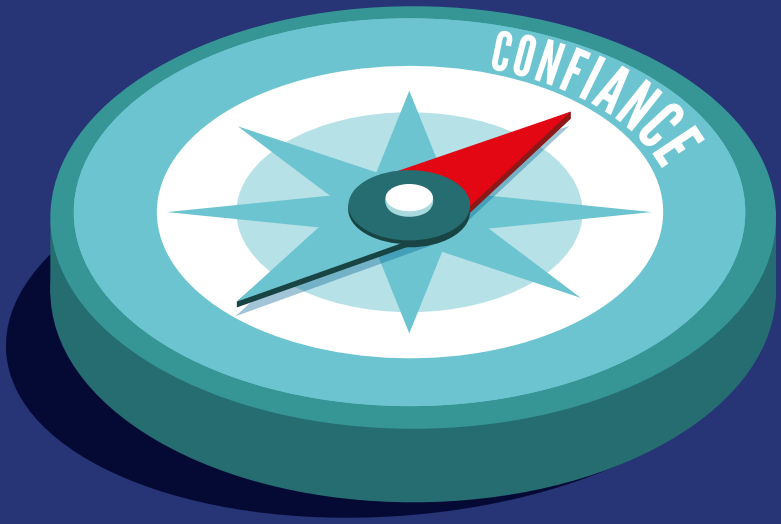
The National Energy Ombudsman

ACTIVITY REPORT 2020



RÉPUBLIQUE FRANÇAISE
Liberté
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Le médiateur national de l'énergie

The médiateur national de l'énergie *(national energy ombudsman)* is an independent public body created by the law of December 7 2006 relating to the energy sector, in the context of the opening of natural gas and electricity markets to competition. Its two legal missions are to participate in informing consumers about their rights and to propose solutions to disputes.

Le médiateur
national
de l'énergie

ACTIVITY REPORT 2020

THE EDITORIAL

by Olivier CHALLAN BELVAL

2020 will have a long-lasting impact on the minds of everyone because of the health crisis that has struck the world, and I want to express my deepest gratitude to our teams, who have adapted to this exceptional situation. The confinement of spring 2020 has pushed them to instantly switch to teleworking, which has proven to be a small revolution! They fulfilled their mission of public service with great commitment, working from home to help consumers assert their rights. This is an undeniable success for our institution!

However, the specificities of 2020, detailed within this activity report, did not facilitate the mediation process. The indicators of the national energy ombudsman reveal yet again a significant increase in the disputes we have processed, by almost 20% in a year.

And this has occurred after a 35% increase in 2019, and 16% in 2018! This year, we produced 7,681 recommendations and amicable agreements. This is more than last year (6,784 recommendations and amicable agreements), and as a consequence to this rise of referred files, the processing times for disputes have inexorably grown.

Half the disputes we have processed through mediation concern issues linked to the billing of energy consumption. This is hardly understandable because suppliers have two months at their disposal before a consumer may appeal for my help! Suppliers and distribution network managers must commit to organizing customer departments with a true capacity to solve promptly the issues experienced by their customers. Yet, it is clear that most of the times this is not the case!

Within the context of intensification of the opening up of energy markets, within which exists the requirement of increasing consumer trust toward its main actors, my suggestion in this report is to take the initiative of creating a label based on a quality frame of reference for their customer services, which would be granted on the basis of objective, clear and comprehensive criteria, with the satisfaction of such criteria being subject to an independent and external monitoring.

This year, I have chosen to formulate my annual report around the theme of trust. Indeed, I consider consumer trust as being one of the key conditions for energy markets as they continue to open up to competition. The participants of these markets are the first concerned and they must fully commit to preserve this trust, when they propose offers to a potential customer, at the moment of signing a contract or during the implementation of a contract when energy is supplied to consumers… and even, or maybe above all, when an issue occurs.

Trust presupposes that a supplier is respectful of its customer. It has a moral duty, including when this is not expressly set by law, to be reliable, fair, and attentive. And because it knows the underlying mechanisms, of the energy supply far better than consumers, it must also provide sound advice.

Successfully opening the gas and electricity markets to competition cannot be achieved by dismissing a high level of trust. This is another asset that suppliers must maintain if they want to obtain customer loyalty.

Not complying with the existing rules and procedures too often results in these disputes being referred to me. In this report, I keep on identifying market actors that treat their customers unfairly, and which I consider to be demonstrating unacceptable behaviours.

This year, the red flag goes to TOTAL DIRECT ENERGIE. Far too many disputes have been referred to me concerning this company, a large number of which could have, and should have, been processed by its complaints department, but it is obviously overwhelmed! Very often, this supplier was incapable of implementing my recommendations, even though it had acknowledged them, including some cases where they only needed to pay 50 or 100 Euros to the consumer for the inconvenience they underwent due to the company's inability to cope with the problem!

I am also still worried by bad solicitation practices, which have continued despite the health crisis. This year, I have even been led to report to the competent public prosecutor, based on article 40 of the code of criminal procedure, **the wrongful acts referred to me that were committed by a solicitor for the benefit of the supplier ENI.**

This mission, which is fully mine, allows me to observe how energy markets operate, and to foresee potential future issues. Last year, I formulated ten proposals, with a view of avoiding some recurring issues, such as for instance the ones due to solicitation. I will renew those this year and shall also outline a few others.

Until they are implemented, the national energy ombudsman, a neutral and independent body, remains the unwavering defender of consumers. It has the duty of answering all their questions about their energy supply, and of helping them solve the issues they meet so their rights are asserted.

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TRUST IS ESSENTIAL

TO THE SUCCESSFUL OPENING OF ENERGY MARKETS TO COMPETITION

Witnessing this year yet another significant increase in the number of disputes referred to him, the national energy ombudsman wishes to pay particular attention to the quality of the contractual relationships between consumers and the companies of the energy sector, which must exercise trust and fairness.

Within any business relationship, trust and fairness are indeed determining factors that guarantee that contractual relationships are of high quality.

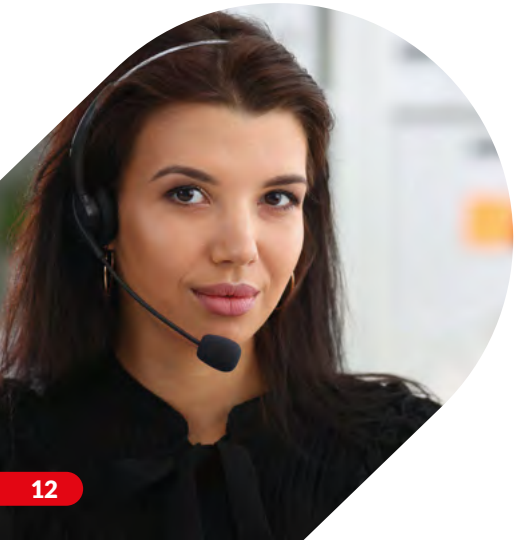
Yet, in the field of the gas and electricity supply, the national energy ombudsman observes that there are still many cases where consumer trust has been broken, notably because some operators do not comply with their legal or regulatory obligations. In the context of opening these markets to competition, such practices are worrying, and the sector operators must mobilize to avoid increasing mistrust, which is a situation that exists for some of our citizens, who do not hesitate to voice their opinions.

01 SUBSCRIBING TO A CONTRACT MUST BE DONE IN TRUST

When a consumer subscribes to a contract of electricity or gas supply, suppliers have a duty of advice and of transparency of information. These qualities are paramount to earn consumer trust.

SOLICITATION, A PRACTICE THAT REMAINS A CAUSE OF SERIOUS ISSUES

Since 2007, a number of electricity and gas suppliers have been increasingly resorting to using solicitation, either with phone calls or via home visits The suppliers concerned explained themselves, stating that using solicitation was justified by their need to « grab customers » in order to build up a customer base within an energy market that struggles to open itself… Little by little, they have diversified their solicitation methods, either with their own employed teams, or –most frequently – by resorting to using service providers or business partners.



Insistent phone calls, unannounced house visits, insidious speeches, biased, or even misleading, information: **the cases where solicitors deceive consumers are unfortunately far too many.** The departments of the national energy ombudsman sometimes even witness practices that are genuinely fraudulent, e.g. when the solicitor pretends to be someone he/she is not, lies about the truthfulness of the offer made, falsifies a contract or forges the signature of a consumer.

Such wrongdoings are shocking, especially in cases where the suppliers « benefitting » from the solicitation do not act immediately to restore the previous situation, and where consumers are being pushed to call on the services of the national energy ombudsman. This illustrates that **a few suppliers, acting in bad faith, try to benefit from the situation by remaining passive and keeping the customer in their portfolio!** These practices gravely damage the outlook of opening the energy markets to competition. They dismiss consumer rights and compromise the trust that these consumers may have in the market.

In February 2020, the national energy ombudsman strongly denounced these practices and, for lack of simply and purely prohibiting such practices, proposed four measures to provide a very strict framework to solicitation practices **(see Proposal n° 1 p.13).** These proposals, resumed in his 2019 activity report, have inspired a parliamentary effort that led to the submission of the law proposal n° 3691 to the National Assembly on December 14 2020. This proposal, *« aiming at providing a framework to commercial solicitations for gas or electricity supply »* was signed by seven members of parliament.

> *If the energy suppliers do not improve their solicitation practices, we will easily convince the legislator to legally compel them to do so.*
>
> Olivier CHALLAN BELVAL

It is not yet on the parliamentary agenda, but it sends a strong warning to suppliers, demanding that they bring ethics and regulations to their practices, with sanctions in the event of non-compliance. « *I fulfill my duty of consumer protection when I propose solutions to terminate serious misconducts. If the actors of the energy market do not solve these issues themselves, then we will easily convince the legislator to legally compel them to do so*», states Olivier CHALLAN BELVAL, national energy ombudsman.

PROPOSAL n° 1

PROVIDE A STRICT FRAMEWORK FOR THE COMMERCIAL SOLICITATION OF ENERGY SUPPLY

For lack of purely prohibiting solicitation, the national energy ombudsman proposes:

• To prohibit the signing of any sort of commitment by consumers at the actual location of solicitation, in order to leave consumers a few days so that they have time to think, calmly collect information, and compare offers.

• To prohibit the implementation of a new contract of energy supply before the withdrawal period of 14 days set by the consumption code has expired, unless the case is exceptional and strictly defined (notably, when consumers move into a new home).

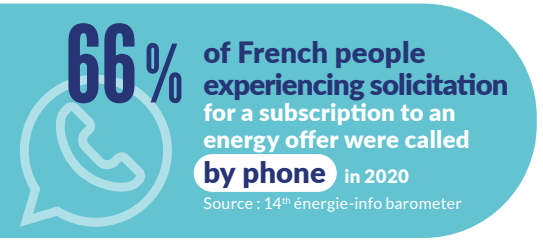
• To allow the pure and simple cancellation of a new contract of energy supply if these rules have not been complied with, and the automatic reinstatement of the previous contract.

• To reinforce the relevant applicable sanctions in case of repeated offenses, notably the administrative ones, and to plan for the removal of the authorization of energy supply for the suppliers concerned.

The possibility of suspending or removing the authorization of supply on these grounds was introduced by decree n° 2021-273 of March 11 2021 relative to the supply of electricity and natural gas.

Solicitation by phone grows, and annoys consumers a lot

The principle, constantly recalled by European directives, is that opening up the energy markets to competition must be carried out « *to the benefit of consumers* ». Practices of abusive solicitation jeopardize this objective, and consumers experiencing such misleading and dishonest practices will unfailingly be scared and lose their trust in the process. They will no longer wish to change their gas or electricity supplier, and will wait until the last minute to subscribe to a market offer, when market offers from their historical provider will no longer be available!



According to the 14th énergie-info barometer of 2020 of the national energy ombudsman, 73% of French people think that opening up energy supply to competition is a good thing. Half of them experienced solicitation in which suppliers attempted to make them subscribe to an energy offer.

The Covid-19 health crisis has changed the commercial strategy of suppliers. During the first confinement of spring 2020, home solicitation stopped, and was replaced by commercial phone calls. The 14th énergie-info barometer of 2020 thus reveals that, by virtue of being at home more, French people were more available to answer their landlines or cellular phones, which have rung a lot for solicitation… 66% of solicited people received commercial phone calls in 2020, compared to 59% in 2019. « *This switch to commercial phone calls also generates disputes. In particular, we have observed numerous cases in which consumers, encouraged by sales representatives, waive their right to a withdrawal period. Yet, such a waiver should only occur within exceptional circumstances, mainly when consumers move into a new home. And when the withdrawal period legitimately requested by a consumer is not implemented by the supplier, the national energy ombudsman obtains the contract cancellation and the reimbursement of consumption. It is unacceptable to process such disputes due to abusive solicitation in mediation, because they should be addressed by the strict application of consumer rights* », explains Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department.

Improvements are too slow and insufficient

The alert raised in 2020 by the national energy ombudsman has increased awareness, and some suppliers have engaged in a change of practices. For instance, the supplier ENGIE exercised strong-willed policies and renegotiated the contracts binding it to its home solicitation providers. Notably, it introduced a proportion of set wages into the salary of sales representatives, reinforced the criteria of quality and strengthened the sanctions that can be contractually applied in cases of non-compliance.

In addition, the supplier TOTAL DIRECT ENERGIE announced for its part that it had ceased using home solicitation for its individual clients. However, it maintained, and probably expanded, the use of phone calls, a practice that is easier to regulate because phone calls can be recorded.

