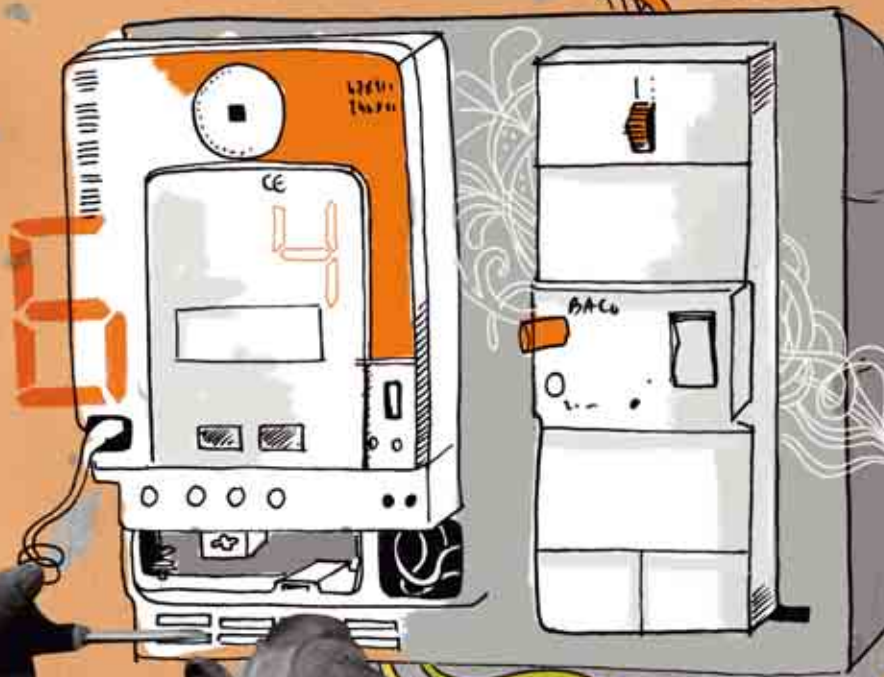
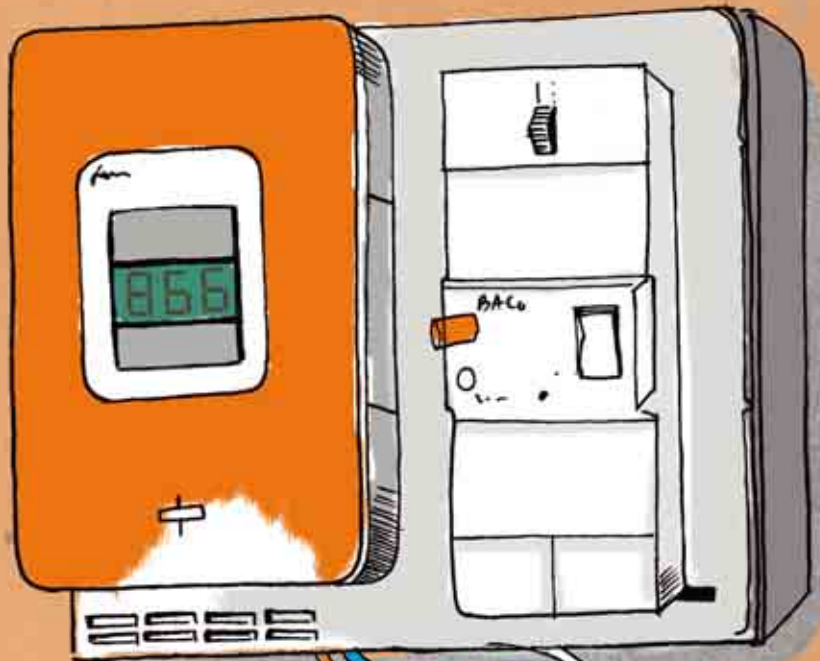


**NATHALIE
KOSCIUSKO-MORIZET**

the procedure. Henceforth, social tariffs will be awarded automatically to eligible households without them having to make the request. Naturally, beneficiaries will still be covered in terms of confidentiality under the protection of the national Commission of information technologies and freedom (Commission nationale Informatique et Libertés). In this way, we expect to triple the number of social tariffs beneficiaries.

During the national roundtable on energy efficiency, the “Households: how to reduce bills” working group submitted a report with around 40 proposals. As energy efficiency is one of the keys to reducing energy poverty, out of the proposed measures, which ones have you decided to implement in the near future?

In mid-2011, I organised a roundtable on energy efficiency to go even further than the environment Law in terms of energy savings and to reduce our consumption by 20% by 2020. In this context, I wanted the “Households” group to pay special attention to vulnerable households. Ten measures have been selected with the aim of speeding up housing heat insulation work, encouraging the use of more efficient appliances and improving citizen information and awareness. The sustainable development tax credit and the zero interest eco-loan, which help households to carry out renovation work on their homes, can now be accumulated, subject to means testing. We have extended the social housing eco-loan system which plays a decisive role in triggering renovation work in social housing, and the “Habiter mieux” bonus was increased by 500 euros on January 1st. All the other measures should be introduced during the first half of 2012. Among these measures, we are working towards integrating the notion of energy performance in proposed laws to promote decent housing conditions in May 2012. ■



LINKY, A “SEMI- COMMUNICATING” METER

Between now and 2020, 35 million communicating electricity meters should be installed in French homes. As the cornerstone for future smart grids, on paper, these meters come adorned with all the virtues: they should cut distribution system operators costs, provide energy savings and give a boost to competition in the best interest of consumers. In 2011, the Linky project was the centre of a fierce debate over what a “smart” meter can actually do, what services it can provide and on whose initiative.

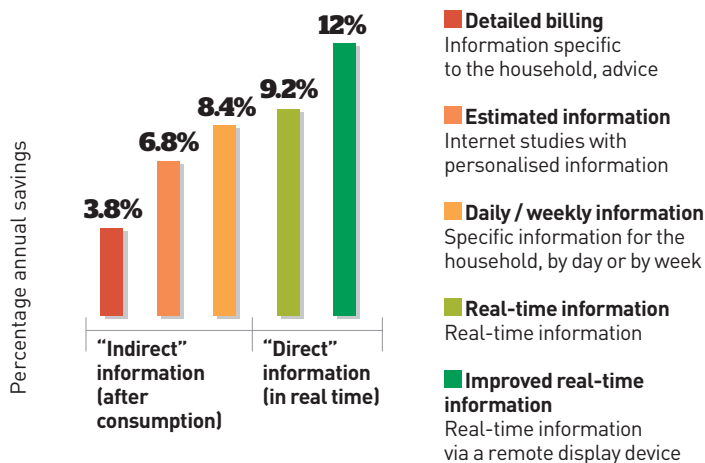


From the outset, the ombudsman has followed the smart meter dossier very closely, by participating in the “Controlling energy demand” working group set up by the energy regulation Commission and in the monitoring committee set up by the government. It has argued the case that consumers, including those on the lowest incomes, should have access to real-time information that enables them to save energy and cut their bills.

What benefits for consumers?

“We regret the fact that this tool has been designed more with the supplier and DSO in mind rather than the consumer”, comments Bruno L chevin, the ombudsman’s chief representative. DSO are going to achieve major productivity savings with the end of physical meter readings (35 million km covered by ERDF staff every year), the possibility of performing operations remotely, and the ability to identify anomalies and fraudulent activity more easily. With a better understanding of their clients’ habits, suppliers will be able to increase the number of innovative tariff offers and propose new services. Linky will have a direct benefit for households, insofar as bills will be calculated based on actual monthly consumption. Will Linky simply be a more sophisticated meter than its predecessor or a genuine tool for helping French consumers to make energy savings and control their size of their bills? To achieve this, the electricity consumption data would have to be supplied directly to consumers in real time and at the point of consumption. Several studies, including the one published by the American council for an energy-efficient economy (ACEEE) in June 2010, have shown that information provided “directly” in the home results in a 10% reduction in energy usage, compared with a reduction of only 4% in the case of a detailed bill. However, electricity meters are generally sited in hard-to-access locations, and even outside the home in 50% of cases.

Average annual electricity savings for a household by type of information



Based on 24 studies carried out between 1995 and 2010
Source: ACEEE, Energy Savings and Advanced Metering Meta-Analysis, June 2010

Real-time energy consumption

Within the monitoring committee, the ombudsman and the Environment and Energy Control Agency (Agence de l’environnement et de la ma trise de l’ nergie - ADEME) have



adopted a common stance: an information system with real-time data and located in the home must be offered free-of-charge to every consumer, and include a limited number of options such as the transmission of warning SMS or the installation of an offset display to provide details of energy consumption, the cost and the level of electrical capacity being used. . .

“The concerns on the part of the ombudsman and the ADEME over Linky are broadly the same, as energy savings and financial savings for the consumer go hand-in-hand”, explains François Loos, the ADEME Chairman. The operators could also offer other more sophisticated, and chargeable, services such as the remote control of household appliances, electronic surveillance and personalised advice. For Stéphane Mialot, the ombudsman’s services director, the right to receive this basic information will become even more important as, with the smart meter, suppliers will be able to increase the number of tariff offers, with different pricing for up to 10 periods of the day and week, and with different prices per kWh, as provided by the decree of January 10th governing the functions available with the Linky meter. *“To fully understand the complex offers that are going to become increasingly available and to be able to take full advantage of them, clients will need to have a clear understanding of their consumption. In order to achieve this, they will have to monitor it on a daily basis.”*

“Semi-communicating” meter

Be that as it may, in its current configuration, the Linky is only a semi-communicating meter that sends its data solely to the DSO. For the control unit to transmit to the consumer’s home, it has to comprise Wifi or Powerline Communication capabilities as standard equipment. These forms of communication are technically feasible and cost less than 3 euros to incorporate, if they are designed in upstream, according to experts questioned by the ombudsman. *“The remote display, a small screen to be located in a frequent passage point in the home, would be to controlling energy consumption what the speedometer is to driving a car. Cost estimates for such a device vary between 10 and 30 euros”,* according to Denis Merville. For his part, François Loos continues, *“the Linky meter has been designed primarily to make it easier to manage the electricity grid. It could enable consumers to achieve savings of between 10% and 15%, provided that it is linked to a real-time consumption information*

➔ “A real-time information solution in the home should be offered free of charge to every consumer.”

service accessible by both managers and households. Therefore we feel that it is important for suppliers to make this additional information facility available when the system is installed, and with this in mind ADEME is offering its support to trials of these future services.”