Finally, the supplier ENI, which was often mentioned in the national energy ombudsman's 2019 activity report, announced it had reviewed the contracts made with solicitation providers, and had put the accreditation of some of them under review. However, cases of abusive solicitations from the supplier ENI continue to be referred to the national energy ombudsman. **Throughout 2020, the newspaper *Le Monde* published a thorough report, written on the basis of recordings found on the internet, about the practices of phone solicitation of a call-centre provider, mainly for the benefit of the supplier ENI.** Besides the concern raised from this news about private data protection, the analysis of the recordings clearly reveals that a clever and deceptive method is implemented for the proposed offers, which sometimes prove more costly than the ones to which the consumers are already subscribed.

For example, the sales representative artificially reduces the amount of monthly bills and thus misleads consumers with « savings » of up to 30 % of their annual bill. It is only when the bill is re-adjusted at the end of the year that the consumer realizes he/she had been deceived.

Some of these suppliers, notably new market entrants such as OHM ENERGIE and IBERDROLA, have started using home solicitation. This is also the case of the supplier SOWEE, a subsidiary of the EDF group, which must ensure that it does not maintain any confusion with the supplier EDF by, for instance, impersonating its sales representatives coming to adjust the current contract or to avoid price increases…

The Union française de l'électricité (UFE, French Union for Electricity), with its members being notably the electricity suppliers, also wishes to « clean-up » these commercial practices, particularly regarding « *any abusive solicitation that may prejudice the whole sector* », as its president had recalled it in the 2019 yearly report of the national energy ombudsman. As of now, the drafting of the envisioned charter has not yet been achieved, as no agreement can be found on a monitoring and sanctioning system that is both realistic and truly a deterrent.

When it was auditioned by the workgroup in charge of drafting this charter, the national energy ombudsman had clearly stated that **no efficient and realistic solution could bring an end to the abuses of solicitation as long as there was no transparent, public and independent system implemented to monitor and sanction the signatories of the charter…**

The results of these too few and too slow actions carried out to improve the situation are worrying: **the number of disputes received by the national energy ombudsman concerning commercial practices has grown yet again**: from 1,883 in 2019 to 2,132 in 2020. Many of these disputes do not meet the receivability criteria that would allow them to be solved through mediation, but this increase proves that the issue lingers. It is even highly probable that the figure does not measure the true extent of the phenomenon, since many consumers do not know, do not wish or do not dare call on the national energy ombudsman to solve a dispute involving commercial practices. Thus, they give up, and eventually stay with their supplier, or switch to another company, without disputing the situation any further. « *The national energy ombudsman also systematically warns the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF, Directorate-General for Competition, Consumer Affairs and Prevention of Fraud) about deceptive or fraudulent practices. Unfortunately, the red line is still crossed too often. When will an electroshock occur to terminate these bad practices, which damage the image and proper functioning of the market?* », asks Frédérique FERIAUD, managing director.

FOCUS

THE NATIONAL ENERGY OMBUDSMAN REPORTS FRAUDULENT SOLICITATION PRACTICES CARRIED OUT FOR THE BENEFIT OF THE SUPPLIER ENI TO THE PUBLIC PROSECUTOR

The national energy ombudsman is committed to fight in every way possible the aggressive solicitation practices, carried out most often at the expense of the most vulnerable consumers. **He has decided that from now on, when fraudulent acts are recorded during solicitation that he will systematically report those to the competent public prosecutor, under article 40 of the code of criminal procedure.** This is precisely what he did with the public prosecutor of the judicial tribunal of Carcassonne regarding **a fraudulent solicitation carried out for the benefit of the supplier ENI.**

Indeed, this supplier had activated a contract of gas supply for the house of a 98 year-old person, even though this person had not lived there for three years. This supply contract had been obviously forged: it had been established by the company ENI under the person's maiden name, with a fake cellular phone number and a fake email address.

The supplier ENI should have noticed the situation if it had carried out the few required verifications prior to activating a contract of energy supply set up after a solicitation. It should have been all the more cautious because the ombudsman had already alerted the CEO of ENI France about cases of fraudulent solicitation carried out by, or to the benefit of, the company he is in charge of. Furthermore, some commercial practices of the supplier ENI were also subject to sanctions, with the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF) sanctioning it in February 2020 with a fine amounting to 315,000 Euros for shortcomings to consumption code rules.

Besides, newspapers reported aggressive and fraudulent solicitation practices carried out by the company ENI, or by its providers (see: the article of *Le Monde* of 16 September 2020 titled « Démarchages sans scrupules dans l'énergie »).

Consumers are very often misled by sale representatives

In 2020, the supplier ENI remains top in the ranking concerning the number of received disputes due to commercial practices (39%), followed by ENGIE (22 %), TOTAL DIRECT ENERGIE (10 %) and IBERDROLA (9 %).

The departments of the national energy ombudsman processed through mediation 294 receivable disputes concerning the commercial practices of suppliers in 2020, compared with 231 in 2019. Even though this 27% increase may appear low in terms of the number of cases (+63 disputes), it is nonetheless a symptom of the recurring dysfunctional practices used by suppliers. Most of these disputes (65 %) are attributable to subscriptions contested by consumers.

Worryingly, this figure is likely to increase during the next few years because of the way suppliers present their offers. Unfortunately, it is increasingly commonplace that the information given to the customers is insufficiently clear and lacks transparency, eventually misleading the consumer.

Below are two examples relative to price transparency:

Offers called « with set price » are never truly so. Indeed, most often only the price of energy (taxes excluded) is set. The costs of subscription, taxes and even supply may change. For the same consumption from one year to the other, the billed amount may differ. Another formulation that may mislead consumers is found in offers with indexed prices. When a price reduction of 10%, compared to regulated tariffs, is advertised, it is only applied on the kilowatt-hour price (excluding taxes) and subscription. Eventually, the decrease on the bill only amounts to 6 to 7%. Sale representatives obviously exploit this ambiguity.

Here is an example of a deceptive presentation during solicitation: the sales representative asks the consumer about his/her monthly bills for energy consumption, and swears the new offer will significantly reduce monthly payments, sometimes up to 30%. Attracted by this prospect of savings, the consumer, trusting and unwary, promptly accepts the offer, and in the process often waives in the process his/her withdrawal rights. Yet, even if monthly bills are reduced, the true kWh price and home consumption will stay unchanged, which leads to a significant bill adjustment at year's end! « *Nonetheless, the supplier has at its disposal tools that can set a correct monthly amount, taking into account all home specificities (area, number and type of electrical appliances, heating mode, number of people, energy performance diagnosis, etc.). Furthermore, the approach toward customers must be fair, sincere and provide sound advice* », reminds Christian SOULETIE, head of the electricity division. It is therefore unacceptable that the information provided by the supplier can prejudice the consumer, who bases his/her decision on monthly amounts that were purposefully underestimated by the representative **(see Practical Case p.20)**.

> *Facing slick sales representatives feeding them with promises, customers are usually lost.*
>
> Article of Damien Leloup and Nabil Wakim in *Le Monde*, 16 September 2020

The national energy ombudsman says again and again that such practices are deceptive, harm the fairness of contractual relations, and damage consumer trust. Thus, he proposes that suppliers should take measures to improve the quality, clarity and reliability of their information when an offer is submitted to a customer. This is one of the key conditions of trust: the consumer must be able to take a decision knowingly and trustingly **(see Proposal n° 2 p.18)**.

PROPOSAL n° 2

IMPROVE THE QUALITY, CLARITY AND RELIABILITY OF INFORMATION GIVEN WHEN SUBSCRIBING TO A CONTRACT OF ENERGY SUPPLY

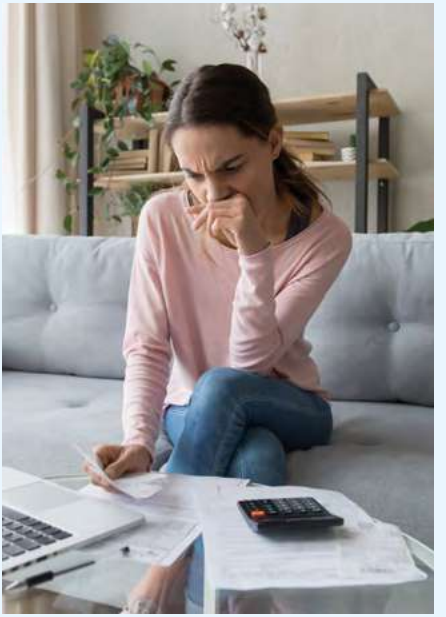
When a consumer, whether an individual or a small business, decides to switch suppliers, the offers of supply with which they are presented must be clear, comprehensive and fair. In that respect, the national energy ombudsman proposes:

• Similar to the reference yearly consumption of gas (CAR), regulatory change could define a provisional yearly consumption of electricity. This reference yearly consumption could allow for better identification and assessment of the needs of consumers and thus offer them an electricity supply contract that better meets their needs, with higher clarity and greater transparency. Without waiting for regulatory changes, good practices could be spontaneously implemented by suppliers in that they could voluntarily add an assessment of the customer's provisional consumption to their contracts and bills.

• That the supplier transmits to the consumer a document on which is displayed an assessment of the yearly bill, calculated on the basis of the reference yearly consumption, and taking into account the price of kWh (including taxes) and the subscription costs. The consumer would then have at his/her disposal key information to compare prices and make a well-informed decision.

• Akin to solicitation, that a clear and comprehensive document summarizing all the significant information relative to the contracting process (such as an assessment of the yearly bill, early termination fees for the ongoing contract, etc.) be given to the consumer by the supplier , and that a legal minimum delay of seven days be granted to the customer to let him/her think before signing a contract.

Indeed, it should be noted that the solicitation of small businesses may also have serious consequences. They may have to pay early termination fees to the previous supplier, but also to the new one with which they signed a contract, if they have to close their business prematurely, or if they retire one year after having subscribed to a contract binding them in for three years (see pp. 28-29 and Proposal n° 4 p.29).



PROPOSAL nº 3

REGULATE THE IMPLEMENTATION OF OFFERS WITH DYNAMIC PRICING TO PROTECT CONSUMERS

The national energy ombudsman asks that specific measures to protect individual and small business consumers should be considered, to avoid situations where consumers who are not experts, or who may be poorly informed or warned, end up with unplanned or excessive price increases.

At the very least, such offers should, when directed toward individuals or small businesses, include a ceiling price to avoid any unreasonable deviations to the electricity bill. The ombudsman also requests that such offers be strictly prohibited if the sale occurs through solicitation, whether at home or by phone call.

Indeed, and besides the risks of abusive solicitation described above, the small amount of time that sales representatives may use to provide explanations regarding the complexity of these offers, and the lack of consumer knowledge about market mechanics, could lead them to take further risks. Finally, a compulsory written declaration should be signed by consumers to indicate that they are aware of the risks associated with the offer, with the said risks explicitly mentioned in the document.

ONE SHOULD BEWARE OFFERS WITH DYNAMIC PRICING

The next few years will see the appearance of offers « with dynamic pricing », the presentation of which is set by European directive 2019/944 (article 11). This type of offer allows for indexing the energy price with the electricity exchange rates of wholesale markets. The goal is to present a price signal to consumers, which should encourage them to tailor their consumption to times when it is less expensive and less polluting, which eventually could lead to a consumption decrease during peak hours, where the energy consumption produces most CO2.

Such an objective should obviously be praised, since it will encourage consumers to reduce consumption during peak hours, and represents a true opportunity for savings.

However, the national energy ombudsman points out the risks induced by such offers for consumers unfamiliar with the mechanisms requiring them to pay attention to changes in the energy markets, and are likely to seriously increase their electricity bills after any steep increase of market prices.

The national energy ombudsman, noticing that the considered solution has notably the consequence of transferring energy supply costs from the supplier to the consumer, would rather have suppliers propose contracts with a system for load-management consumption, which would be simpler and safer, and would in that way encourage consumers to use energy at times when energy is less polluting and costly.

The national energy ombudsman alerts public authorities about the inherent risks of dynamic pricing offers, due to how complex they are for uninformed consumers to understand: « *These methods deceive customers into believing that market prices will decrease. But the truth is that individual and small business customers will be exposed to the volatility of wholesale markets, especially when those will increase! Risk management will thus be transferred from the supplier to consumers, even though they are not equipped to assess market dynamics. It is unlikely that such offers will bring any true benefit to consumers. Quite the opposite, they will be detrimental to them.*

What happened this winter in Texas (USA) should be pause for thoughts... Some conventional offers, such as peak hours/off-peak hours or load management offers already provide incentives to entice consumers to adjust consumption. We should focus on improving and developing them, or offers implementing load-management », notes Olivier CHALLAN BELVAL.

The ombudsman therefore requests public authorities to implement, jointly with the transposing of the directive, provisions protecting individual consumers and small businesses against the risks that such offers may entail, and especially since suppliers that already have more than 200,000 end customers will be required to present dynamic pricing offers from 2022 onward **(see Proposal n° 3 p.19).**

> *It is unlikely that such offers will bring any true benefit to consumers. Quite the opposite, they will be detrimental to them.*
>
> Olivier CHALLAN BELVAL

CAS CONCRET

MONTHLY AMOUNTS THAT WERE ARTIFICIALLY REDUCED DURING SOLICITATION

After a home solicitation in March 2018, Mrs F. subscribed to an offer of electricity supply with ENGIE. Her main incentive to switch suppliers was that the salesperson had guaranteed her a 30% decrease in her monthly payments, and therefore of her bills. The contract established an annual billing on the basis of monthly payments of 134 Euros, withdrawn from April 2018 to February 2019. This amount indeed represented a decrease of 30% compared to the monthly amounts she was paying to the previous supplier, but the reality was that the kilowatt-hour price was little different and nothing had changed in terms of her electricity consumption. Thus, when she received her yearly adjustment in March 2019, Mrs. F. discovered that she had to pay an additional sum of 633 Euros.

From April 2019 onward, ENGIE increased her monthly payment. Billing was however stopped because of unpaid bills, and then for unknown reasons was reinstated with reduced monthly amounts. A new adjustment followed, for a balance due of 920 Euros in February 2020. The national energy ombudsman concluded that all these anomalies originated from the deceptive commercial promises purposefully made by the salesperson, misleading Mrs. F. The ombudsman therefore asked the supplier ENGIE to compensate her with a total amount of 300 Euros, and to implement a payment plan to allow her to pay the balance due.

Recommendation n° D2020-11624

Please note: since this dispute originated from deceptive commercial practices for the benefit of ENGIE, the national energy ombudsman has reported this matter to the Direction départementale de protection des populations *(departmental director of population protection)* of the Hauts-de-Seine Department.

CONSUMERS MUST BEWARE « PRIVATE COMPARISON TOOLS OF ENERGY OFFERS », WHICH HAVE PRIMARILY A COMMERCIAL PURPOSE

With the opening of the energy markets to competition, individual consumers can henceforth choose between forty suppliers of gas and electricity. These suppliers propose numerous and diverse offers, and it is sometimes difficult to make a choice that corresponds well with consumption needs and habits.

For several years now, the national energy ombudsman has provided a price comparison tool, allowing consumers who intend to subscribe to an offer to find the most appropriate one, both independently and neutrally.

The law of November 8 2019 (article L.122-3 of the energy code) gave an official existence to this comparison tool, and a decree regulates its operations. This price comparison tool is free (it is financed by the budgetary allocations of the national energy ombudsman). All the existing offers are included, which allows for the identification of all those that exist for a given territory. It is the sole official public comparison tool, and it is independent, free and comprehensive. Completely rebuilt in 2020, it is now easier to use and has attained a greater level of performance **(see Focus p.22).**

Consumer associations have also developed price comparison tools, such as that of UFC-Que Choisir. By having no relations to referenced companies, monetary or otherwise, they benefit from the neutrality required with this type of tool.

Some suppliers of energy have also implemented price comparison tools. However, these are inherently incomplete, because they only allow comparison between offers from the same supplier. Nonetheless, they are undeniably useful because they allow a consumer to make a sound choice amongst the offers from a supplier that has already been chosen.

As for other competitive sectors (phone, insurance, travel, etc.) a certain number of comparison tools have seized the market, notably on the internet, such as SELECTRA, AFFICONSO, LE LYNX, CAPITAINE ENERGIE, HELLOWATT, LES FURETS, MEILLEUR TAUX, etc. Although these price comparison tools usually present themselves as being free and independent, they are not! **In fact, they are paid by the suppliers every time a contract is signed thanks to them**. Hence, the reality is that they are brokers who may sometimes display incomplete energy offers, or purposefully biased ones, depending on the fee they can potentially collect. They must therefore be perused with the greatest caution, because they do not always clearly display their commercial intents.

The lack of transparency of these energy brokers, having purely commercial intentions instead of being impartial, worries the national energy ombudsman. Sometimes, their equivocal position may prove abusive. Several consumers have hence warned the departments of the national energy ombudsman about the comparison tool AFFICONSO, which has salespeople presenting themselves on the phone as being from the « official comparison tool » or from the « department of verification of energy consumption ». Similarly, the comparison tool SELECTRA has for some time published on its website, kelwatt.fr, an information that has allowed it to be confusedwith the official comparison tool of the national energy ombudsman, by playing with the wording « free » or by implying « *a link with the Government* ».

« *What the company SELECTRA did is legally called free-riding. We were required to send it a formal letter of cease and desist, and that was not the first time, to have it stop such practices. Some of these comparison tools, falsely claiming independence, are on the fringes of legality.* », states Frédérique FERIAUD, managing director.

1,312,339

visits on the price comparison tool
of the national energy ombudsman in 2020

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THE OFFICIAL COMPARISON TOOL OF THE OMBUDSMAN : COMPARATEUR.ENERGIE-INFO.FR/

There is only one official comparison tool! It is the comparison tool of the national energy ombudsman, made official by the law of 8 November 2019 (article L. 122-3 of the energy code). Online since 2009, it has been extensively redesigned during summer 2020. In terms of usability, it is now more convenient, and notably allows users to keep their initial search data in its memory, while executing new searches with new parameters to compare supply offers. It is technically better adapted to smartphones, including a feature to compare three offers simultaneously.

Faster, it may now be used by more internet users at the same time. This is a required feature, because with the scheduled end of the regulated tariffs of gas sale, traffic on the comparison tool's website is increasing: while the site accounted for 650,000 visits of individual consumers and small businesses in 2019, this figure doubled to more than 1.3 million visits in 2020.

The Commission de régulation de l'énergie *(CRE, energy regulatory commission)* announced it was also monitoring comparison tools

The private price comparison tools are also being monitored by the CRE. In its report of November 2020 about the operations of the French retail market of electricity and natural gas, the CRE focused its attention on the development of these new intermediaries. It carried out an analysis of how comparison tools operate, and amongst the elements it took into account was the way consumer needs are identified, how the comparison tool results are displayed, the way the consumer can subscribe (online or by phone), and how offers can be coupled with offers of energy services or even of relocation support. The CRE also examined the business model of these comparison tools and how they push the referral of their websites, which depend on the supplier fees, on the number of users clicking on an offer and on the number of people subscribing to one. These fees may go from 20 to 200 Euros per customer.

The CRE acknowledges that there may be some benefits for consumers, to the extent that information remains transparent and clear. It will nonetheless perform, within the framework of its mission of market monitoring, a systematic watch on the practices of comparison tools. It is also considering the opportunity of designing a charter with rules pertaining to the financing transparency of comparison tools, the data accuracy of supplier offers, for explaining the level of comprehensiveness of compared offers and to regulating referral practices on the internet. Complying with these rules would be subject to the monitoring of the CRE.

It should be remembered that, by application of paragraph 9 of article L. 111-7 of the consumption code and articles D. 111-10 et seq. of the same code, **comparison tools are required to inform consumers about their operating and financing methods.**

80%

of French people have heard about regulated sale tariffs in 2020

i.e.: twice the figure of 2015.
Source: 14th énergie-info barometer

INFORMATION ABOUT THE END OF THE REGULATED GAS TARIFFS MUST CONTINUE

The regulated sale tariffs for electricity and gas, set by the public authorities, are progressively disappearing with the opening to competition. Within a context where consumers will have to subscribe to markets offers, everything must be done so they can perfectly understand what is happening and they are made aware that the process is beneficial to them. Associated to the CRE, the national energy ombudsman participates in relaying this information. Thus, they jointly published a guideline for professionals about what steps to take concerning the end of the regulated gas tariffs.

For professional customers, the regulated tariffs of gas sale were terminated on December 1 2020. Already in place since 2014 for the larger professional consumers of gas, the switch to market offers occurred seamlessly. Three official letters were successively sent by the historical suppliers (ENGIE, or a local distribution company) to every professional customer to warn them about the end of the regulated sale tariffs, and to explain the details and consequences that this would entail, notably the implementation of the gas market offer, which will automatically replace the regulated tariff for those not having yet subscribed to a market offer. The last of these letters was sent in October 2020.

« *This measure was essential to avoid having any consumer left without a gas supply after December 1, even under the hypothesis of a consumer not having taken any steps to change his/her offer. In 2016, during the previous stage for the opening of gas markets, this had not been anticipated and created issues for a few professional consumers* », explains Caroline KELLER, head of the information and communication department.

Professional customers will now have the opportunity to keep the market offer that was automatically attributed to them. They may, most obviously, change their offer or supplier if they wish to do so, or if they find a more attractive supply offer. Until November 30 2020, they could thus cancel the contract they had subscribed to with their historical provider at any moment and without any costs, provided they give advance notice of 15 days.

The official information that was thus delivered unfailingly piqued the curiosity of the professional consumers concerned. Once the letter had been sent out mentioning the website of the price comparison tool from the national energy ombudsman, the visits to the website quadrupled: close to 105,000 visits in 2020 in the section of the comparison tool reserved for professionals, while this figure was slightly above 26,000 in 2019. This traffic growth is also a proof that consumers trust the tools offered by the national energy ombudsman.

The national energy ombudsman also directly communicated about the end of the regulated tariffs of gas sale for professionals. It also reminded them on its website that any letter not coming from the ombudsman, or any entity introducing itself as an « energy advisor » or as being sent by the ombudsman or by the Ministry of the Ecological Transition could only have a disguised commercial purpose and should be treated with caution.

Individual consumers should anticipate the end of the regulated tariffs of gas sales

For individual consumers, the end of the regulated tariffs of gas sales will occur at the latest on July 1st 2023. As has happened for professional consumers, letters will be sent by the historical suppliers to provide explanations and information about the details of this operation. A first letter was sent in 2020, another is being sent at the start of 2021, two other letters will be sent in 2022 and a final one in March 2023. Consumers will therefore have plenty of time to collect information and compare market offers. Before June 30 2023 they will be able to choose at any moment the one offer that best fits their needs, without any costs or any prior notice.

To allow the switch of 4 million gas consumers to markets offers, it is required that the new suppliers know the contact details of the consumers who may susbscribe to one of their offers. The letter sent in October 2020 by ENGIE and the local distribution companies to the gas consumers concerned, asked each customer whether he/she would accept being contacted by other suppliers. Consumers thus had the opportunity to express their agreement, or non-agreement, by sending back an enclosed reply coupon, with one stating he/she would accept his/her contact details to be transferred, and the other refusing it. Customers who did not reply to this initial request will in 2022 receive a new mail, giving them another opportunity to have their choice be known.

The law states that, in the event the consumer does not reply to this second request, it is assumed that he/she agrees to the transfer of their contact details for the purpose of being contacted. **The goal is to have as many consumers as possible benefit from market offers before the deadline of June 30 2023, while maintaining the right of anyone to oppose the transmission of his/her contact details.**

These information letters about the end of the regulated sale tariffs have logically raised the awareness of consumers about the opening of the gas and electricity supply to competition, and on the practical details of the process. According to the 14th énergie-info barometer, 80 % of French people have now heard of regulated sale tariffs, compared to 60% in 2018 and 40% in 2015. There are also more (71%) who know the steps needed to change supplier,

FOCUS

THE END OF THE REGULATED TARIFFS OF ELECTRICITY SALE FOR PROFESSIONALS

Since January 1 2021, non-residential customers no longer have the opportunity to subscribe to an offer of electricity at the regulated sale tariff. This includes local communities above a certain threshold, associations and professionals, except for micro-businesses of less than ten employees and up to 2 million Euros of revenues, turnover or balance sheet. Since the historical suppliers of electricity – mainly EDF – did not have access to the information about the number of employees or the turnover, they sent an official letter to all their professional customers to warn them about the end of the regulated tariffs of electricity sale, and ask them if they were concerned. About 700 000 entities agreed to choose a market offer adapted to their needs for their supply of electricity, while 510,000 entities who were customers of EDF, and a few tens of thousands of professional customers of local distribution companies, were automatically transferred to a market offer by their historical supplier, for lack of making a choice. It is obviously in the best interest of these professional customers to capitalize on competition, and compare the provisions of their contract of electricity supply with the other offers existing on the market.

The national energy ombudsman invites them to first collect information on its website energie-info.fr/pro, and more particularly use its price comparison tool **(see Focus p.22)**.

compared with only 65% who knew this in 2019. The convenience of these steps is also acknowledged by a greater number of people (78%, i.e. 5% more than in 2019).

This effort to provide information and explanations must continue so consumers may take fully-informed decisions. The fast-growing traffic on the national energy ombudsman's price comparison tool is an element of this information, and increases choice transparency. It may, for consumers who are unfamiliar with the use of computer tools, be adapted, by sending a mail containing a simulation of various offers meeting their wishes.

Competition must be enabled in areas of local distribution companies

The national energy ombudsman had already stated it in its 2019 activity report: competition is mostly absent for individual consumers and small businesses in some territories historically supplied with energy by local distribution companies.

The market is legally open to competition in these territories, and, de facto, this situation prevents consumers from benefitting from competition and freely choosing a supplier, even though it is a right set by law! The CRE is also worried by this situation and has established a workgroup to find solutions.

« As is set by law, all consumers of gas and electricity must be able to capitalize on competition, including the ones in the territories of local distribution companies. The law must be enforced for all citizens, no matter where they live », adds Olivier CHALLAN BELVAL. As of today, the absence of competition in the territory of a few local distribution companies is being exposed by some consumers, notably after they receive information letters about the end of the regulated tariffs of gas sales. **The national energy ombudsman has already received several messages from consumers complaining about the fact they were told they could choose an alternative offer for their gas or electricity supply, when in practice no such offer exists...** In some cases, consumers denounce the situation where to their detriment the local distribution company exploits the lack of competition to set excessive market prices.