Decree of January 10th defines minimum service requirements

The decree has removed the inclusion of additional functionalities such as remote displays from the basic information funded by the public service. However, households will be able to equip their meters with these devices, but will have to pay for them. Bruno Léchevin is highly critical of this decision and considers that *“the meter runs the risk of only benefiting those households that can afford to pay for the extra services. It should be an object of general interest before being an object on which suppliers can make money.”* The issue of energy savings remains, and in all likelihood will only be resolved by chargeable offers from the suppliers. *“As an independent ethical authority, the ombudsman has striven to avoid this Linky technology being taken over by businesses, and to ensure that it will be used for the benefit of the greatest number of consumers,”* stresses Alain Bazot, the chairman of the consumer association UFC-Que Choisir. *“Unfortunately, the decree introduces the notion of a trade in this energy consumption information, whereas consumer access to such data is a basic right.”* François Brottes, the MP for the Isère region and Joint Chairman of the French Parliamentary energy studies Group, considers that this supposedly “smart” meter is not actually providing all that it should. *“It provides the services expected of it by DSO, which is an important feature at a time when the electricity mix is evolving, but provides nothing more for consumers to help them change their behaviour patterns. Consumers need to have the benefit of the information provided by the meter on a display in their homes, along with a guarantee of personal data protection. With this in mind, I have actually filed an amendment to propose that the national Commission of information technologies and freedom (Commission nationale de l’informatique et des libertés - CNIL) is represented at the energy regulation Commission.”*

➤ **March 2010 – March 31st 2011:**

ERDF conducts trials of the Linky communicating meter with 300,000 clients in Touraine and in the Lyons region.

➤ **May 4th 2011:**

Éric Besson, Minister of Energy, sets up a committee to monitor project implementation.

➤ **July 7th 2011:**

Energy regulation Commission reviews the results of the trials and votes in favour of widespread Linky meter deployment.

➤ **September 28th 2011:**

Following the submission of the monitoring committee's report, Éric Besson announces the deployment of the smart meter in 35 million homes starting in 2013.

➤ **January 10th 2012:**

Publication of the decree defining Linky's functionalities.

➤ **2013 - 2019:**

Widespread deployment throughout the country.

Preconceptions about Linky

“No more estimated bills”

Apart from exceptional circumstances, such as a transmission failure, a reading will be sent to suppliers once a month, as well as each time a contractual event occurs, e.g. supply connection, contract termination, change of supplier. Unfortunately, a change of price is not currently considered a contractual event... Suppliers have not planned to request a reading on the actual date when prices change and therefore an estimated consumption breakdown will be calculated before and after the change, between two readings, as is currently the case. The ombudsman is calling on players to implement the procedures needed to address consumers' legitimate expectations of more accurate electricity bills, particularly at the point when there is a change of tariff.

“The new meters will be more reliable than the old ones”

Breakdown levels for the future meters should be the same as for current electronic meters. In the trials conducted by ERDF, 0.3% of meters experienced a fault, and this level is considered normal. We note that the main cause of failure involves a reading display fault, as opposed to incorrect or excessive meter readings.

“If the consumer becomes an electricity generator, only one meter will be needed because Linky can also record feed-in kWh.”

Currently, renewable electricity generating installations for which the homeowner resells the output require two additional meters to be installed, in addition to the one measuring consumption. As part of its specification, Linky can replace one meter but the home will still require two meters: one to measure production, the other to measure consumption.



Linky: who pays for the free installation?

When he gave the go-ahead for the widespread installation of Linky electricity meters, Éric Besson, the Minister of Energy, gave the guarantee that it would be free of charge for consumers. Therefore, who is going to fund the new communicating meter which is estimated to cost between 120 and 240 euros? In the electricity business just as everywhere else in life, the word free does not really exist. Certainly, there is no payment for the “act” of fitting the meter and the consumer will not have to write a cheque for the technician. However, consumers do pay for meters, even the current version, as part of their electricity bills, of which 33% covers the tariff for the use of public electricity grids (tariff d’utilisation des réseaux publics d’électricité (TURPE)). All in all, the cost of the Linky meter will be higher than that of the current meter, even when the operating cost savings achieved by the DSO are taken into account.

On this point, the ombudsman and the national Federation of delegating local authorities and state-owned companies (Fédération nationale des collectivités concédantes et régies - FNCCR) arrive at the same analysis: “At what level is the TURPE going to be set in order to finance ERDF’s investment? We hope that the productivity gains will be directed to mitigating the tariff increase”, observes Pascal Sokoloff, the FNCCR’s director general. “If it generates productivity gains and energy savings, the Linky meter will result in no extra cost for the consumer, but it will not be free.”

Controversy over smart meter ownership

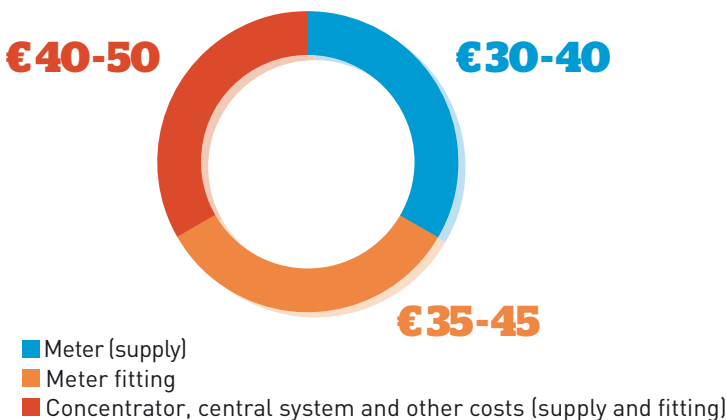
ERDF and the CRE estimate the cost of the Linky project at 4.3 billion euros. Other players such as the FNCCR and EDF consider that the deployment project could cost up to 8 billion euros. Currently, distribution grids, meters and metering systems

are owned by local authorities that entrust their management to DSO as part of a concession contract. Is there a need to revise these regulations so that Linky meters are owned by ERDF, in order to guarantee the latter a return on their investment? Pascal Sokoloff believes that the communicating meter must be included in the concession contract business model, along the same lines as other investments. “ERDF has the right to charge fair tariffs and from this viewpoint, the ball is firmly in the CRE’s court as part of the TURPE 4 arrangements. Furthermore, the operator should reasonably expect to recover its investment if the contract is terminated. Our specifications provide for this and we are against any question of granting ownership to the delegating authority, in the manner specified by the legislation.”

Ladislas Poniatowski, a Senator who chairs the senate energy studies group, is all in favour of the deployment of communicating meters that “will make grid management easier and open the way to developing additional services for consumers”, but stresses the fact, as the issue is the subject of debate, that the meters form part of the distribution grid, and that “accordingly, they must remain the property of the local authorities acting as guarantors of the general interest in their capacity as energy distribution organising bodies.”

For their part, some local distribution companies (Entreprises locales de distribution - ELD) are also raising questions, notably about the reliability of the system’s technology in guaranteeing tariff changes, as well as about smart meter funding in general. “The business model created under the aegis of the CRE is based entirely on Linky, a registered trademark owned by ERDF”, explains Christophe Chauvet, director general of the SICAE de la Somme et du Cambrasis, an electricity distribution authority specialised in supplying farming communities. “This business model cannot be transposed to ELD. We run the risk of encountering problems if our special requirements, their impacts on the purchase costs of new meters and their associated information systems are not covered by TURPE funding.”

Linky project costs breakdown



Source: national energy ombudsman estimate based on CRE data.

Increasingly complex disputes

The ombudsman intends to remain vigilant, as the range of usual causes for complaints is about to undergo radical change. Logically, the number of disputes associated with meter reading errors and estimated energy bills should decline dramatically, but doubtless they will be replaced by more complicated disputes over difficulties in obtaining corrections to errors caused by possible faults with the computer system. Already, in 2011, the ombudsman received 13 appeals from consumers equipped with Linky meters. With the end of physical meter readings, we fear that this project will be seen by the public at large as a further stage in the dehumanisation of the public energy distribution service. It is up to the DSO to seize the opportunity and create a new and close relationship with consumers.

“With Linky, the consumer will benefit from free services.”

Interview with Éric Besson, Minister of Industry, Energy and the Digital Economy.

What conditions are required for the Linky project to be a success? How is the Ministry involved in ensuring its deployment (monitoring committees...)?

Almost all the 35 million meters installed in France will be replaced between now and 2020. This project is currently the most ambitious of its type in the world and it represents an opportunity for French consumers, the entire electricity system, and French manufacturers.

To guarantee successful deployment, we have to ensure that this will lead to the development of services for consumers. We also have to ensure that this deployment is completed in the best possible manner. In addition, we have to put in place a legal and regulatory framework to guarantee that the deployment programme costs nothing for the consumer.

This oversight role is being fulfilled by the deployment committee which brings together elected officials, businesses, associations and administrations to exercise close monitoring throughout the entire project implementation period.

What are the industrial challenges for France?

Linky deployment represents an advantage for the electricity grid. With a better understanding of consumption, the new metering system will reduce energy losses throughout the grid. It is also going to support the development of renewable energies by contributing to more effective management of the intermittent availability characteristics of these energy sources.

By its sheer extent, this deployment programme is going to enable French businesses to become credible bidders for large calls for tenders which, in the event of successful outcomes, will create



ÉRIC BESSON

activity in France, and reinforce our technological advance vis-à-vis other players. The deployment programme is also going to encourage the development of tools for understanding and managing consumption, and will therefore contribute further to boosting French industry in this area where it is already considered a cutting-edge player. All in all, deploying these new meters is going to create 10,000 jobs in France.

Over and above the financial aspects, what are Linky's other benefits for consumers? What targets are you setting for Linky to ensure that the project benefits consumers?

Consumers will benefit from free services: the energy suppliers have made commitments on this aspect, at my request, by way of a charter which notably includes access to consumption history, automatic warnings and personalised advice. For the future, this deployment programme will contribute to the emergence of more advanced services designed to helping households rationalise and control their energy consumption.