ENERGY SUPPLIERS HAVE A DUTY OF FAIRNESS AND OF ADVICE TOWARD THEIR CUSTOMERS

The consumption code regulates the general principles of the contractual relation existing between suppliers and consumers, with a general obligation of pre-contractual information (articles L. 111-1 to L. 111-8) and of information regarding prices and terms of sale (articles L. 112-1 to L. 112-9). The consumption code provides for sanctions in cases where rules are not be complied with (articles L. 131-1 to L. 132-28). In addition to the rules regarding the writing and performing of contracts in general, the contractual relations pertaining to the supply of electricity, natural gas and liquefied petroleum gas (LPG) are also governed by specific provisions, i.e., articles L. 224-1 to L. 224-25 of the consumption code.

« *The duty of advice resulting from the provisions of the consumption code is all the more necessary from gas and electricity suppliers in that the concerned consumers are not experts and are not yet used to subscribing to such market offers. The information they receive when they subscribe to a contract, but also the information provided within the relationship when the contract is being executed, must be embedded with quality, transparency and fairness* », states Olivier CHALLAN BELVAL. However, the national energy ombudsman condemns that, in addition to reported issues due to abusive solicitation, numerous disputes referred to him originate from a failure to perform this duty of advice.

> *The relationship during the execution of a contract of energy supply must be embedded with transparency, trust and fairness.*
>
> Olivier CHALLAN BELVAL

For instance, when moving into a new home, it is not difficult for a supplier to remind its future cutomer that he/she must think about cancelling the contract for his/her previous home. Unfortunately, this is not always the case, and some consumers who thought they had cancelled their previous contract, or had forgotten to do so, end up paying bills for two homes (recommendation n° D2019-19191). In other cases, the supplier even advises customers not to immediately cancel the contract but to wait for the person inhabiting their former home to subscribe to a contract. Here again, if this subscription is delayed, the consumer ends up paying a double bill, because he/she was not given the correct advice (recommendation n° D2019-18315). **The national energy ombudsman has therefore requested all suppliers to always advise consumers who change home to remember to cancel their previous contract.**

Choosing a market offer must be done clearly and safely

All energy suppliers strive to increase their market share. Since there are many of them, competition is strong and active. The national energy ombudsman still receives too many referrals for disputes due to problematic commercial practices. A certain number of suppliers must therefore improve the methods used to convince customers to subscribe to one of their market offers. Priority is given to informing and advising consumers in an accurate, clear and transparent fashion, and above all to never force a sale.

For that matter, it should be noted that at the start of 2021six energy brokers have formed the Union of energy brokers, and that their first initiative was to draft a code of good behavior proposing« *high standards of quality and ethics* ». This code of good behaviour also notably describes the principles to be abided by to display offers « *in an honest, simple, accurate, transparent and unequivocal fashion* » and details how offers of energy supply should be compared. The national energy ombudsman can only applaud this commercial approach, and encourages all suppliers to adopt this type of initiative, respectful of consumers.

FOCUS

THE OFFER « ASTUCIO PROTECTION » FROM SUPPLIER ENI IS NOT SUFFICIENTLY CLEAR AND DOES NOT PROVIDE PROPER CONSUMER INFORMATION

The offer « Astucio Protection » from supplier ENI seems easy to understand at first: in addition to a supply of energy, the supplier ENI proposes assistance with electricity, gas, plumbing and boiler. *« However, we have proceeded to analyse the offer and noticed that the information accompanying the offer lacked transparency and clarity, and did not provide comprehensive and fair information to customers, in compliance notably with the requirements of article L. 111-1 of the consumption code and of the decree of December 3 1987 »*, explains François-Xavier BOUTIN, head of the gas and network division.

The national energy ombudsman has already issued two generic recommendations to the attention of supplier ENI regarding the lack of clarity and transparency of its offer « Astucio Protection », with yet another one in 2020 (recommendation n° D2020-16235). Indeed, it is still not clearly explained that, firstly, the plumbing and boiler support is billed in addition to the kWh price and subscription cost, and that secondly this service can be cancelled at any moment upon the request of the customer, independently of the energy.

The information about the most structuring contractual provisions must be more detailed

To perform their duty of advice toward consumers to the best of their abilities, energy suppliers must better explain and inform about contractual conditions.

The best tariff option for any given consumer must be systematically proposed, for his/her greatest benefit. With offers becoming increasingly more complex, notably with associated service offers or the possibility for consumers to modulate consumption in function of a price time signal, the supplier must make some effort to properly explain all the details and make sure that the customer fully understands them. In particular, the choice of a peak hours/off-peak hours option must be seriously examined, because as of today it is not always easy to benefit from the use of such an offer **(see p.32)** and the customers sometimes lack sufficiently accurate information about the applicable schedules in their area **(see the Practical Case p.28)**.

As was already stated, a commercial argument during a sale cannot be made on the basis of a decrease of monthly payments. It is essential to inform consumers about all the components of an offer **(see Proposal n° 2 p.18)**. The supplier must also inform them about the options and services that can meet their specific requirements, such as, e.g., the cost of modifying the subscribed power. Even if the service is billed by the manager of the distribution network, the supplier must provide the information directly to the consumer, and it is capable of doing so.

PRACTICAL CASE

THE SUPPLIER MUST CLEARLY INFORM THE CONSUMER ABOUT THE VARIOUS TIME WINDOWS THAT DIFFERENTIATE TARIFFS

A consumer has subscribed to an offer with a scheduled variation of prices (peak hours / off-peak hours). When receiving the first adjustment bill, he is surprised to notice that he owes almost 350 Euros to his supplier. After obtaining information from the supplier about the time window during which is applied the tariff for off-peak hours, he realizes these hours do not match what the supplier had stated verbally. In other words, the four hours indicated on the eight hour window are incorrect, and the particular conditions of sale do not specify them. Because of this false information, the consumer changed his habits in such a way he could not benefit from his tariff. After the ombudsman's departments analysed his file, the supplier acknowledged it had wrongly informed its customer.

Furthermore, it had not readjusted the monthly payments, which had further increased the final bill amount. In addition to a financial compensation for the consumer, the national energy ombudsman issued a generic recommendation requesting all suppliers to mention the time windows of tariff differentiations in the particular terms of sale, which is the pure and simple application of the provisions of article L. 224-7 of the consumption code, as well as on the bills, which is the pure and simple application of the provisions of article 4 of the decree of April 18 2012!

Recommendation n° D2020-01687

Please note : While processing this dispute, the national energy ombudsman also recommended all suppliers, when a customer requests the price of a service from the manager of the distribution network, to not turn this customer over the service catalogue of the network manager, but to communicate directly this information, as is set out in the single contract policy.

THE CONTRACTS OF ENERGY SUPPLY FOR PROFESSIONALS MUST BE ACCURATE AND COMPREHENSIVE

For professional customers, it is required to detail all the items of the contract and of the upcoming bill. This seems obvious but in reality it is unfortunately not always the case: consumption billing takes into account kWh and subscription prices, but also supply costs and taxes. These elements must be clearly explained and mentioned on the bill, including the supply tariff, even if it is independent from the supplier and will be paid back to the network manager. This supply tariff, which amounts to about a third of the energy bill amount, is called TURPE for electricity (tariff of utilization of the public network of electricity) and ATRD for gas (access of end users to the networks of distribution/transportation), and is set by the Energy regulatory commission.

The national energy ombudsman is often referred to for disputes in which the suppliers did not explain any of the supply tariff components, or insufficiently, or badly. This failure of information misleads consumers, and skews competition compared to companies that properly include these tariffs in their sale prices. Yet, suppliers have a duty of fairness, expressly stated in article 1112-1 of the civil code, which implies that they have to provide

all required information to their customers so they may fully understand the extent of their contractual commitment.

In a generic recommendation (n° D2020-02864), the national energy ombudsman had to remind suppliers that they must strictly abide by this duty of fairness toward customers, notably by communicating to them all items that constitute the final sale price of the energy supply. Supply tariffs are one of these items, such as the tariffs for renting equipment (meter, and gas trigger block in the case of this recommendation). The information must be transmitted again whenever these tariffs change.

Another feature of the contracts for professional consumers are the fees for early cancellation. The contracts to which they subscribe may indeed have provisions that state that the customer must commit for a set duration, and that in the event he/she cancels the contract before its end « fees for early cancellation » will be billed. This compensation for the supplier is justified by the premature loss of a customer, for which it had acquired or stored some quantities of energy. The information relative to these provisions for early cancellation must be extremely clear, and be subject to the express consent of the customer, because the resulting sums may amount to several tens of thousands of Euros. The dispute of a restaurant owner about early cancellation fees has thus resulted in a generic recommendation from the national energy ombudsman in 2020 (n° D2019-17077). In addition to being simultaneously billed by both suppliers (the former and the new one), and to not having obtained the renewal of the power he had previously subscribed to, this honest customer discovered he had been billed with early cancellation fees by his previous supplier. The ombudsman assessed that the new supplier should have warned him about the probable occurrence of penalties for early cancellation in his previous contract.

Regarding this matter, the national energy ombudsman formally recommends suppliers, in the spirit of a prevailing relationship of trust and fairness, do not sign any new contract without ensuring first that the customers are made fully aware of any fees for early cancellation to which they could be exposed by cancelling their ongoing contract before its end **(see Proposal below).**

PROPOSAL n° 4

PROVIDE CLEAR AND COMPREHENSIVE INFORMATION ABOUT THE COSTS A NEW PROFESSIONAL CUSTOMER WOULD INCUR IN THE EVENT OF AN EARLY CANCELLATION OF THEIR PREVIOUS CONTRACT

Suppliers must ensure that professional customers who subscribe to a new contract with them have a complete and accurate knowledge of the penalties they could incur due to the early cancellation of their previous contract. The national energy ombudsman recommends that whenever a new subscription is made the suppliers obtain a handwritten statement from their customers about this.

In addition to all the information allowing the professional customer to fully understand the proposed offer, the national energy ombudsman recommends that, prior to activating a contract, both salespeople and suppliers systematically indicate the price in Euros of the supply tariff, if it is not integrated into the kWh price.

L'INTERVIEW

BARBARA POMPILI

Minister of the Ecological Transition

For the past 25 years, European law has progressively opened the production and supply of energy to competition, and reinforced the role of public network managers, which guarantee the proper supply of this energy.

From now on, anyone can freely choose his/her supplier of electricity or natural gas, and the supply offer that best suits his/her needs and expectations.

This constitutes a true freedom of choice, both in regard to prices and to a range of other features, such as notably the fraction of renewable energies.

This opening was obviously carried out for the benefit of consumers, but we shall remain vigilant: these consumers must always be provided with trustworthy and objective information about the content of offers. The government is watchful about this.

Beyond this freedom of choice, consumers also benefit from a higher level of safety. This is perhaps less visible, but these reforms allowed increasing the safety of supply by mobilizing production capacities at the European scale, with more efficiency and a greater scope.

"If the opening to competition has not resulted in a decrease of bills, it has allowed mastering increases, in a context where the transition requires large-scale investments in the electricity sector."

© Damien VALENTE – MTE

If the opening to competition has not resulted in a decrease of bills, it has allowed mastering increases, in a context where the transition requires large-scale investments in the electricity sector. Today, taking into account energy savings, the average household spending on their home energy consumption has been approximately stable over the past ten years. And for the most vulnerable households, the State stands by their side, notably with the cheque energy.

The action of the ombudsman is paramount to inform and support consumers, with some of them experiencing their first market offers with the end of the regulated tariffs of gas in 2023.

It is essential that consumers are not worried or annoyed by inappropriate or even fraudulent behaviours. The ombudsman constitutes an observatory and barometer of the reality of the energy markets in daily lives, and it may be a true whistleblower with regard to potential abuses.

02 TRUST IS ALSO ESSENTIAL DURING THE DURATION OF THE CONTRACT

Once a contract of energy supply is signed, a supplier respectful of its customers must guarantee them a fair, comprehensive and understandable billing. However,it must also answer the questions they ask, and reply to the claims they make.

THE DUTY OF ADVICE TOWARD CUSTOMERS MUST CONTINUE DURING THE CONTRACT DURATION

The contractual commitment of a supplier toward a consumer first implies a high-quality service that is respectful of its customer. The duty of advice of a supplier notably entails it to be vigilant about anything that could damage the quality of the billing and of the contractual relation: is billing accurate or steady? Does an unpaid bill originate from difficulties of payment or from a disagreement? In the case of unpaid bills, is this due to a situation of fuel poverty, or are the monthly amounts poorly adapted? Are the recorded meterings consistent with the consumption history or profile? Is the subscribed offer the one that best meets the needs and requests of the consumer?

If all of these questions were systematically anticipated and properly processed by suppliers, then a great number of the disputes referred to the national energy ombudsman would simply vanish. **Indeed, the issues of billing, payment and inadequacy of tariff offers account for 28 % of the disputes it received in 2020. By adding billed consumption levels that are challenged by consumers, this figure reaches 57 %.** « *The repeated actions and position statements of the national energy ombudsman over several years have allowed for the correction of a certain number of dysfunctions. However, the bad practices of some suppliers, their non-compliance with rules and regulations, as well as defective information systems that suppliers are sometimes incapable of managing explain the growth of the number of disputes referred to me. A quality approach must be undertaken with resolve to alleviate these situations that consumers face and who end up feeling helpless* », states Olivier CHALLAN BELVAL.

Amongst the disputes that should be avoided is the activation of contracts without the suppliers having a consumption index reading on the meter. Without this information, the supplier lacks the essential data to produce an accurate billing to the consumer, which is unavoidingly a cause of disputes. The deployment of smart-meters has gradually alleviated this issue, since it is now feasible to remotely collect consumption indexes. But this should not prevent suppliers from immediately implementing the very convenient solution of self-readings, which proves to be a solution for avoiding numerous disputes.

The national energy ombudsman renews the proposal it formulated last year: in the absence of a smart-meter, a contract cannot be activated as long as the supplier does not obtain a consistent self-reading from the consumer **(see Proposal n° 5 p.32).**

PROPOSAL n° 5

ALWAYS HAVE A METER READING PRIOR TO ACTIVATING A CONTRACT

Suppliers should not go ahead with the activation or cancellation of contracts if they do not have at their disposal a reading of the consumption index from the meter. Although this case occurs less and less frequently with the deployment of smart-meters, suppliers should systematically request their customers to carry out a self-reading of their meters. They would then be compelled to take into account this consumption index reading from the consumer, unless it is deemed inconsistent by the network manager.

In the event that the consumer is unable, or refuses, to carry out a self-reading, a meter reading should be logged by the network manager, which could be billed to the consumer who did not forward a self-reading, or if the latter proved erroneous. Within the context of a supplier switch or a change of offer, resorting to using an estimated index should only be accepted under the dual condition that the meter had been read within the previous six months and that the consumer has expressly agreed to this.

Disputes relating to contracts with peak hours/off-peak hours

In France, **12 million households have chosen an electricity contract with different kWh tariffs for different time windows.** The principle is simple: during off-peak hours, the tariff is lower than during peak hours. In return for this tariff bonus, the consumer agrees to pay a more expensive subscription. To financially benefit from this option, the consumer must shift a large part of his/her most energy-consuming activities (dishwasher, washing machine, boiler) to off-peak hours, as defined by the manager of the distribution network. There are eight off-peak hours per day, which are usually set at times during the day where the production of electricity is most available. Off-peak hours vary in function of consumption sites, and are usually set during nighttime and lunchtime.

Several types of disputes originate from this peak hours/off-peak hours tariff. Missing or erroneous information about the time windows have already been mentioned **(see Pratical p.28).**

They constitute the first improvement step for suppliers: this information must be properly and clearly indicated during tariff subscription, but also during the contract duration, in the event that the distribution network manager changes these time windows because of technical constraints. The supplier must forward to its consumers accurate information about off-peak hour windows on their bills, in order for them to optimize their consumption of electricity with full knowledge. Other disputes are caused by transmission troubles between the meter and electrical appliances, such as a hot water tank for a bathroom, which disrupt their automatic trigger at the right hours.

When a consumer changes supplier or offer, he/she may choose whether to keep his/her option for peak hours/off-peak hours, or to change it. It is the duty of the supplier not only to advise the customer about the best solution meeting his/her needs, but also to do everything in its power so the change is effective.

Yet, the departments of the national energy ombudsman observe that this is not always the case, and there are two main causes for these disputes:

• In some cases, the supplier produces a request to the distribution network manager that does not match the changes requested by the consumer, i.e. by referencing a service start when in reality it is a change of supplier. Yet, in the case of a service start, ENEDIS generates a new time window. It is often suppliers that have recently entered the market that make this kind of mistake, because they are unfamiliar with these procedures. However, even the most experienced ones can err, such as ENGIE, and it is the actions of the national energy ombudsman that have allowed consumers to get their previous time windows reinstated (recommendation n° D2020-11863).

• Suppliers are not authorized to change the formule tarifaire d'acheminement (FTA, tariff formula for supply) more than once per year. The Energy regulatory commission has actually resumed the rule under which a tariff formula for supply is subscribed to for 12 consecutive months, including in the event of a change of supplier (deliberation of 17 November 2016). Yet, suppliers sometimes change the tariff formula for supply without informing their customers, or they ignore that in the case of a tariff formula for supply called « short use », they may program the meter with a single or dual tariff. The national energy ombudsman was thus called to solve such an issue with supplier MEGA ENERGIE (recommendation n° D2020-13912), demonstrating that if this rule had been better known, these disputes could have been avoided.

Some suppliers have not yet adapted their information systems to the various possibilities of the tariff formula for supply, which may lead them to refuse some sales. In order to have consumers maintain their trust in the diversity of offers allowed by the opening to competition, the national energy ombudsman entrusts suppliers with improving their information systems, or with finding alternate solutions rather than refusing a contract **(see p.28)**.

The peak hours/off-peak hours option must remain financially attractive for consumers

For a certain number of consumers, the evolution of the regulated tariff has reduced the attractiveness of offers featuring a peak hours/off-peak hours option. For the past few years, the trend was for a decrease of the price gap between peak hours and off-peak hours. At the start of 2020, a tariff change has yet again reduced this gap, making it harder for consumers to financially benefit from this tariff option. « *Before this, if 40% of a household's consumption was used during off-peak hours, the extra costs from the subscription price and peak hours tariff were compensated by the reduced price of the off-peak hours. And this option was financially beneficial for consumers. But with the last tariff changes, this threshold increased to 50%, and it has become difficult to achieve financial gain. This may cause new disputes, because the tariff option that was initially subscribed to is no longer adapted, and this is not on the consumer's behalf* », an analysis by Christian SOULETIE, head of the electricity division. Furthermore, households are increasingly consuming electricity for electronic and office devices (home computers, telephones, internet routers) that are used throughout the day, and the energy performance of home appliances that can be used at any time (such as a washing machine) has improved, which contributes to the decrease in consumption that can be reported to off-peak hours. Newspapers reported this issue, after the association 60 millions de consommateurs and alternative suppliers such as PLÜM ENERGIE exposed the extra costs that are now generated by this tariff inadequation. The actors concerned, and in particular EDF, must anticipate this issue and advise their customers, so that they will not see their bills grow. This issue concerns millions of people.

The national energy ombudsman recommended consumers to use the calculator provided for them on the website energie-info.fr/comparateurs-et-outils to check out if the peak hours/off-peak hours option is more beneficial to them than the basic tariff. **It reminds suppliers that having customers who have chosen this solution must, abiding with their duty of advice, warn them and indicate if their tariff option has become disadvantageous.** When this is the case, it is up to the suppliers to propose an offer with a « basic » tariff, provided it is financially more beneficial. The Energy regulatory commission announced it was studying a change of mechanism, which would give an option of differing time windows that would be more attractive to consumers, without disregarding the imperatives of equilibrium of the electricity network.

L'INTERVIEW

PHILIPPE LAVAL

Director general of the Institut national de la consommation (INC, *National institute for consumption*)

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Since the opening of the energy market to competition, this sector is very present in the letters or e-mails we receive from consumers. Letters relative to the customer-supplier relationship have increased in number in the past two months and reflect the degradation in this relationship for some suppliers.

Sometimes, the issues concern some of the most basic duties that suppliers must perfom, such as billing consumed energy or terminating a contract. Simple operations, like the reimbursement of overpaid amounts or the implementation of an adapted monthly payment plan, can be the cause of misunderstandings and complaints. Consumers struggle to obtain a clear explanation that would allow them understand and solve their problems. They redouble phone calls to customer services, they feel like they are being « moved around » departments, and they complain about the lengthy processing delays of claims.

> *The customer experience should also be subject to a higher traceability.*

Some good practices could also improve the customer-supplier relationship and the processing of claims. In some other sectors a phone call is considered as to be the first level of claim. However, for several energy suppliers, the consumer is forced to use a written request for the claim to be effectively taken into account and produce results. The customer experience should also be subject to a higher traceability: each contact should be followed up on, and result in a reply to the customer within a reasonable delay with regular calls. Every consumer would thus feel he/she is heard and matters.

In this period of health and economic crisis, numerous consumers are facing financial difficulties. An attentive consumer department is required for both preventing the occurrence of unpaid bills and providing support for the solving of problems. Being more committed to implementing payment installments may constitute an efficient solution to help vulnerable persons.

Jointly with the national energy ombudsman, the Institut national de la consommation warns and informs consumers about their rights, notably through its magazine *60 millions de consommateurs*.

SUPPLIERS MUST SYSTEMATICALLY PROPOSE TO CONSUMERS THE MOST BENEFICIAL TYPE OF SUBSCRIPTION

The suppliers of electricity must not only advise their customers about the best tariff option (basic, or peak hours/off-peak hours), but also advise them so they can subscribe to a power option that best meets their needs and consumption mode. Indeed, the subscription price differs from one option to another.

In the gas supply market, the consumer subscribes to a contract that must suit his/her consumption: if he/she consumes more than what was anticipated, the supplier should automatically switch him/her to another subscription that better matches the current consumption. If it does not do so, the consequence is an increased bill for the consumer.

« *Unfortunately, we observe cases of tariff options that are inadequate on both levels, which results in an increased price of the billed energy. Either the customer consumes large volumes with an under-dimensioned subscription, which increases the kWh price of gas, and therefore the bill, or the consumption is lower than anticipated, and then the subscription cost is too high and this also increases the bill.* », regrets Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department. A certain number of suppliers spontaneously and favourably correct the subscription level for consumers, when they identify such cases. However, others still refuse to do so, notably ENGIE, despite the recommendations that the national energy ombudsman has directed towards them.

This is for instance the case of Mr. and Mrs. L., for whom the supplier ENGIE has let an unfavourable situation linger for years. Since 2011, their tariff option was set on the basis of a consumption higher than 6,000 kWh per year, even though the couple had changed their heating mode and were consuming less than 500 kWh yearly. It is only in 2019, after the consumers had called the supplier, that ENGIE changed the subscription. The supplier ENGIE justified its position by stating its general terms of sale, which indicate that it is up to the customer to remain vigilant about whether the tariff remains suitable for their needs. On the opposite, The national energy ombudsman considers that given the numerous cases referred to him, consumers are not aware of these contractual provisions and ignore the extra costs they incur because of them. Therefore, it should be the « duty » of suppliers to explain this to their customers! The supplier ENGIE has a duty of advice toward its customers, and has at its disposal the proper information to advise them about the right tariff option. **Therefore, the national energy ombudsman recommended ENGIE, and several other energy suppliers with similar practices, to change its general terms of sales in its contracts of natural gas sale in order to automatically offer to its customers the tariff option that best matches their levels of yearly consumption, whether they are with regulated tariffs or on a market offer.** (recommendation n° D2019-16400).

Suppliers must adjust monthly amounts when they prove inadequate with regard to the observed consumption

The monthly amounts set by some suppliers when the subscription starts are sometimes not adapted to the anticipated consumption of customers. They are sometimes even purposefully underestimated which leads to numerous disputes **(see p.20)**. Once the contract is signed, if the consumer consumption changes, if a metering issue occurs, or if the initial consumption was poorly estimated (which is a case that is unfortunately far too frequent), the supplier, having the capability of detecting this situation, must, within the scope of its duty of advice, adapt the monthly amounts of the offer. This is fairly easy when consumers have a smart-meter at their disposal **(see Practical case p.37).** But even when this is not the case, the supplier must proceed to changing monthly amounts when the intermediary meter reading identifies such a situation (recommendation n° D2020-01687). In any case, **when the disputes submitted to the national energy ombudsman reveal underestimated monthly amounts, it requests suppliers to review the levels of these amounts and pay a compensation for the inconvenience caused to the consumer by this failure of advice.** This is what it did in the recommendation n° D2020-14870.

PRACTICAL CASE

MONTHLY AMOUNTS MUST BE ADAPTED TO CUSTOMER CONSUMPTION, AND RE-ADJUSTED IF NEEDED

Mr. G. subscribed to a contract of electricity supply with the supplier LECLERC ENERGIES, which took effect in February 2019. Worried about the fact that the monthly amounts proposed by the supplier may be too low, he requested an upward re-adjustment, which became effective in August 2019. Despite this, he received an adjustment bill amounting to almost 540 Euros in January 2020. However, the supplier was aware of the consumption indexes, which had been remotely read by the smart-meter LINKY, and should have consequently advised its customer to change the monthly amounts initially set by the payment plan.

The national energy ombudsman recalls that suppliers have a duty of advice toward their customers, and that they may not systematically shrug off their responsibilities on their customers or on general sale terms.

If the consumer chooses to have monthly payments, it is precisely to smooth the burden of payments, and suppliers must assess the probable consumption « in an appropriate fashion », as is expressly setout in article L. 224-12 of the consumption code. Besides, in the aforementioned case, the general terms of sale of the supplier LECLERC ENERGIES comply with this rule. In its recommendation of June 2020, the national energy ombudsman reminded all suppliers that it is up to them to adjust the monthly payment plans when the readings they receive each month from the smart-meters LINKY show that the monthly amounts are not consistent with the level of true consumption.

Recommendation n° D2020-05758

PROPOSAL n° 6

ALWAYS PROPOSE AN OFFER WITH MONTHLY BILLS BASED ON TRUE CONSUMPTION

Numerous consumers wish to have monthly payments, to space out their energy bill over a year. But if the monthly amounts are poorly calculated, the yearly adjustment bill may prove very significant. Some consumers prefer to manage their energy expenses on a month-by-month basis, by paying a monthly bill based on their true consumption. The national energy ombudsman therefore recommends suppliers to systematically propose to consumers equipped with smart-meters at least one offer with billing established each month on the basis of true consumption.

The national energy ombudsman considers this recommendation as being the foundation of a regulatory change.