The communicating meter will also provide for remote meter readings in real time. It will no longer be necessary for a meter reader to visit the property every year, as ERDF will be able to conduct many operations remotely, and notably in the event of breakdowns.

Finally, the deployment programme for these new meters will not cost consumers anything: it will be funded from ERDF's own resources. It will not have any impact on French consumers' energy bills. ■



LINKY, CHALLENGES AND DEBATES

With the major developments in renewable energies, the emergence of new applications (heat pumps, electric vehicles, storage...), the electricity distribution sector finds itself at an historical technology turning point. Grids are becoming a central link in the electricity system. The distribution system operator (DSO) has to permanently guarantee the balance between increasingly intermittent generating resources and consumption. New technologies, in terms of meters and new information and communication technologies, form a key part of meeting these new challenges. Michèle Bellon, the chairman of the board of management at the DSO ERDF (Électricité Réseau Distribution France), explains the situation.

There is currently a debate over the DSO role in communicating the smart meter's information to users. How far can the DSO go in terms of the service provided to consumers?

Linky has been designed specifically to offer our 35 million clients more straightforward and efficient management of their electricity consumption, by providing them with new and useful information such as, for example, the maximum capacity drawn down during the day, to see whether it is possible to reduce the level of subscribed capacity over time. The energy regulation Commission (Commission de régulation de l'énergie - CRE) has recommended to ERDF that consumers should have free-of-charge access to basic information via an Internet site, and to suppliers to develop complementary offers for rationalising energy bills. To enhance the Linky system's value, we are pursuing our initiative with trials to develop the "client information" aspects. In partnership with the social housing lessor Grand Lyon Habitat, we are conducting a trial involving a sample of 1,200 homes by providing secure Internet site access to each household to enable users to consult their Linky data. This experiment will also provide us with valuable consumer information in terms of the impacts on their electricity consumption behaviour, their level of interest in the device and any additional expectations.



**MICHÈLE
BELLON**

➔ **"The relevant issue is not meter ownership, but how to fund this project and provide guarantees for this funding."**

What is at stake in the debate over meter ownership?

The relevant issue is not meter ownership, but how to fund this project and provide guarantees for this funding. Even though the Linky deployment programme is going to cost 4.5 billion euros, the project also offers benefits for ERDF. A 20-year operating period is needed to amortise this investment and to recover the associated savings in terms of fewer on-site visits and lower energy losses. However, the meters form an integral part of the grid equipment belonging to local authorities. To obtain funding for assets belonging to third parties, it is vital that the financial flows from the savings made by the meters over time find their way back to ERDF. If such a return cannot be guaranteed, then possible compensation guarantees should be provided. ■



KEY RENDEZVOUS IN 2011

“Energy Special” Consumer programmes on France Télévisions

05 / 02 / 2011



Five consumer affairs programmes in the “Consomag” series were produced in partnership with the National Consumers’ Institute (Institut National de la Consommation) and broadcast on France

Télévisions channels between 2nd and

May 20th 2011. With the energy bill as the central theme, around 3.5 million viewers watched each of these programmes.



“THE OMBUDSMAN’S NEWSLETTER” CELEBRATES ONE YEAR OF PUBLICATION

Since September 2010

In 2011, the ombudsman continued to publish its bimonthly newsletter at the rate of five issues per annum. Launched in September 2010, the newsletter aims to inform elected officials and market players of the ombudsman’s activities. It is distributed mainly electronically and each four-page edition presents the ombudsman’s point of

view on key issues such as the Linky meter and energy poverty. In every issue, an opportunity is given to important figures inside and outside the energy sector to express their views.

Amélie’s advices September 2011

The producers of the RTL radio programme entitled Amélie’s Advices (Les conseils d’Amélie) invited four representatives from the energy ombudsman to participate in their broadcasts, with interviews lasting one and a half minutes at 2 pm every Thursday during the month of September. The interviews focused on the following questions:

- How to find information about energy?
- What to do if you have a payment problem?
- What to do if you have a complaint?
- How to refer your case to the ombudsman? What is its role?

Freephone number for Énergie-Info

01/01/2012

Since January 1st 2012, the consumer electricity and gas information service known as Énergie-Info can be accessed free of charge from a landline telephone on the freephone number (Numéro vert) 0800 112 212. Lines are open from Monday to Friday, between 8:30 am and 6 pm. The former call centre number will remain in service for a few months to allow time for those services and operators that inform consumers of its existence to update their records (notably service-public.fr, ERDF and GrDF).

▶ N° Vert 0 800 112 212

APPEL GRATUIT DEPUIS UN POSTE FIXE

To fulfil its mission as an information service, in 2011 the national energy ombudsman increased its number of initiatives by holding meetings with consumer associations, participating in roundtables and public meetings, and by signing agreements with institutions affected by the changing energy market. We present the highlights of some of the major events in the year which contributed greatly to sharing our experience.

Two rendezvous with consumer associations

09/03 & 09/11/2011



The ombudsman met consumer associations on two occasions in 2011. The morning of March 9th was the opportunity to present a review of the ombudsman's activity and exchange views on the mediation concept advocated by the institution.

The second roundtable on November 9th focused on the subject of consumer information and was the opportunity to present a preview of the results of the 5th annual Énergie- Info barometer on energy market liberalisation.



Agreement between the ombudsman and the FNCCR

March 2011

The agreement signed in March 2011 between the ombudsman and the national Federation of delegating local authorities and state-owned Companies (Fédération nationale des collectivités concédantes et régies - FNCCR) aims to formalise information exchanges and to create greater consistency between the positions adopted by both parties as part of their respective energy mediation and local public services oversight missions. In 2011, the ombudsman's team participated in a few meetings held in Paris and in the French regions with the local public services consultative commissions (Commissions consultatives des services publics locaux - CCSPL), set up in 2002 to encourage user involvement in the development of public services projects. These events provide another opportunity for meeting the associations, elected officials and operators sitting on these commissions to exchange views on specific problems encountered locally.



OMBUDSMAN PRESENT AT THE MAYORS OF FRANCE TRADE SHOW 22-24/11/2011

For the third year running, the ombudsman's staff manned a stand at the mayors and local authorities trade show that was held between 22nd and November 24th 2011 in Paris. This event is the opportunity to meet not only elected officials from large cities but also those representing rural communities. Too many mayors are still unaware of the ombudsman's existence and its missions, but they are sometimes called upon by their electors, out of desperation, when the latter are unable to settle a dispute with an energy supplier or can no longer manage to pay their energy bills. This initiative has been warmly applauded by elected officials who are reassured by the existence of a public, free and independent service which can solve some of the problems experienced by their fellow citizens.



Ombudsman invited to the UNCCAS conference

27/09/2011

Denis Merville was invited to participate in the 64th Congress of the national union of community welfare action centres (Union nationale des centres communaux d'action sociale - UNCCAS) on September 27th 2011. As a front-line witness to the effects of energy poverty, in his speech the ombudsman highlighted the complementary nature of his institution's action with that of community welfare action Centres. He announced plans to cooperate more closely to develop information about sources of funding to help settle unpaid bills, and to provide support for dossiers involving people in difficulties.

➤ **“We are here to help, advise and offer our technical expertise to the social services. We can also help them to decipher the background to a complicated billing problem or negotiate payment schedules with energy operators on their behalf.”**
Denis Merville

All jurisprudence available on www.energie-mediateur.fr

09/11/2011

Since November 9th 2011, legal judgements involving the energy sector and consumers have been posted online on the ombudsman's Internet site. Providing easier access to jurisprudence forms part of two of the ombudsman's missions of informing consumers of their rights and achieving amicable dispute settlements. In fact, according to European Community law, an alternative dispute settlement system must provide solutions similar to those which a consumer would obtain via legal recourse. This legal database includes both local court judgements as well as rulings by appeal courts or the Council of State. The Internet site uses the keyword search method to make this information freely and easily accessible. To comply with the personal data protection recommendations issued by the national of Commission of



information technologies and freedom (Commission nationale de l'informatique et des libertés - CNIL), the names of the individuals involved do not appear on the site. This site already contains 44 legal rulings and its content will be expanded as time goes by.



Partnership signed with the mayors of France Association

20/05/2011

On Friday May 20th, the national energy ombudsman, Denis Merville, and the Chairman of the mayors of France Association (Association des maires de France - AMF), Jacques Pélissard, signed a partnership agreement. The aim of this venture? To raise awareness among elected officials about energy sector issues, help local authorities to respond better to requests for information from their electors and to direct them towards the ombudsman in the event of disputes with market operators. A joint project: provide local authorities with the tools and practical means to enable them to improve understanding of a complex energy market among their fellow citizens.

➤ **“The AMF contributes as well as it can to improving consumer understanding of the new energy market organisation. This action will be strengthened by working with the energy ombudsman.”** Jacques Pélissard



CONSENSUAL REGULATION FOR IMPROVING THE MARKET

The ombudsman is convinced that consensual regulation, which is much more flexible than regulations themselves, is in everybody's interest to improve energy market operation. With one regret: this approach does not result in success often enough.



Since its creation, the ombudsman has adopted the stance of a player committed to changing energy markets. The disputes referred to it represent opportunities to highlight certain malfunctions, consider strategies to guard against them in future and propose solutions. To ensure that its legal and technical expertise used to settle individual cases benefits the entire community, it has decided to forward general recommendations to operators. As the ombudsman has genuine freedom to analyse given situations, it does not hesitate to put forward sometimes daring and innovative recommendations in the hope that they serve as catalysts for improvements among energy sector businesses.

Stimulus role

Even though energy operators now acknowledge the institution's legitimate right to make proposals, their implementation is not always as readily accepted. To play its role as an industry stimulus to the maximum, the ombudsman plays an active part in the dialogue bodies set up by the energy regulation Commission (Commission de régulation de l'énergie - CRE) at the time of market liberalisation. This is where changes in procedures between suppliers, DSO, consumer associations and administrations are debated. They are also the forums where general recommendations are discussed and fine-tuned with a view to making their application easier. The ombudsman has gradually carved out its place in these forums, up to the point when in May 2010, it took over steering responsibility for the "Client, suppliers, DSO, relationships" working group.