THE LAW PROHIBITS THE BILLING OF CONSUMPTIONS THAT OCCURRED MORE THAN 14 MONTHS PREVIOUSLY

The national energy ombudsman has systematically reminded suppliers each year since 2016 that the law prohibits them to bill for energy that was consumed more than 14 months previously. This prohibition is formulated in article L. 224-11 of the consumption code. This rule was introduced by the law of energy transition for green growth of August 17 2015, in order to protect consumers from having their energy consumption billed by their supplier for several months. ***« First has to be noted that this rule is still not fully enforced by several suppliers. It is not enforced either by distribution network managers, even though they are obligated to send a registered mail when they cannot access the consumption index.*** *These disputes still amount to about 9% of the referral procedures under review in 2020, i.e. 662 processed cases compared to 576 in 2019 »,* details Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department.

We may legitimately wonder about the reasons for which an ever-growing number of these cases end up in the hands of the national energy ombudsman when the law is that clear. The ombudsman's departments nonetheless observe that when a consumer files a complaint with his/her supplier, the latter does not spontaneously and systematically apply the rule. In 2020, the supplier ENGIE even cited as an explanation the exceptional situation created by the health crisis to justify the overrun of the 14 months set by law! Yet, it is obvious that if the information systems of suppliers were parametered to automatically block any billing beyond the 14 months preceding the last meter reading or self-reading, such disputes would merely vanish!

Roughly all operators are concerned by the non-compliance with this 14-month limit on billing. . In some disputes, it is ENEDIS that did not read the meter for several years. It is for instance out of the question for Mr. R. in Seine-Saint-Denis to catch-up close to four years of consumption, and it is the network manager that is liable for cancelling the consumption concerned by prohibited billings beyond 14 months (recommendation n° D2019-19023). In another case where ENEDIS sent a registered mail to request access to the meter, which proved unsuccessful, the national energy ombudsman recommended that they send another one the following year. In order to remain faithful to the law, if the manager of the distribution network can prove it sent a registered mail, the ombudsman recommends it should never catch-up more than two years of consumption, as it was done before article

L. 224-11 of the consumption code was published.

Sometimes, several issues accumulate. Thus, Mrs. M. experienced malfunctions on her new meter LINKY, a billing freeze from her electricity supplier BUTAGAZ, an absence of re-assessment of her monthly payments and eventually a catch-up bill of more than 14 months. In the recommendation it issued, the ombudsman reminded the supplier to strictly apply the legal rule (recommendation n° D2019-18199).

The supplier EDF is also involved in this type of dispute. For instance, it failed to apply the proper tariff grid for the gas supply of Mrs. K. and then did not send her any bill from February 2019 to July 2020. What followed was an adjustment bill burdening Mrs. K. with consumptions prior to April 2019, which is prohibited because of the 14-month limit set by the law (recommendation n° D2020-16933). There was also a divergence of interpretation about article L. 224-11 of the consumption code, since the supplier assumed that the 14-month rule did not apply to cases where an inversion of the reference of the delivery point between two consumers would occur.

The supplier eventually reviewed its position and no longer invokes this exception. In contrast, the supplier EDF proves reluctant to rigorously apply article L. 224-11 when the adjusted consumption goes beyond 14 months because of underestimated indexes taken into account during a period without readings. The catch-up of billed consumption, when it is integrated into the adjustment reading, is then all the more important.

In most cases, disputes relative to the 14-month maximum limit for billing processed through mediation are solved with an amicable agreement. But the national energy ombudsman has decided it would systematically alert the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF) about all cases where it observes a non-compliance with the provisions of article L. 224-11 of the consumption code.

9% **of the ombudsman's referrals**

↓

for billings prohibited after 14 months

from the previous reading

PROPOSAL n° 7

SIMPLIFY AND HARMONISE THE CALCULATION METHOD OF THE TARIFF CONTRIBUTION FOR SUPPLY (CTA) FOR GAS BILLS

The consumers of gas connected to the distribution network are subject to a tax called CTA. Since its calculation is complex, and its value differs depending on the suppliers, a consumer who is not an expert cannot fully understand this tax, nor be able to verify it. Several market actors, including the national energy ombudsman, the CRE and some suppliers have asked for the calculation method of the CTA be modified, so that its amount would no longer depend on the mode of gas supply of each supplier, and so that a consumer would be able to verify its calculation. A draft of a decree was favourably received by the CRE (deliberation n° 2021-44). The national energy ombudsman supports this project and wishes to see it promptly applied.

RED CARD

QUALITY LABELS OF CONVENIENCE MUST BE TERMINATED, BECAUSE THEY LACK NEUTRALITY AND INDEPENDENCE

The national energy ombudsman was already wondering last year about how the supplier ENI was awarded the trophy of «best supplier of the year», even though it was the one that had the highest dispute rate for 100,000 customers by far in 2019, since this figure was around 5 times larger than the average rate of suppliers. This practice of attributing awards is not founded on a transparent and neutral competition, and, in reality, it constitutes a disguised method of marketing rather than a true label of quality, awarded on the basis of objective criteria under stringent control. Nonetheless, this practice keeps on expanding: the supplier ENI still displays its « best supplier of the year » award for 2020-2021, BUTAGAZ was crowned « Best customer service for 2021 », and TOTAL DIRECT ENERGIE, which is nevertheless the largest supplier for mediated disputes (2,282 receivable disputes) boasts about collecting three awards, including the **SELECTRA award (see what is said about this price comparison tool p.21)** for being « the best supplier of energy » for the fourth consecutive year, as well as the « Podium of customer relationship » and the « Customer excellence award » in the energy supplier category.

The multiplication of such awards, attributed without true competition, on the basis of less than transparent criteria, is a cause for problems in regard to the sincere and objective information that the suppliers of energy are supposed to provide to their customers. The reality observed by the national energy ombudsman, through the disputes referred to him, tends to effectively demonstrate that in most cases these awards are ones of convenience, and do not reflect the reality of the quality of service of the awarded suppliers.

Within a context where competition in the energy market is intensifying, the national energy ombudsman considers that it would be in the collective interest of the sector to improve consumer trust and to not resort to such deceptive acknowledgements. It calls out the market actors to take initiatives for that matter, and to organize roundtables **to define a true quality label for their customer services,** which would be attributed on the basis of comprehensive, clear and objective criteria, with compliance subject to control by an independent body **(see Proposal n° 8 p.41).**

Pending this, **the national energy ombudsman considers that the dispute rate per 100,000 customers published each year in its activity report for each supplier, which may be viewed on its website, constitutes for consumers an excellent way of choosing a supply offer of electricity or gas.**

PROPOSAL nº 8

CREATE A TRUE QUALITY LABEL FOR CUSTOMER SERVICES OF ENERGY SUPPLIERS, GRANTED ON THE BASIS OF OBJECTIVE, CLEAR AND COMPREHENSIVE CRITERIA

The quality of a « customer service client » constitutes a major objective when it comes to reliably supplying a consumer resource as essential as energy. To avoid the display of deceptive quality labels, which are neither objective nor independent, the national energy ombudsman **proposes that energy market operators commit to jointly working on the creation of a true quality label for their « customer service ».**

Being granted this quality label should be subject to objective, clear and comprehensive criteria, with its compliance being subject to control by an independent body and, if needed, by penalties.

This quality label would guarantee to everyone that the energy supply would be carried out within a context of best practices. It would strongly contribute to improving consumer trust.

Pending the implementation of such a label of service quality, the national energy ombudsman suggests to suppliers that wish to guarantee a particular quality of service to their customers, to try to obtain the quality standards that already exist, and which are delivered by certifying bodies such as Afnor with the NF Services relation client *(French standard for customer relation services).*

FUEL POVERTY WAS AGGRAVATED BY THE COVID-19 HEALTH CRISIS

The confinement episodes and the shut-down of some professional sectors in the context of the fight against the Covid-19 pandemic has impacted economic life, and has resulted in a loss or decrease in income for many households. According to Insee *(National institute for economic and statistical studies)*, 30% of people belonging to the first three income deciles estimate the situation of their household as having deteriorated. **Those who could telework may have experienced higher energy consumption, for lighting, heating, cooking and using digital equipment.**

The most vulnerable households were partially protected by:

• **The extension of the winter truce to July 10 2020,** which also resulted in a ban on gas or electricity cuts in the case of unpaid bills. As a consequence, interventions carried out after the request of energy suppliers in 2020 because of unpaid bills (power reductions, supply freeze, contract cancellations) decreased by 18% compared to 2019: from 672,400 to 551,721. This decrease was higher for gas (-28.5%) than for electricity (-15.7%).

• The cheque energy: people who were eligible in 2019 could benefit from it until September 23 2020, instead of being able to use it at the latest until March 31 2020. The protection schemes associated with the cheque (ban on power reductions during the winter truce, free servicing, absence of fees for cases of rejected payments, and an 80% deduction on intervention fees in cases of a power cut for unpaid bills) were also extended to September 23 2020. This extension was all the more needed because the sending of cheques had been delayed due to the health crisis, and lingered until May 2020.

« *With the effects of the measures taken because of Covid-19, 2020 will be labelled as an atypical year. The extension of the winter truce has produced protective results, as is shown by the decrease of interventions for unpaid bills. This situation was also observed by the information department of énergie-info, which received an overabundance of requests in July by people facing payment difficulties, rather than in April, which is usually the case. But there is a high risk of a rebound effect in 2021* », assesses Caroline KELLER, head of the information and communication department. The extension of the winter truce indeed reduced the period during which households contacted us for unpaid bills: unsolved problems being shifted over time will obviously have an impact in 2021 or 2022.

> ***Observing a fuel poverty increase, the ombudsman proposes to better assist the people concerned, e.g. by modifying the solidarity fund for housing, doubling the value of the cheque energy, or even by adjusting taxation.***
>
> Caroline KELLER

On May 14 2020, the national association of energy detail operators (ANODE) warned about the consequences of the winter truce, by communicating about the increase in unpaid bills, which already amounted in « **tens of millions of Euros** ». The risk is all the greater in that in 2020 220,000 fewer people were granted cheque energy than in 2019. 5.5 million cheques were issued for an average amount of 148 Euros. It is highly probable than this solidarity effort, even if sustained, will not keep pace with the increase in the level of poverty generated by the coronavirus.

FOCUS

THE NATIONAL OBSERVATORY OF FUEL POVERTY

Each year, the Observatoire national de la précarité énergétique (ONPE, national observatory of fuel poverty) publishes studies and a trend chart, with the support of various actors including the national energy ombudsman. The last edition of this trend chart confirms that 3.5 million households experienced fuel poverty in 2019, according to the indicator based on the net expenditure for energy.

Although the 2019 figures show a slight improvement compared to 2018, this must be considered with caution because the figures of 2020 have yet to be published. Indeed, all the field actors warn about a constant decrease in the purchasing power of the most vulnerable households. Their situation is all the more precarious in that social protective schemes, such as the solidarity fund for housing (FSL), are granted to less and less beneficiaries, due to a decrease in contributions from financing bodies.

Within this context, the national energy ombudsman and all of his teams extend their thoughts to Bruno LECHEVIN, who died in February 2020 and who had been the president of the ONPE from 2016 to 2018 in his quality of president of the administrative board of the ADEME *(Agency for the Environment and Energy Management)*. He had taken to heart the fight against fuel poverty, and strived to shake things up, notably during his mandate of general delegate for the national energy ombudsman, from 2008 to 2013.

551,721

interventions for unpaid bills in 2020

(-18% compared to 2019)

Fuel poverty is more significant amongst young people and professionals

The last edition of the énergie-info barometer confirmed the precariousness of French household with regard to energy expenditure. 79% of consumers answered they were worried by their consumption, and 71% stated that energy bills constituted a major part of their budget. 53% of French people have reduced their heating consumption hoping to decrease their bills, and close to 18% have experienced financial difficulties when having to pay their electricity or gas bills during the past 12 months. These two last figures are much higher than in 2019, and can be explained by the effects of the economic crisis more than by winter weather, which was rather mild. Of the people interviewed, the percentage stating they suffered from cold temperatures in their homes was 14%, a decrease of 4%.

The social precariousness experienced by young people (18-34 years old) during the health crisis has consequences on their fuel poverty: 66 % reduced their heating, 32 % state they had payment difficulties, 29 % suffered from the cold for at least 24 hours and 20 % experienced an energy supply freeze after having payment difficulties.

We should also note that in 2020 professional customers also experienced more payment difficulties, due to their economic situation. Even though the national energy ombudsman receives few requests from professionals, these increased in 2020. Protective measures taken by the Government in the context of the sanitary state of emergency have nonetheless lessened their difficulties. In March 2020, the energy suppliers were prohibited from freezing, interrupting or reducing the energy supply of very small companies because of unpaid bills. They were also compelled to grant them, upon request, the report of payment installments for bills due between March 12 2020 and the end date of the sanitary state of emergency.

Law n° 2020-1379 of November 14 2020 provided for the broadening of these measures to all professionals impacted by an administrative closure imposed by the health crisis. The application decree was published on April 21 2021.