Improving complaints handling

In addition to the bilateral meetings held regularly with each industry player, the ombudsman is also involved

in the work of the national consumer Council (Conseil national de la consommation - CNC), where it has proposed amongst other initiatives, that operators adopt certain complaints handling quality standards, as advocated by the European energy regulators group. *"Committing to maximum response deadlines, alerting the consumer if this deadline is exceeded, providing transparent information on complaints handling circuits and courses of appeal... Exchanges within the CNC are an opportunity for defining such standards"*, considers Stéphane Mialot, the ombudsman's services director. In 2011, discussions over the text for the forthcoming "billing" decree actually achieved progress, as the obligation to provide the ombudsman's contact details on all energy bills now forms part of the provisions scheduled to be adopted.

2011, a rich year for dialogue

As an acknowledged partner of public authorities, the institution was invited to participate in the roundtable on energy efficiency launched in June 2011 by the Minister of Ecology. Supported by other participants such as the Fondation Abbé Pierre and the CLCV consumers association, the ombudsman put forward concrete measures, and notably the "energy cheque" scheme to enable consumers to cope with the rise in energy prices. The Linky project called for dialogue lasting several months, with the ombudsman present at every single opportunity. The institution has been involved in the monitoring committee set up by the Minister of Energy in May 2011, where it has adopted a joint stance alongside the Environment and Energy Control Agency (Agence de l'environnement et de la maîtrise de l'énergie - ADEME) on the need for basic free-of-charge, real-time information

for consumers. In addition, the ombudsman has been an active participant in the CRE working group focused on “Controlling energy demand”. *“The nature of the data made available for consumers has been the subject of numerous debates”*, comments Frédérique Coffre, head of the Énergie-Info consumer information service. *“We have argued the need to deploy a remote display with each meter offering free access to basic information such as consumption values in kWh, or the cost of consumption in euros, as well as the possibility of accessing data without having to pass through one’s supplier.”*

Operators are in favour

The ombudsman is convinced that consensual regulation is more flexible than laws and regulations, and more beneficial to all concerned: *“Solutions built on a consensus work in the interests of both consumers and businesses”*, argues Bruno Léchevin, the ombudsman’s chief representative. In the main, energy operators sectors are all in favour of this approach, and take the same view as Pierre Astruc, the director of economics at the France energy division of GDF SUEZ: *“We have exchanged our naturally different points of view with stakeholders with an interest in the dossiers in question. This approach provides a common understanding of the problems and results in a shared diagnosis. Obviously, if at the end we do not achieve a consensus, a decision has to be made one way or the other, but even in this case it has more chance of being the right one. Accordingly, consensual regulation presents several advantages compared with regulatory procedures insofar as it is quicker to implement, no preconceived solution prevails, and it results in greater reactivity when we see that changes need to be made. These changes are often cheaper to implement, and this benefits the consumer who will actually bear the costs at the end of the day. However, consensual regulation can only operate with a balanced approach. Institutional players set up at the time of market liberalisation must take care that the changing procedures not only benefit consumers but also fully cover the obligations of an energy market that is totally open to competition.”*

Stumbling blocks

Be that as it may, the institution regrets that consensual regulation does not always provide results, and criticises operators for dragging their heels, which eventually means that the legislator has to intervene. This was the case for the issue of energy bill overpayment reimbursements. For a long time, the ombudsman has recommended that suppliers reimburse their clients quickly for any overcharges, which can sometimes amount to several hundred euros.



Consensual regulation on the other side of the Channel

Different approach

In Great Britain, market regulation now evolves under pressure from OFGEM (Office of the Gas and Electricity Markets). Operators became aware that they were no longer simply able to criticise the amount of red tape being created, and that it was in their interest to agree mutual and more favourable ways of treating consumers in order to avoid the introduction of further legislation or regulations. Consequently, in 2006, the energy suppliers association which includes the six leading players in the electricity and gas sector adopted a “code of good conduct” regarding billing and particularly in respect of billing arrears. Up to that point, back billing could be applied for up to 6 years in arrear (5 years in Scotland). Since then, in order to avoid plunging consumers into deep financial difficulties, back billing for arrears only covers a period of one year when the supplier is found to be at fault. Players reached an agreement on how to deal with several different and clearly-defined situations, such as lack of meter readings for more than one year, ignored client meter readings, bills not clearly stating the word “estimate”, etc.



The electricity market new organisation Law (loi sur la nouvelle organisation du marché de l'électricité - NOME) of December 7th 2010 introduced a mandatory deadline of 15 days for replying to consumer complaints. However, consensual regulation has come to a dead halt in many areas. The proposal to limit the collection of arrears to one year when the consumer has acted in good faith has been met with refusal on the part of the operators. This stance contrasts with that of their British counterparts who have voluntarily accepted to limit the recovery of arrears due to billing problems to one year, even though national law allows them to recover underpayments for the past five or six years (see box on page 39). *"We are not giving up hope that the operators will adopt a more flexible position on this issue. In any event, smart meter deployment should change this situation,"* considers Stéphane Mialot. *"In the telecoms sector, the statute of limitations covers just one year; as an exception to common law. It would be logical to apply the same rules for energy as soon as suppliers have instant access to consumption data."*

Self-regulation is not the same as consensual regulation

Within the national consumer Council, a single operator can block a proposal even when it has been approved by the majority of members. Accordingly, alternative electricity suppliers have sought to have the right to grant the basic needs tariff to their under-privileged clients. Consumer associations are also in favour of this move but, nevertheless, as of today the national consumer Council has yet to issue any recommendation along these lines. Again, members sitting on the NCC bodies have expressed their interest in committing to a series of undertakings listed in the form of a charter. In the ombudsman's view, its charter corresponds to a form of self-regulation, which is in some ways the opposite of regulation derived from consensual agreement. The institution has reconfirmed its intent to influence all projects and debates involving energy consumers via its involvement, its expertise, and its culture of dialogue. ■

➔ CONSENSUAL REGULATION AS SEEN BY...

Viewpoint of Marc Aldebert, External Relations, Consumer Affairs and Solidarity Director at EDF.



**MARC
ALDEBERT**

EDF is highly committed to consensual regulation, via its involvement in working groups set up by both the energy regulation Commission and the national consumer Council. This is a far more flexible way of working than regulation and results in solutions accepted by all which are less costly

to deploy for industry players, which means that they are less costly for consumers in the final analysis. In a competitive market, where suppliers are naturally encouraged to improve the quality of their client relationships and where regulations should aim at protecting consumers, consensual regulation plays a special

role insofar as it should enable the parties to find mutual ways of improving the market while protecting each player's ability to differentiate itself in terms of the offers and services it proposes to clients.

➔ CONSENSUAL REGULATION AS SEEN BY...

Viewpoint of Fabien Choné, Chairman of the National Association of Electricity Retail Operators (ANODE).



**FABIEN
CHONÉ**

Consensual regulation is even more necessary, as the way in which the organised markets in France have been opened up has failed to encourage the emergence of free competition. In too many instances, we consider that the drafting of these soft laws simply helps the former monopolies meet their constraints and challenges, to the detriment of

new market entrants. Consensual regulation has to be somewhat asymmetric when it is a matter of correcting the structural imbalance between historical and alternative DSO. This is far from being the case, as illustrated by the discussions over contract termination on the supplier's initiative at the consumer's expense, and which consists of the latter facing totally unwarranted

costs likely to close the market even further to competition. In the absence of genuine consensual regulation, we will have no other option than to embark on more systematic legal proceedings to settle our disputes, to the detriment of the regulator's natural jurisdiction.

WELL-ESTABLISHED RIGHTS

In a report submitted to the Minister of Energy in December 2010, the ombudsman put forward a series of recommendations to improve consumer complaints handling and information. The implementation of some of these recommendations and the integration of several generic recommendations in operators' practices has resulted in improvements for consumers. Selected highlights.



• Providing consumers with the means to check their estimated bills.

One aspect of progress has been achieved with the posting on the GrDF Internet site of details of the coefficient for converting m³ of gas into kWh. This coefficient varies in relation to the seasons and from one geographic region to another. By entering their postcode into a search engine, consumers now have access to a range of average values for their communities and can compare them with the figures mentioned on the energy bill. Other aspects, such as the inclusion of the consumption data on which the estimate is based and the source of this data (DSO or supplier), should be made mandatory as part of the forthcoming "Billing" decree.

• Introducing alternative solutions to avoid estimated bills.

GrDF and ERDF have developed a joint Internet site where consumers are able to enter their own meter readings. *"We have also conducted a targeted action campaign to read meters that have been inaccessible due to repeated absences on the part of residents when the meter reader has called"*, explains Jacques Gérard, the GrDF energy supply and delivery director. *"In one year, the percentage of clients absent more than three times when the meter reader passes has been reduced by over 10%."*

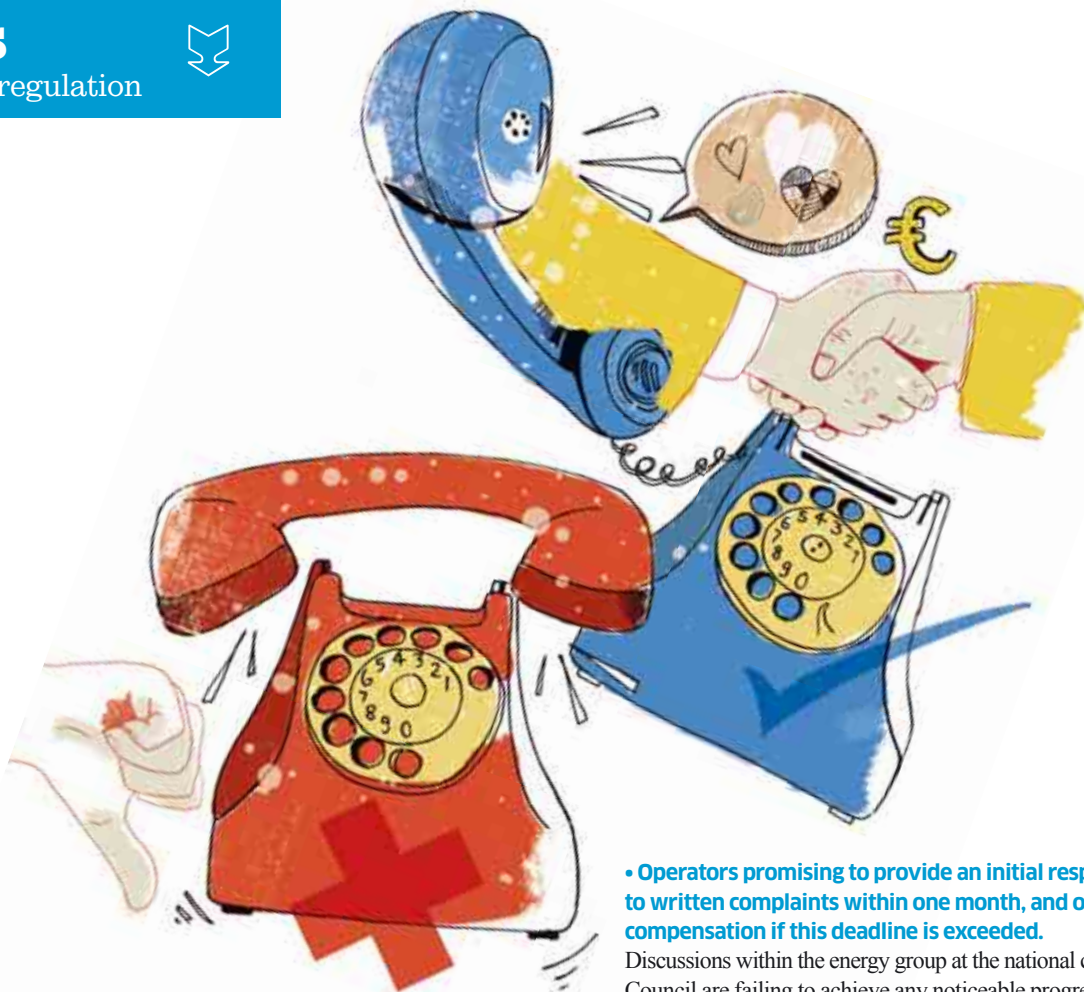
• Enabling consumers to correct any bill based on an estimate.

A major step forward has been achieved with the possibility of correcting contractual readings at the time of connection, cancellation or change of supplier. Until now, operators

refused to accept corrections even when the consumption appeared absurd. For gas supplies, the connection and termination procedure provides for corrections in certain cases, based on proof provided by the consumer in the form of an official inventory of fixtures, for example. In this instance, a correction will be made if the variance is greater than 50m³. With regard to corrections involving a change of supplier, discussions are continuing within the "client, supplier, DSO relationships" working group set up by the energy regulation Commission. Dialogue is also on-going for electricity in respect of this issue, and players have already agreed to change procedures under certain conditions. Furthermore, the DSO has set up new services for gas suppliers when a consumer disputes an estimated reading. *"The supplier can take direct account of the consumer's own reading which enables the client's bill to be corrected automatically, even for small variances of less than 50m³"*, states Jacques Gérard. A similar service is offered to suppliers when the client flags up an error at the time of the reading.

• Reimbursing credit balances and overcharges in accordance with the same conditions applied for settling bills.

This recommendation has been taken into account under article 18 of the NOME law with regard to contract termination following a change of supplier. In this case, the consumer must receive the final bill within a period of four weeks. If the bill shows a credit balance, it must be repaid to the consumer within a period of 15 days. The forthcoming "Billing" decree should stipulate the procedure for reimbursing overcharged amounts on a live contract.



• Restoring personalised client relationships.

It has to be said that there has been little progress on this front. Nevertheless, in 2011, as part of its business customer relations department, EDF appointed “special advisers” tasked with complaints handling. The operator has also indicated that it wishes to carry out trials of this type of customer service for its private consumer clientele. *“This is a move in the right direction”*, considers Frédérique Coffre. *“As these advisers have margins of manoeuvre to negotiate payment plans and grant commercial gestures.”*

• Simplifying organisations in charge of complaints handling, and informing consumers of the changes.

Tangible improvements in this area actually remain somewhat limited. EDF’s general terms and conditions of sale now contain details of its consumer department, as the second level of the complaints handling process. In contrast, GDF SUEZ’s general terms and conditions of sale still mention that consumer can only appeal to the national energy ombudsman once all the in-house phases of complaint follow-up have been exhausted, including recourse to the company’s internal ombudsman. This statement is contrary to current regulations, as a client of GDF SUEZ, just as of any supplier, has the right of recourse to an independent means of dispute settlement two months after submitting a written complaint, even if it has remained without reply.

• Operators promising to provide an initial response to written complaints within one month, and offering compensation if this deadline is exceeded.

Discussions within the energy group at the national consumer Council are failing to achieve any noticeable progress on the matter, as operators do not share the opinion that there is a need to achieve significant improvements in their complaints handling procedures.

• Change of supplier meter readings must no longer be mentioned on bills as actual readings but as estimated readings.

Actual implementation of the ombudsman’s recommendations can take some time. This recommendation dates back to May 2009 and involves EDF, but the operator only implemented it in November 2011 for electricity, and no changes have been made as yet with regard to gas.

• 10% abatement provided in assessing consumption corrections following meter problems should also apply in the event of incorrect recording of consumption hours breakdowns.

When a meter is not reading correctly, the DSO estimates consumption based on the consumer’s historical usage. A 10% abatement is deducted from the bill to cover the uncertainty involved in this practice. The ombudsman believes that this abatement should also be applied when the calculation of the breakdown of consumption between off-peak and peak hours is incorrect. The DSO ERDF has already indicated that it agrees with this principle.

➤ COMPLAINTS HANDLING AS SEEN BY...

Viewpoint of Jean-Pierre Hervé, External Relations Director of the France Consumer, Collective Housing and Business Department at GDF SUEZ.



**JEAN-PIERRE
HERVÉ**

Complaint resolution process quality forms a vital part of our drive to improve customer satisfaction. As part of our continuous improvement programme (ISO 9001 certified quality system), we have conducted several initiatives in terms of analysing disputes to identify better those involving the incorrect application of internal instructions or procedures and which should be changed. All our call centre advisers participate in this initiative.

In association with the DSO, we have put in place a process to apply the rules for taking account of consumers' own meter readings and for correcting disputed estimated readings in a more flexible manner. Our customers eagerly awaited improvements in this area, welcoming too the suspension of reminders for disputed bills. Finally, the dialogue we have built up with consumer associations has led us to define a common, and less "technical" language that we use in instruction

leaflets intended to provide better consumer information. As a result, in 2011 we observed that the level of customer satisfaction has improved via all our channels of communication, and that the volume of complaints has declined sharply, in terms of both day-to-day complaints and referrals to appeal bodies.

• Divided Gas Sales Contracts (Contrats Vente de Gaz Réparti - VGR) should no longer be a source of confusion.

These are contracts signed by the residents' association of a building to divide consumption from a collective boiler between the various occupants on a pro rata usage basis, with individual resident meters for hot water and heat. Even though the contract is signed by the residents' association, each resident is billed directly by the supplier, but details of the collective point of consumption and estimation (Point de consommation et d'estimation - PCE) appear on the bill. After having switched suppliers, several consumers have found themselves facing bills for several thousand euros as their new operator has taken the entire building's PCE as the consumption benchmark. Following a recommendation on the part of the ombudsman, GDF SUEZ has taken steps to ensure that collective PCE details no longer appear on individual bills. Moreover alternative gas suppliers have been informed of this potential source of billing errors.

• All current tariffs, even those scheduled for abolition, should be published.

Certain tariffs, such as the peak days load shedding tariff (Effacement jour de pointe - EJP) are no longer available for new subscribers, but are still applied for consumers having signed up before they were withdrawn. Accordingly, these consumers should be able to check that the price they pay actually corresponds to current tariffs. Operators have followed the ombudsman's recommendation in this instance. ■

Diverging stances

Persistent disagreement

If an act of fraud is detected, the consumer has to pay a fixed fine of 400 euros based on an incident report written by a sworn official. When the facts show that clients have not perpetrated any fraud, the ombudsman recommends that they should not have to pay this fixed penalty charge, as they have not voluntarily benefited from the misappropriated consumption. However, quite naturally, they should be required to pay any amount owing for their actual consumption. Obviously, while fraudulent acts should be discouraged in all circumstances and there is a need to remain vigilant, the ombudsman is involved in an on-going disagreement with the DSO that systematically invoice the fixed sworn official incident report penalty charge in too many instances. Another bone of contention? When there is a malfunction with the remote metering system known as "télé-report", the operators recalculate the amounts due by going back up to 20 years, based on the consumption recorded by the meter itself, if it has continued to register correctly. The ombudsman considers that this problem should be considered as a meter malfunction, particularly as DSO should take notice of inconsistent meter readings. A divergence of opinion remains over the interpretation of the statute of limitations. For gas supplies, GrDF has indicated that it is open to limiting consumption corrections to 2 years, but the suppliers are against this move. In fact, all electricity operators are opposed to this notion. We hope we will achieve progress in 2012, because settling the bill for a few years' incorrect meter readings can often cost the consumer several thousand euros.



QUEST FOR EFFICIENCY

In 2011, in just one year, the ombudsman's services produced more recommendations than since the organisation was first set up in 2008. This is the result of both the improvement in our teams' expertise and several initiatives undertaken to improve appeal handling productivity. Moreover, an online dispute settlement system is on the drawing board for 2012.

In agreement with the operators, the “second chance” process was launched on June 1st 2010. One and a half year later, this system aimed at cutting dispute resolution timescales is starting to bear fruit. The idea for this system was borne out of a simple observation: a number of consumers refer their cases to the ombudsman because they have received no response whatsoever from company customer relations departments to their written complaints after a period of two months, being the timescale after which they have the right to refer their problem to the ombudsman. However, the latter has not been given the remit of handling straightforward complaints, but of settling disputes when the parties fail to reach an agreement. As part of the “second chance” process, the ombudsman submits dossiers to operators for complaints that have not received an adequate prior response. The operators then have two months to propose a solution to the consumer, which is analysed by ombudsman staff. It is not a just matter of accepting an abnormal situation whereby several thousands of written complaints are simply ignored, but of offering a transitional remedy to the consequences of these shortcomings on the part of operators, particularly as the ombudsman is drowning under the volume of these complaints, at the risk of harming the effectiveness of its action in other areas.