Reinforcing the mechanisms against precariousness

The national energy ombudsman considers that the mechanisms to fight fuel poverty must be reinforced. Several national policies exist to encourage the insulation of homes that have a poor energy performance certificate. The most vulnerable households benefit from a particularly strong support, but the pace of renovations still proves insufficient to lift most of them out of fuel poverty. The ombudsman therefore maintains the proposal it had formulated last year about the reform to the solidarity fund for housing (FSL), which constitutes the first element to efficiently assist people experiencing unusual difficulties **(see Proposal n° 9 p.45)**. He also proposes a set of other measures to better protect them, within the difficult context of the health crisis, and notably a doubling in the amount of cheque energy **(see Proposal n° 10 p.45).**

Prior to implementing these measures, which are deemed necessary to improve the efficiency of solidarity schemes, **the national energy ombudsman considers that some actions should be applied without any further delay:**

• All energy suppliers must sign funding agreements with Departments for the FSL, and comply more with their obligation, relative to the application of article 2 of decree n° 2008-780 of August 13 2008, to systematically signal cases of unpaid bills by their customers to the concerned departmental or communal authorities, so social services may more easily identify people in precarious situations.

• The winter truce should also be applied in overseas departments, regions and collectivities. Indeed, even if winter cold is not always as harsh there, the reasons and effects from the truce have gone beyond the sole fact of being confronted with heating expenditure in winter, and now encompass the specific weather, health and economic constraints of these territories.

Finally, the national energy ombudsman wonders about the current taxation level on electricity, which amounts to more than 30% of the consumer bill. The level of the value-added tax could possibly be adjusted to better take into account the fact that electricity is, as expressly recalled in article L. 121-1 of the energy code, an essential necessity. This tax is already at 5.5% on natural gas subscriptions, as well as on electricity subscriptions with a power lower than 36 kVA. The 20% rate is applied on the consumption of gas and electricity kWh.

Even if the topic is a politically sensitive one, the national energy ombudsman deems that serious thought should be given to the taxation level on electricity and gas.

PROPOSAL n° 9

HAVE THE STATE DIRECTLY ALLOCATE THE SOLIDARITY FUND FOR HOUSING (FSL) TO THE DEPARTMENTS

Currently, it is the role of suppliers to allocate the subsidies for the FSL to the Departments, with which an agreement has already been made. They are then compensated by the State for the corresponding expenditure. However, despite their obligation to do so, not all suppliers have signed a convention with all Departments, and do not allocate subsidies to the FSL as they should. A dual issue arises from this. Firstly, there is an inequality of treatment for the potential beneficiaries, resultant of the territory in which they live. Secondly, only the largest suppliers have signed conventions applicable to all Departments.

The national energy ombudsman proposes therefore that the FSL mechanism should be simplified, and financed through a direct allocation from the state to the Departmental Boards, with its amount being set in relation to the number of households benefitting from the cheque energy in the Department. The suppliers would nonetheless keep the possibility of paying to the Departments an additional voluntary contribution, which would then not be subject to a reimbursement made by public funding.

PROPOSAL n° 10

RENFORCE THE ACTIONS AGAINST FUEL POVERTY

The health crisis caused by the coronavirus has shed light on the ever-growing precariousness of the fraction of the population subject to economic, financial and social hardship. The national energy ombudsman therefore proposes that the following measures should be implemented:

• Doubling the amount of the cheque energy in 2021, so it reaches 300 Euros on average. Indeed, its current amount (150 Euros on average) barely allows some households to pay the taxation amount of a winter bill!

• Making effective the obligation provided by the article 11 of decree n° 2008-780 of August 13 2008 for all energy suppliers to name (and clearly identify) a « solidarity-poverty correspondent » and to systematically forward his/her contact details to the national energy ombudsman. These correspondents indeed constitute an essential relay for social services in Departments, and help consumers to benefit from the FSL.

• Broadening the application of the winter truce to consumers of liquefied petroleum gas (LPG) and to consumers connected to a heating network.

PROPOSAL n° 11

IMPLEMENT A « UNIVERSAL ELECTRICITY SUPPLIER OF LAST RESORT »

The national energy ombudsman requests, as it has already done several times in the past, the creation of a universal electricity supplier of last resort. This solution is provided for by the law relating to energy and climate for natural gas, and it has become urgent to also implement it for a minimum supply of electricity, which is legally acknowledged as being an essential necessity.

Implementing a universal supplier of last resort would allow consumers – individuals and small businesses – to recover from inextricable situations and subscribe to a contract, notably because of financial difficulties. The issue is particularly sensitive in areas where the presence of a single supplier (some local distribution companies) creates a situation where competition is not yet effective.

METERING, THE BASIS OF A PROPER BILLING, MUST BE IMPROVED

Distributing electricity and gas through networks requires a technical competency that is mastered by the managers, mainly ENEDIS and GRDF, which notably have the mission of metering consumptions. Yet, errors in the metering of electricity or gas consumption are frequent and recurring causes of disputes. If not due to reading or self-reading errors, they may be caused by the meter itself, or by a management issue attributable to the distributor, which may mistakenly dismiss a reading that was nonetheless correct.

In the gas distribution sector, there are still meter malfunctions that take time before they are detected, and hence mislead the supplier when it establishes the bill. However, in most cases, the supplier has the capability of identifying the issue itself, and should be able to solve it promptly, as a failure to properly adjust the situation skews consumer billing. This is the issue that Mrs. A. experienced. A customer of the supplier ENGIE since May 2019 for an unocupied apartment, she discovered that she had been charged for 571 m3 of gas in August and December of the same year, even though she was equipped with a smart-meter GAZPAR that displayed an index of 1 m3. GRDF ascertained that the signal sent by the meter was faulty, and therefore installed a new GAZPAR meter. However, since the meter index at the time of installation had been rejected by the information system of GRDF, the supplier ENGIE continued to bill Mr. A., even imposing her with penalties for late payments, sending dunning mails, resorting to using a collection company then finally a bailiff! As soon as the consumer had called her supplier to mention her index was 1 m3, ENGIE should have understood that an erroneous consumption had been taken into account. The analysis of the dispute by the national energy ombudsman (recommendation n° D2019-22561) eventually resolved the situation, but to the price of a heavy inconvenience for the consumer, who saw her rights only restored because she requested the assistance of the national energy ombudsman! This example demonstrates that operators must remain vigilant to detect these types of situations, strive to solve them promptly, and not remain passive until consumers refer their cases to the national energy ombudsman to have their issues solved.

PRACTICAL CASE

A GAS METER THAT HAS MALFUNCTIONED FOR 10 YEARS!

The new smart-meters GAZPAR should generate less metering issues than the older models, but major malfunctions are sometimes observed, as in the case of Mrs. S., living in Paris. Since her contract started in 2006, the remote-reading box of her gas meter has been malfunctioning. GRDF acknowledged this issue only in 2015, but did not solve it, and the billing continued on an erroneous basis. The same ascertainment of meter malfunction was carried out in 2019, wherein Mrs. S. received unusually high bills, corresponding to consumption catch-ups. She then filed several claims, and eventually contested the billing from her supplier ENGIE after sending her file to the national energy ombudsman. The analysis of her case by the departments of the ombudsman revealed that, besides a calculation error made by GRDF, the adjustment made had been carried out in compliance with the consumption code, notably by complying with the billing limit of 14 months preceding the last meter reading. Both operators nonetheless agreed to compensate the consumer because of the conditions in which her file was processed, and the supplier ENGIE granted her a payment facility for the upcoming balance due. Eventually, Mrs. S. suffered no other inconveniences from this malfunction, because her billing eventually had been established on highly underestimated bases over 10 years.

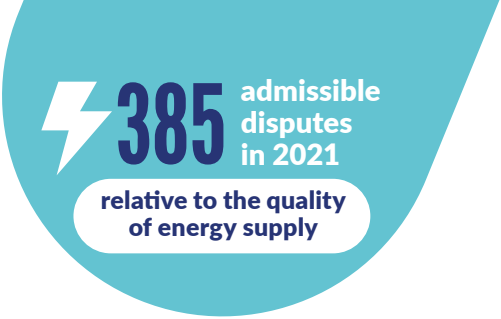
Recommendation n° D2020-00655

In the electricity sector, metering issues may also skew the calculation of consumption and the amount of set monthly payments, which may sometimes lead to billing adjustments beyond the legal limit of 14 months (**see the cases previously mentioned p.39, as well as the case of recommendation n° D2019-18846**). Mrs. P. contested the increase in her consumption after her smart-meter LINKY was installed. What was revealed, and this is frequently the case, was that her former meter had been malfunctioning and had not properly measured all the consumed energy. Since her supplier had not readjusted the amount of her monthly payments to take into account the monthly readings carried out by the smart-meter LINKY, the national energy ombudsman requested the supplier to compensate the consumer for all the inconvenience she had experienced.

Number of smart-meters already installed

Linky	Gazpar
30 MILLION	7.4 MILLION

ENEDIS MUST SYSTEMATICALLY AND SPONTANEOUSLY APPLY THE SET BILL REDUCTION IN CASES WHERE A POWER CUT LASTS FOR MORE THAN FIVE HOURS



The quality of the electricity supply may vary, sometimes without consumers even noticing it, due to a tension lower than what is set by the standard, or to micro-cuts of less than a second. However, there are also cases in which power cuts last for a few minutes and these are more troublesome, especially when their repetition over time may eventually amount to several hours in a year. Besides these obvious shortcomings in the quality of the electricity supply, which may lead to damages and financial losses, users do not benefit from any bill reduction if the power cut is shorter than five consecutive hours. « *It is unfair that users with a lower quality of service pay their electricity supply as if nothing has happened.* ***At all events, ENEDIS should inform consumers, by text messages or emails, of power cuts or disturbances in their area, including an explanation about the cause of the incident, details about the planned delay to restore normal operations and information about the procedure to file claims*** », details François-Xavier BOUTIN, head of the gas and networks division.

When a consumer experiences a cut in his/her electricity supply that lasts longer than five consecutive hours, and that is attributable to a failure of the distribution or transportation public network, he/she must automatically benefit from a tariff cut on his/her bill, without having to file a request for it. This is what is set out by the deliberation of the Energy regulatory commission of June 14 2018. This lump-sum reduction on the utilization tariff of the public networks of electricity is calculated on the basis of 2 Euros (excluding taxes) per kVA of subscribed power and per time periods of five hours of power cuts, for consumers connected with a low voltage and a subscribed power lower than, or equal to, 36 kVA.

The national energy ombudsman has nonetheless observed, after processing several disputes referred to him, that ENEDIS was not automatically applying the tariff reduction set by the deliberation of the Energy regulatory commission. For instance, Mrs. V. and Mr. B experienced a power cut that lasted for more than five hours while works were carried out on the public network. However, under the pretext that works should have lasted less than five hours and that consumers had been warned beforehand, the manager of the distribution network refused to apply the set reduction on their bill. After the national energy ombudsman intervened, ENEDIS eventually agreed to apply this reduction (recommendation n° D2020-15559). In some cases, ENEDIS applies a bill reduction, but makes mistakes on its amount (recommandation n° D2020-09832).

In some other situations, when the relation between the electricity cut and the material inconvenience is established, the manager of the distribution network is required to compensate the consumer who is affected. This is especially the case of food product losses due to fridge and freezer shutdowns (recommendations n° D2020-05865 and n° D2020-21352) or of damages to electrical equipment, in particular on those devices functioning with three-phase current undergoing a neutral loss (recommendation n° D2020-21245). In some situations, which are fortunately highly uncommon, such as the power cut of more than five days experienced by Mrs. G., (recommandation n° D2020-15994), the damage is so considerable that it is shocking to see the manager of the distribution network not immediately and spontaneously apply the set reduction of the TURPE.

« *ENEDIS invokes far too often consumer liability, or cases of force majeure, to dismiss any compensation for cases of more than five hours. Given the low amounts incurred in cases of TURPE reduction – most often they are lower than 50 Euros – ENEDIS should not seek to systematically avoid fulfilling its obligations. By systematically complying with the rule, it would save the national energy ombudsman from intervening in these disputes and signaling to the CRE the shortcomings of ENEDIS regarding its application of the set reduction* », regrets Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department.

03 TRUST MUST ALSO BE OF THE ESSENCE IN CASES OF DISPUTES

The poor processing of consumer claims by suppliers damages the trust they have in the opening of the energy markets.

Suppliers and managers of distribution networks of electricity or gas have two months at their disposal to process a consumer claim and solve the dispute. In the event that the required corrective actions have not been taken within this time limit, consumers may refer their disputes to the national energy ombudsman.

In a certain number of cases, which have unfortunately been increasing during the past few years, **the disputes that suppliers or distributors have not been capable of solving satisfactorily for their customers tend to increase**, particularly in cases in which operators have given an inadequate reply, or even no reply at all. Hence, the trust that was earned when the subscription was made has now been lost…

TOO MANY DISPUTES ARE CAUSED BY THE POOR PROCESSING OF CUSTOMER CLAIMS BY SUPPLIERS

When a customer experiences an issue relating to energy supply, which can commonly happen, he/she contacts the customer service of his/her supplier or distributor, and in the event the solution is unsatisfying, he/she sends the file to the claims department. The supplier must then process the customer request as promptly as possible, and in his/her best interests. This is a common sense practice in any business sector, which allows for the maintenance of consumer trust and loyalty. « *In November 2020, one year after I was nominated, I had to encourage several operators to improve their commercial services, notably their claim departments. Too often do they not process the claims from their customers, or do not produce a satisfying answer within the allocated delay of two months. Why is that so? I am convinced that the energy sector lacks a commercial culture, and that the "customer experience",*

as it is called nowadays, is not sufficiently valued. What results from this are consumer requests becoming mediation referrals for my departments. ***Oftentimes, the simple intervention of the national energy ombudsman is sufficient to obtain the answer*** *that the customer has not received. What we observe are disputes that are easy to process and that should have been solved promptly. In all cases, my opinion is that it is abnormal for the national energy ombudsman to become the customer support of suppliers!* », protests Olivier CHALLAN BELVAL.