“The ability for consumers to refer their cases to the ombudsman two months after a written complaint to an operator, whether or not it has been handled, is an indispensable safeguard to encourage operators to improve their customer service. We will be very mindful in ensuring that the second chance process has a positive effect on the quality of prior complaint treatment processes”, explains Stéphane Mialot, services director. In 2011, 59% of appeals

referred in this way were reviewed within the allotted time by the customer service departments at the suppliers and DSO involved. For 40% of consumers, the proposal they received met their expectations. Therefore, these dossiers are not subject to further in-depth investigation with a view to drafting a written recommendation, and this enables the ombudsman's teams to focus their action on more complicated appeals. GDF SUEZ considers that the system works in the best interests of both the company and its clients: *“We are able to recover those dossiers which, due to errors or misunderstandings, have been referred too quickly to the ombudsman”*, states Jean-Pierre Hervé, external relations director of the France consumer, collective housing and business department at GDF SUEZ.

“Second chance” opportunity not always taken

Nevertheless, the ombudsman considers that there is still progress to be made with the way in which the “second chance” system operates, as too many disputes being returned for reconsideration by operators are still not being handled effectively. This was the case for up to 44% of complaints submitted to EDF in 2011. *“Perhaps the operators do not have sufficient incentive in respect of the second chance process”*, highlights Stéphane Mialot. *“Notably because, when all is said and done, our recommendations are not binding and operators are well aware that very few customers will actually take them to court.”* Moreover, they are not responsible for every aspect of the problem. Some consumers continue to press their appeals, doubtless in the hope of obtaining more from the ombudsman, and sometimes even if the solution and possibly the compensation awarded actually already correspond to the



standards required by the institution. When the supplier or the DSO proposes a satisfactory solution, the ombudsman writes a “compliant recommendation” letter to the consumer. If the proposed solution is unsatisfactory and does not comply with its recommendation, the institution’s services continue to press the case.

New approach: amicable agreement

The ombudsman has continued to innovate by introducing a new procedure in the summer of 2011, known as an amicable agreement. The aim is to resolve the dispute under the ombudsman’s aegis. After having analysed the dossier, case managers formulate proposals and communicate with the operators and the consumer via e-mail or telephone to reach an agreement between the two parties. This dispute resolution technique presents several advantages. *“When we reach an agreement, we are sure that it is going to be applied and that the consumer will be satisfied,”* explains Stéphane Mialot. *“This procedure can also cut teams’ workloads, as presenting an actual solution requires fewer legal and technical arguments than presenting an official recommendation, and it cuts the red tape involved with handling the follow-up.”*

“
We do not
perceive
mediation
as a form of
cut-price
justice.
”



Sometimes excessively time-consuming dialogue

However, we have encountered a few stumbling blocks, insofar as operators refuse to deal by telephone as their employees tasked with handling complaints do not have the necessary authority to make decisions. Furthermore, discussions with players to arrive at a consensus sometime prove excessively time-consuming, without any guarantee that we will achieve an outcome acceptable to all parties involved.

Here again, the system only works if the consumer refrains from making extravagant demands and if the operator agrees to assume its responsibilities. The ombudsman's role is to identify those disputes most likely to result in a positive outcome via the amicable agreement process. Moreover, we have already observed that the process results in more detailed handling of complicated cases. For Jean-Pierre Hervé, who confirms that GDF SUEZ is fully in favour of participating in any process that speeds up dispute settlement, the amicable

agreement process guarantees greater satisfaction for all parties involved. As he explains, *"the institution's approach is focused more on mediation in relation to legislation. By listening carefully to the parties' concerns, the ombudsman arrives at balanced outcomes"*.

Three months to resolve a dispute

The number of appeals referred to the ombudsman has increased considerably over the past three years, and despite the improvements in organisation and case handling, the institution's departments, just as those of the operators, are overloaded. This has led to a major backlog in dealing with disputes.

In September 2011, the ombudsman introduced a different organisation to separate the management of dossiers in its backlog and "flow" dossiers, i.e. newly-arrived referrals. *"We needed to change our organisation as we were in a paradoxical situation whereby we had the resources to handle new appeals, but due to the number of dossiers pending, we were always behind with our work,"* explains Catherine Lefrançois, deputy head of the recommendations department. The team dedicated to flow handling manages to process an admissible appeal within 83 days on average, given the timescale allowed to operators to forward their observations. This represents progress for consumers who have recently referred their cases to the ombudsman.

"In the light of an in-depth analysis of our case handling timescales, we decided to set ourselves the target of completing the case handling procedure within a maximum timeframe of 13 weeks. It should be said that this timescale starts on the day we receive the consumer's letter, and before it has even been analysed... Moreover, we decided not to reduce the recommendations verification and validation timescales (three levels, three weeks maximum), in order to maintain quality. We do not perceive mediation as a form of cut-price justice, and we owe it to the consumer to conduct high quality technical and legal investigations," states Guillaume Girot, head of the recommendations department. The other case managers focus on pending disputes, and prioritise them in relation to their characteristics and the consumer's situation. In fact, we always contact the customer to reassure them that, despite the delay, their case is being reviewed. The ombudsman has set itself the target of achieving a major reduction in its pending dossier backlog by the end of 2012. These initiatives have improved productivity within the ombudsman's departments, although scope remains for further improvement. The current budget austerity climate that doubtless will be with us for several years to come, forces the institution to take initiatives to cope with any increase in referrals with its current level of human resources. This is the aim of the planned launch of an online dispute resolution process that is on the drawing board for 2012. ■

Concrete example

Amicable agreement process in practice

Following an underestimate of his gas consumption, Mr L. received a large bill for arrears of 1,946 euros. As he was unable to pay the entire amount, the operator cut off the gas supply to this resident of Enghien-les-Bains (95). The ombudsman handled his dispute via the amicable agreement procedure. After analysing the situation, the ombudsman considered that the disputed bill was valid as it related to a straightforward back-billing procedure. However, the ombudsman also observed that the accumulation of this considerable amount of arrears was actually caused by an anomaly, insofar as GrDF had ignored a meter reading taken one year earlier, and replaced it by a fanciful, and considerably underestimated, consumption value. The ombudsman's case manager, Yann Morin, sent an e-mail to the DSO to propose the following amicable agreement: 200 euros in compensation for the inconvenience suffered by Mr. L. (gas supply cut off, unexpected expenditure that affected his cash flow). In return, the DSO made the point that a reading to correct some of the underestimated consumption had been taken a few months after the event, but this had been ignored by the supplier, GDF SUEZ. With the acknowledgement of partial responsibility on the part of the DSO, an agreement was finally reached on 100 euros of compensation to be paid by GrDF. For its part, GDF SUEZ agreed to pay 100 euros for failing to take account of the reading forwarded in the interim, and for the unsatisfactory manner in which it handled the complaint. As for Mr. L., he agreed to this proposed compensation. These various exchanges, under the aegis of the ombudsman's staff, enabled this dispute to be resolved to the satisfaction of all three stakeholders.

➔ “SECOND CHANCE” OPERATION AND THE AMICABLE AGREEMENT PROCESS AS SEEN BY...

Viewpoint of Alain Roberton,
Head of consumer relations at GrDF.



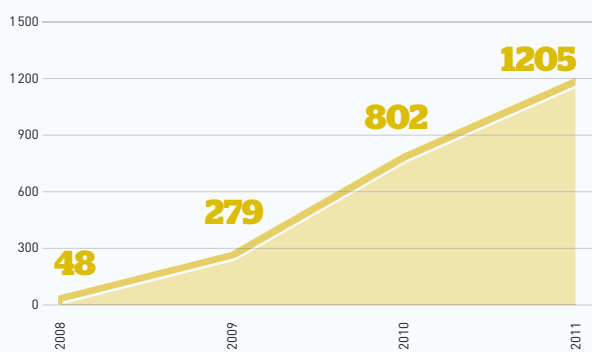
**ALAIN
ROBERTON**

We are all in favour of the “second chance” and amicable agreement systems because, when they succeed, they contribute added value to the overall dispute resolution activity, both for the client, who obtains a rapid and final response, and for the operator who appreciates the lower level of red tape and therefore the lower cost of handling dossiers. Both

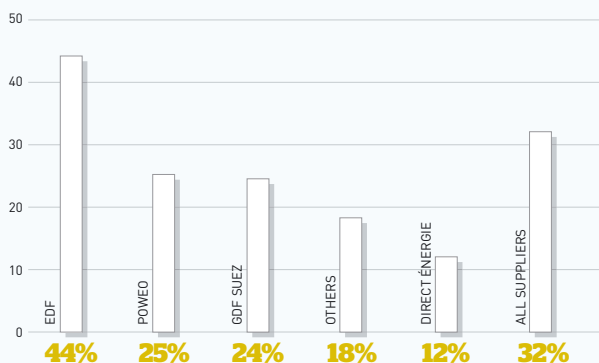
these processes provide for more dialogue between the ombudsman and our departments and lead to more consensual outcomes. Moreover, the ombudsman gains a better understanding of our position or our difficulties in settling a dispute, and this is helpful for handling similar cases in future. We also gain a better understanding of the ombudsman’s approach to problems, which leads to a

clearer understanding for us of its recommendations. However, when the consumer is not satisfied by the proposed solution and confirms his or her appeal, handling times become longer and the productivity gains are wiped out. We now need to find ways of making the “second chance” scheme and the amicable agreement process even more efficient in order to establish their legitimacy.

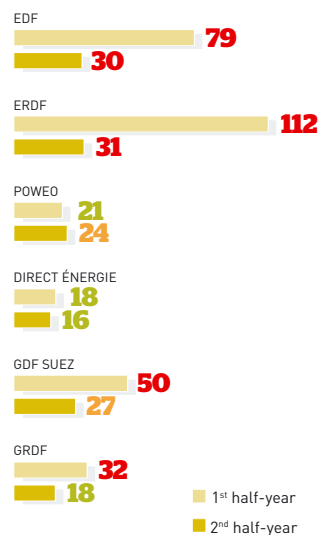
Annual number of recommendations issued



Levels of lack of response from suppliers in the “second chance” process (in 2011)



Operators’ average response time to requests for observations in 2011



➔ 21 days

Regulatory response deadline set for the ombudsman.

INTERNET TO THE RESCUE OF DISPUTE RESOLUTION

In 2012, the ombudsman plans to introduce an online dispute settlement system as a complement to the current appeal referral procedures. Explanations from Marie-Françoise Le Tallec, the ombudsman's advisor, and an expert member of the French delegation to the United Nations Commission on International Trade Law (UNCITRAL). As the former secretary general of the forum on Internet rights, and head of its mediation service, she already has several years' experience with this innovative tool.

How does the online dispute resolution system operate?

Marie-Françoise Le Tallec: It is a question of taking advantage of new technologies to make dispute handling easier in both qualitative and quantitative terms. The idea is to hold a dialogue between consumers and operators under the aegis of a third party, namely the ombudsman, and by way of the Internet. The first phase consists of registering the dissatisfied client's appeal. This can be done via e-mail, as well as by letter or fax. In this event, the documents are then digitised. At this stage, the consumer will be asked to provide a lot of information so that the ombudsman's staff can gain a full understanding of all aspects of the dispute. Then, from their workstations, case managers forward the dossier to the operator concerned. From this moment on, no particular course of action is imposed on the parties: either they enter into a dialogue via the digital platform and arrive at a compromise, or become entrenched in their positions and no progress is made with the appeal. In this event, the ombudsman intervenes to smooth things over and suggests avenues for arriving at a solution. The ombudsman then actually finalises the formal agreement and monitors its application.

What is the benefit of online mediation?

M.-F. Le T.: It is a dynamic tool which makes the parties in the dispute assume their responsibilities. Consumers can take charge of their dossiers and manage them remotely. If they provide further justification for their case, a warning message alerts the ombudsman's case manager of the development. When the case manager observes that nothing has happened for a few days, he or she sends out chase-up e-mails. In this way, the dossier always remains live. Use of computing does not introduce any further notion of remoteness and, on the



**MARIE-FRANÇOISE
LE TALLEC**

➤ **“Computing offers continuous case monitoring which reassures consumers.”**

contrary, it enables continuous monitoring which reassures consumers that their complaints are not lying dormant in a corner. Moreover, it also provides for faster dialogue which is unachievable by sending letters. In the light of my experience, some mediation procedures have been successfully completed within a few hours. Furthermore, this online dispute settlement system corresponds to our citizens' expectations as they are increasingly connected to the web, not only via their computers but also via their smartphones, and this includes senior citizens who have mastered computing and the Internet more recently...

What can this system provide for the energy ombudsman?

M.-F. Le T.: It will serve as a way of coping with the foreseeable rise in its activity, without increasing its workforce. In particular, the use of this system will expand when the details of the service are included on all gas and electricity bills, which will become a requirement when the “Billing” decree presently being drafted comes into effect. Furthermore, this way of resolving disputes online is arousing major interest at worldwide level. The United Nations Commission on International Trade Law (UNCITRAL) plans to adopt rules on the matter which will stipulate operating standards. For its part, the European Union is also working on draft regulations which should be adopted by the end of 2012. By experimenting with this efficient and modern way of handling disputes, the national energy ombudsman is actively and enthusiastically following European Community and international developments and aims to be a ground-breaking player in this area. ■



EUROPE STRENGTHENS THE ROLE OF INDEPENDENT MEDIATION

To provide stronger consumer protection, the European Union intends developing extra-judicial means of resolving disputes by laying down a few unequivocal principles. In this area, the energy sector already has a head start in terms of amicable dispute resolution processes, for which the rules were restated when the ombudsman participated in the London Forum in October 2011.

The European Parliament and Council Consumer Rights draft directive issued in November 2011 covers procedures for alternative dispute resolution for consumer disputes. It should stimulate the development of mediation on the Old Continent. The text lays down several principles to ensure proper operation of mediation bodies, such as those of impartiality, effectiveness and fairness, in order to increase both consumer and business confidence in these alternatives to placing disputes before the courts. The proposals call for disputes to be settled within 90 days, and for access to the mediation process to be either free of charge or cost very little for private individuals. Moreover, the text stipulates that the people running such systems must possess the “necessary skills”, and be impartial. To fulfil the latter requirement, they must not have “any conflict of interest with either party to the dispute”. According to the national energy ombudsman, these European guidelines represent a major step towards genuine independent and transparent mediation and serve to reinforce the French institution’s status. In France, with regard to the energy market, the legislators have already introduced a practice which should become the norm in terms of alternative dispute settlement in all consumer sectors open to competition in Europe.

Varying situations

For Professor Christopher Hodges, in charge of a research programme into civil law systems at the Centre for Socio-Legal Studies at Oxford University, and the author of “Consumer Alternative dispute resolution in Europe”*, Europe is embarking on a daring initiative with the creation

of a global system to benefit all consumers within the Union, as the current situation varies greatly from one country to the next: *“Northern member States are equipped with good and very comprehensive structures capable of taking charge of any dispute whatsoever between consumers and businesses. Great Britain has created mediation services independent of business players in several sectors. This situation is less advanced in Germany and even less advanced in France. Several reasons argue in favour of amicable dispute resolution bodies, when they are properly conceived and operate effectively, as opposed to legal action: speed, lower costs and useful information feedback for suppliers, consumers and regulators. Companies that argue against such procedures run the risk of having to face class actions.”*

Ombudsman active in European dialogue

The national energy ombudsman is actively involved in the European dialogue on alternative dispute resolution within the energy sector, and has participated in the working group set up by the Commission’s Directorate general for health and consumers and the Directorate general for energy. This working group has been tasked with identifying good mediation practices. It presented its report at the 4th edition of the Citizens’ Energy Forum held in London in October which brought together representatives of the European Commission and member States, regulators, consumer associations and industry players. In particular, this report comments on the role of companies’ in-house mediation systems as additions to customer complaints departments. It reveals that the latter

* Consumer ADR in Europe, Christopher Hodges, Iris Benöhr, Naomi Creutzfeldt-Banda, Oxford Hart Publishing 2012



do not comply with the directives of the third energy package which calls on member States to deploy independent mechanisms to make it easier to handle and resolve disputes amicably.

Corporate mediation under question

At the London Forum, the majority of participants, including consumer associations and regulators, agreed on the fact that a corporate ombudsman cannot be considered as a genuine alternative dispute resolution service. The report also highlights that, over and above the principle of independence, a mediation service at national level is a guarantee of equal treatment for all energy consumers. For Christopher Hodges, the presence of corporate ombudsmen in France, just as in other States, maintains confusion in people's minds: *"This confusion is prejudicial to all, to consumers, businesses and the market. In a few countries, a clear model is appearing based on the belief that the customer relationship process set up by businesses must not be too complicated, but should remain the first step in handling complaints. If the dispute is not resolved within a short timeframe, the consumer should be able to refer the case exclusively to an external mediation body, whose decisions are legally enforceable on sector*

players". As part of the moves to clarify alternative dispute resolution mechanisms, the draft European directive excludes systems with staff *"employed exclusively by businesses"* from its scope of application.

Energy tariff transparency

The French energy ombudsman continues to collaborate closely with the European authorities in their work to improve market operation. It is associated with the working group set up by the Directorate general for health and consumers and the Directorate general for energy to provide straightforward and transparent tariffs in the energy sector. This working party held its first meeting in December 2011. *"Energy market deregulation should lead to competitive prices as a result of competition,"* comments Monique Goyens, director general of the European consumers' association (Bureau européen des unions de consommateurs - BEUC). *"However, prices are skyrocketing and consumers are struggling to find their way through the tariff jungle"*. At the next London Forum, the working group will propose recommendations which should be included in a future directive.

Online dispute resolution, a flagship project for Europe

To boost consumer confidence in cross-border e-commerce, the European Union wants to set up an "online dispute settlement platform". The regulations proposed by the European Parliament and the Council that were published in November 2011, aim to lay the groundwork for a free-of-charge, interactive Internet site accessible in all languages. It would be a point of contact for all consumers and businesses wishing to achieve amicable settlements for disputes arising from online trade transactions in all business sectors, without recourse to the judicial system. Interested parties will be able to lodge their complaint via an online form which, after having been checked for admissibility, will be registered by the European Commission and forwarded to the mediation bodies with jurisdiction in each member State. These bodies will then have a period of one month to resolve the dispute.

Major challenge

The national energy ombudsman is keenly interested in this complex project as it intends developing an online dispute settlement system in France in 2012 as an addition to its current appeal referral service (See the section: Deciphering developments). The European proposal is scheduled for adoption in 2012 and will lay down technical and operating standards applicable in member States in a few years' time. This online venture represents a major challenge for the institution which will be actively involved in exchanges with Brussels based on its experience. ■

Outlook



Birth of a European energy ombudsmen Network.

The creation of a national energy ombudsman network, known as NEON, was announced at the Citizens' Energy Forum held in London in October 2011. It already regroups the mediation services of three countries, namely France, Belgium and Great Britain and will welcome any structure that shares the same values of independence vis-à-vis sector industries as a guarantee of impartiality, transparent operation and funding, and effectiveness. Network members are committed to the objectives of promoting alternative dispute resolution in line with European directives, contributing to improving complaints handling and facilitating dialogue and exchanges on good practices between members.

➤ ALTERNATIVE DISPUTE RESOLUTION AS SEEN BY...

Viewpoint of Monique Goyens, director general of the European Consumers' Association (BEUC)



**MONIQUE
GOYENS**

In Europe, the energy sector, along with the banking and telecoms sectors, leads the field in the terms of complaints about services. The energy sector is also the source of the highest level of consumer dissatisfaction over the ways in which their complaints are handled. Certainly, the directives of the third energy package include provisions aimed at improving the situation by way of creating independent mediation bodies to settle disputes between citizens

and electricity and gas suppliers. Be that as it may, these provisions have yet to be transposed into national law in 18 countries. We are eagerly awaiting, and are going to lend our full support to, the draft directive on extrajudicial consumer dispute settlement in Europe, despite a few criticisms of the text. In fact, the word "independence" which appeared in the first version has been removed and replaced by... "impartiality", although at this juncture the text explicitly

excludes internal corporate dispute settlement structures. Moreover, the draft directive is not sufficiently precise with regard to mandatory application of the recommendations on the part of businesses. We feel that mediation should not be used as a dilatory measure to defer recourse to a Judge, by counting on consumer lassitude.

➤ 3 QUESTIONS TO...

Lord John Mogg, Chairman of Ofgem and the Council of European Energy Regulators (CEER)



**JOHN
MOGG**

Every year you host the Citizens' Energy Forum in London. In a market open to competition, how do you take account of the need to protect energy consumers?

There are many ways of protecting consumers in a competitive market. At Ofgem, we ensure that suppliers abide by supply authorisation conditions, and notably with our specific requirements on the procedures to be followed before cutting off electricity and gas supplies as a result of unpaid bills. We have also put forward concrete measures in our latest Retail Market Review initiative in order to guarantee price transparency and encourage consumers to switch suppliers. This is an issue of growing concern both for us and the European Commission. The London Forum is a venue for debate where national energy regulators, European Union member countries and consumer

associations, under the aegis of the European Commission, exchange their views on questions relating to active consumer involvement in the energy market.

Ofgem has striven to strengthen the British ombudsman's independence. In what way is this independence a fundamental aspect of a well-functioning energy market?

Independence is a basic condition needed for consumers to have a trusting relationship with their supplier. This means that the dispute resolution system, approved by the regulator, must be deemed independent by the parties to the dispute, i.e. by both customers and energy suppliers. However, the notion of independence does not prevent the system from being funded by one of the parties, but such an arrangement implies necessary and adequate guarantees to ensure impartiality.

Energy poverty is growing in France. What is the situation at the European level? What possible initiatives could be deployed to curb energy poverty?

The third energy package introduced an obligation for member States to take appropriate measures to combat energy poverty, such as formulating national energy action plans. We should realise that in many countries, energy poverty falls within the remit of the Minister of Energy, rather than the regulator. Accordingly, the regulator is there to support government action. Measures focused on improving housing energy performance, or banning the interruption of supplies to vulnerable clients at critical times, can contribute to the

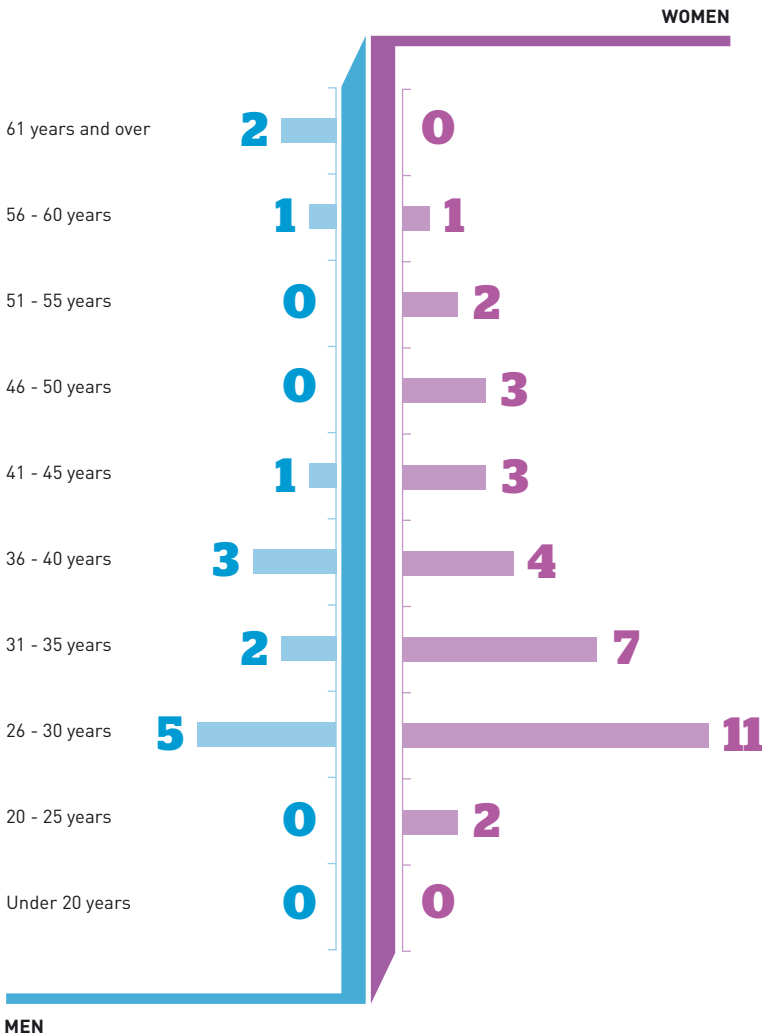
fight against this unfortunately growing phenomenon. The use of smart meters should also contribute to better household energy consumption and budget control. Taking account of vulnerable consumers' situations must not be an obstacle to the effective opening of the electricity and gas markets.



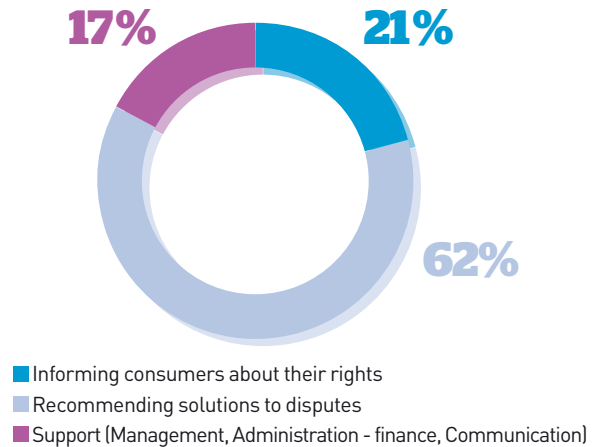
SOCIAL INDICATORS

The continuous vocational training budget for the ombudsman's staff represents 3.79% of our total personnel costs. This expenditure is aimed at improving our level of energy sector technical and legal skills.

National energy ombudsman



Staff breakdown by mission



36 years
average age of
ombudsman staff

47
number of staff
at December 31st 2011

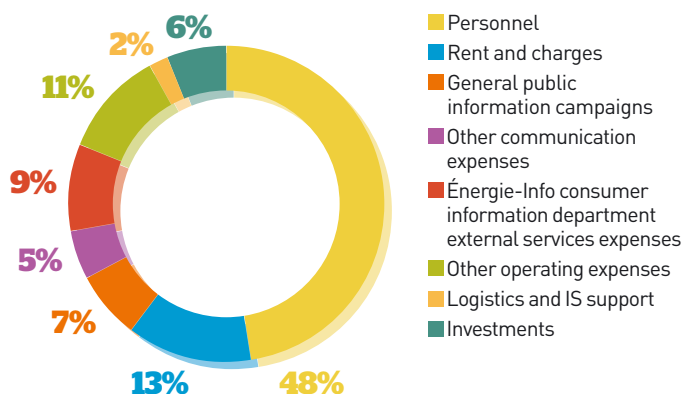
46
authorised number
of full-time staff in 2011

43.2
actual number of full-time
staff employed in 2011

FINANCIAL REPORT

Tighter operating expense control in an increasingly strict budget climate has enabled us to meet the obligations of the 2011-2013 framework budget for all government entities.

Actual itemised budget breakdown



Public contracts in 2011*

1,410 K€

Spending via contracts

64.2%

Share of contracts in total expenditure (excluding personnel expenses)

* All expenditure not covered by a contract is subject to competitive bidding from the 1st euro.

2010

2011

	Forecast budget	Actual budget	% performance	Forecast budget	Actual budget	% performance
TOTAL	€ 6,725,000	€ 6,714,363	100%	€ 6,620,000	€ 6,337,326	96%
PERSONNEL	€ 2,795,000	€ 2,725,394	98%	€ 3,035,000	€ 2,876,316	95%
Operating expenses excluding personnel	€ 3,510,000	€ 3,506,618	100%	€ 3,335,000	€ 3,119,157	94%
Including: Rents and charges	€ 740,000	€ 758,267	102%	€ 796,000	€ 816,284	103%
General public information campaigns	€ 1,000,000	€ 947,195	95%	€ 500,000	€ 414,658	83%
Other communication expenses	€ 400,000	€ 261,897	65%	€ 350,000	€ 292,748	84%
Énergie-Info consumer information department external services expenses	€ 900,000	€ 916,733	102%	€ 850,000	€ 823,843	97%
Other operating expenses	€ 406,557	€ 559,083	138%	€ 732,933	€ 665,558	91%
Logistics and IS support	€ 63,443	€ 63,443	100%	€ 106,067	€ 106,067	100%
INVESTMENT	€ 420,00	€ 482,351	115%	€ 250,000	€ 341,853	137%

HOW TO APPEAL TO THE OMBUDSMAN?

Any private or business consumer⁽¹⁾ can refer their case to the national energy ombudsman free-of-charge. Before submitting a case, the consumer must send a prior written complaint to the supplier, ideally via registered letter with acknowledgement of receipt. If no satisfactory reply has been obtained within two months of the supplier receiving the complaint, or in the event of no reply whatsoever, the consumer has two months to submit the dispute to the ombudsman. The dossier must include all the items needed for it to be reviewed (copies of letters exchanged, bills, the contract, justification of costs incurred...), as well as the ombudsman appeal form which can be downloaded from the www.energie-mediateur.fr Internet site or sent out on request by calling the free-phone number 0 800 112 212. The case file should then be sent without a stamp to the following address:

MÉDIATEUR NATIONAL DE L'ÉNERGIE
Libre réponse n° 59252
75443 Paris Cedex 09

You can also appeal to the ombudsman online:
www.energie-mediateur.fr

**TO FIND OUT EVERYTHING ABOUT PROCEDURES
AND YOUR RIGHTS:**

www.energie-info.fr

 **N° Vert** **0 800 112 212**

APPEL GRATUIT DEPUIS UN POSTE FIXE

(1) Business consumer signing up for electricity capacity equal to or less than 36 kilovolt Amps, or consuming less than 30 000 kilowatt hours of natural gas per annum.



Informer, conseiller, protéger