As the national energy ombudsman reiterates every year, anything that pertains to the strict compliance with the law (providing accurate and clear information about the content of an offer prior to the subscription, advising about the offer most suited to the consumer, banning bills beyond 14 months in cases of major adjustments, terminating contracts at the date requested by consumers, reimbursing overpaid amounts) should never ends up in his hands! Obviously, the maximum delay of two months for the processing of claims should be abided by, as this is a legal requirement. Too many « simple » disputes are processed through mediation, even though they could have been avoided. The Ombudsman's Letter n° 40 of September 2020 incidentally dealt with this topic.

In 2020, the increase in the number of disputes has been due for a large part to the neglectful or unprofessional processing of customer claims by some suppliers. Even though a few of them remain attentive about this issue and maintain a high quality of service toward customers, and if some others, such as ENEDIS, showed improvements during the year, a certain number of suppliers, and not only new market entrants, seem to still be experiencing a learning curve (see below). But major actors, from which is expected a high quality of service, show a lot of inefficiency, or even of carelessness, when processing the issues of their customers.

This is the case of TOTAL DIRECT ENERGIE, which has exhibited several shortcomings when processing disputes, or more precisely in its lack of dispute processing **(see Focus p.51)**. And yet, it is the third supplier in France in terms of number of customers, and it is backed by one of the largest energy groups worldwide. The national energy ombudsman has major criticisms toward this company **(see the red flag p.74),** especially when it observes that more than half of the receivable disputes involving TOTAL DIRECT ENERGIE are billing issues that the supplier is incapable of solving! An operator of this size should have the capacity of billing its customers without anomalies, and in the event that errors do occur, it should be able to find a solution within the time limit of two months!

Yet, the departments of the national energy ombudsman must too often solve disputes that should never have been referred to them in the first place, that is because they should not have occurred! This is for instance the case of the dispute between TOTAL DIRECT ENERGIE and Mrs. S.-c. about the reimbursement of the balance of a bill, that the supplier had not paid by due date, or had responded to the claim of its customer. An intervention by the national energy ombudsman was required to produce a satisfying result to the legitimate claim of the customer, who received compensation amounting to 10 % of the sum at stake for the inconvenience she underwent and the faulty processing of her issue by TOTAL DIRECT ENERGIE.

FOCUS

TOTAL DIRECT ENERGIE DOES NOT SERIOUSLY PROCESS THE NUMEROUS DISPUTES FROM ITS CUSTOMERS

The fusion between TOTAL SPRING with DIRECT ENERGIE in April 2019 generated issues of customer billing management for the new entity. TOTAL DIRECT ENERGIE proved incapable of solving these issues, and the number of disputes receivable for mediation involving TOTAL DIRECT ENERGIE more than doubled between the start of 2020 and the start of 2021! In particular, when the ombudsman examines these disputes, it observes that TOTAL DIRECT ENERGIE often barely processes the initial claims of its customers, or even not at all. Some of them are relative to payments made to TOTAL SPRING but not taken into account by TOTAL DIRECT ENERGIE (recommendation n° D2020-19144), or to bills issued within delays that are not « reasonable » in the legal sense, i.e., that are factually unacceptable (recommendation n° D2020-16979).

Additionally, TOTAL DIRECT ENERGIE does not comply with a certain number of legal or regulatory rules, which is yet another cause for disputes: sending of the closing bill after a contract termination with delays of over a month, in breach of article 224-15 of the consumption code, or the billing of consumption beyond the 14-month limit set by article L. 224-11 of the same code.

In addition to these disputes, which should not have been referred to the national energy ombudsman, there are persistent difficulties with how it manages dispute processing. The observations forwarded by TOTAL DIRECT ENERGIE do not bring any pertinent answers to the departments of the national energy ombudsman. Besides, and in opposition to the principles usually applied by other suppliers, TOTAL DIRECT ENERGIE indulges in maintaining, or even initiating, recovery procedures during ongoing mediations (recommendation n° D2020-20313). This type of pressure applied on consumers during a mediation process is particularly unseemly! « *All the persons from TOTAL DIRECT ENERGIE with whom the teams of the national energy ombudsman talk say repeatedly that they are acting in good faith and working to find solutions to improve the situation. But for the moment, the reality is that the number of disputes that can be received for mediation is strongly increasing (it amounted to more than a third of referred cases received by the national energy ombudsman over the first quarter of 2021). The ombudsman's teams spend too much time on these cases. If only this supplier would implement within a month the amicable agreements and recommendations it agreed to, we would not have to regularly chase it up!* », states Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department, irritated after seeing some amicable agreements still not applied several months after they were issued.

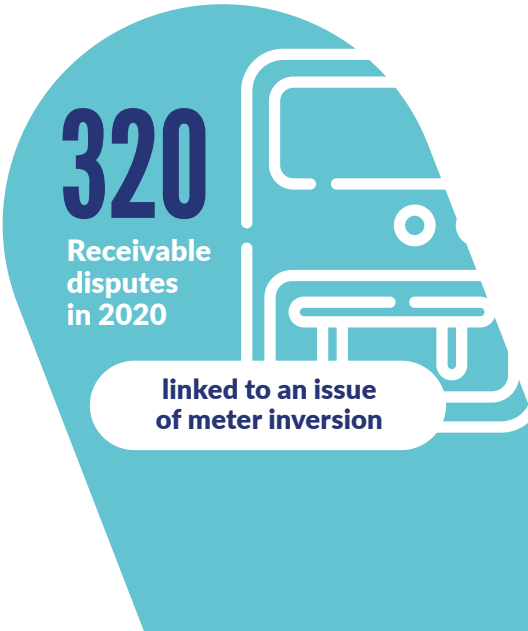
A SOLUTION TO PERMANENTLY END METER INVERSIONS MUST BE FOUND

Amongst the procedures that must be complied with by suppliers are those that must be applied in the event of errors on the technical reference of the consumption site, i.e. on the identification of the customer to whom this or that meter is attributed. Indicated on both the bill and the meter by a 14-figure number, this reference is called the « delivery point » (PDL) or the « reference measure point » (PRM) for electricity, and the «metering and estimation point » (PCE) for gas. Sometimes, this reference, which is essential for any subscription with a new supplier or for a service start, may be erroneous, either because the consumer made a mistake when transmitting it, or due to a wrong supplier (or more rarely network manager) assignment. Once a wrong PDL/PRM or PCE number is associated to the contract of a consumer, he/she will end up being billed with the energy consumption of another customer, or sometimes with a bill for two meters. Even worse, this consumer could see his/her energy supply cut.

These meter inversions are often extremely troublesome for consumers, with their contracts being effectively terminated in the information systems of operators. These cases are particularly difficult to solve, because it requires being able to identify the origin of the problem. In 2020, these situations, sometimes quite absurd, nonetheless amounted to more than 6% of disputes processed through mediation by the national energy ombudsman. Operators have already been encouraged by the national energy ombudsman to better combat these types of errors. He wishes that the fight would shift to the root of the problem and that sustainable measures are taken to forestall and prevent such errors. Above all, he hopes that they will be detected as soon as possible, before anyone ends up in a situation that is necessarily difficult to manage. He also wishes that suppliers would adopt a more responsible approach and has spurred them on to avoid contract subscriptions when a meter reference error is suspected **(voir Proposition n° 12 p.54)**.

The efficient management of these meter inversions is all the more essential in that a consumer enduring a contract termination must not only be able to swiftly renew it, but also be subscribed with the same contractual terms. This is the least that any consumer should expect, since they were not responsible in the matter. It is therefore essential that the communication between suppliers and the distributor functions properly, with the strict application of the procedures set out by the Energy regulatory commission **(voir Practical Case p.53)**. **Indeed, suppliers must abide by a precise procedure, established by workgroups steered by the Energy regulatory commission. However, they too often prefer cancelling contracts without bothering about the consequences.** It is surely a faster solution, but one that generally backfires on the consumer!

For people having a contract with the regulated tariffs of gas sale, it is even more essential to strictly apply the procedure, since it is no longer feasible to recreate an identical contract with the discontinuation of this tariff. Moreover, these procedures were updated in April 2020, to take into account the specificities of the « backdating » in the case of a contract with a regulated tariff.



PRACTICAL CASE

THE SUPPLIER DID NOT APPLY THE SET PROCEDURE FOR CASES OF METER INVERSION

The contract of gas supply for a jointly-owned estate in the Yvelines was terminated unwittingly in May 2019. What followed was a gas cut of nine days during September of the same year. The supplier ENI was the culprit: indeed, it had logged the meter reference for the whole estate when it carried out a request for a supplier change for one of its customers in May. To correct its error, the supplier ENU cancelled the contract it had mistakenly established with the metering point of the estate, which led to a gas supply cut in September. *« After ENI realized the error it had made, it should have applied the procedure set by the CRE for cases of PCE errors; i.e. to contact the supplier of the jointly-owned estate (in other words ENGIE) - going through the distributor GRDF if needed – and have it take back its customer. The supply cut would have then been avoided»*, explains Fouzia LAYAOUI, jurist and task officer.

This example illustrates the difficulties that consumers may undergo after experiencing a meter inversion.

In the present case, the co-ownership, being a non-residential customer, was contractually committed with ENGIE for three years until the end of May 2020. Even if the estate had not asked for anything, the contract termination before its expiry date resulted the estate being charged with fees close to 6,000 Euros (taxes excluded) for early cancellation. *«ENGIE assumed that these fees for early cancellation had to be calculated on the basis of the remaining contractual year. Yet, the co-ownership became a customer of ENGIE again in September 2019. We then recommended that ENGIE reimburse 8/12th of the billed penalties, and ENI 4/12th of the remaining penalties »*, adds Fouzia LAYAOUI. To this date, the supplier ENI has agreed with, and implemented, the recommendation of the national energy ombudsman (compensation to the co-ownership and take-over of the gas consumption from May to September). However, the supplier ENGIE has not…

Recommendation n° D2020-13800

PROPOSAL n° 12

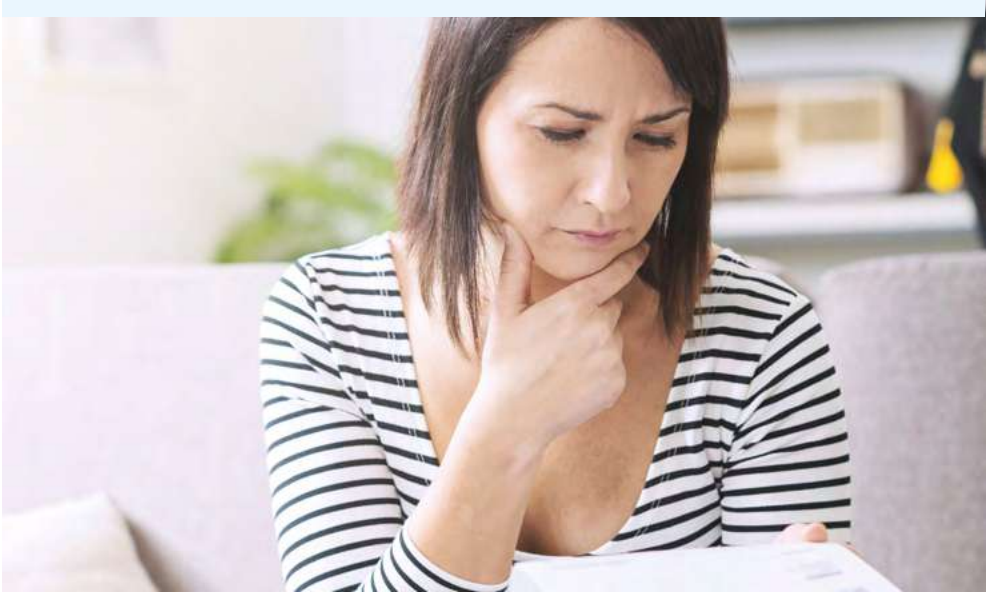
STOP THE SUBSCRIPTION TO A CONTRACT OF ENERGY SUPPLY AS SOON AS A METER INVERSION IS DETECTED

Several hundreds of disputes are referred each year to the national energy ombudsman because of identification errors on the delivery or metering point. These situations, highly detrimental to consumers, must be better managed when they occur, but measures should also be researched into sustainably eliminating those errors. For that matter, the national energy ombudsman, who has strived to define structural solutions, welcomes the creation (at last) of a workgroup that gathers all the concerned actors (suppliers, managers of distribution networks, Energy regulatory commission) and has the mission of:

• Defining and implementing a preventive system to detect PDL/PRM and PCE errors, which would be under the responsibility of the managers of distribution networks.

• Automatically stopping a subscription to a contract as soon as a risk of meter inversion is detected, notably by verifying a second data source such as, e.g., the number displayed on the meter or the valve.

• Applying financial penalties to suppliers that are the cause of PDL/PRM or PCE errors, or that will not apply the agreed procedures. The amount of these penalties would be redistributed to network managers, and would help diminishing the supply tariff.



NON-COMPLIANCE WITH PROCEDURES OR REGULATIONS STILL REMAINS TOO FREQUENT

Several procedures or rules are not being applied, which results in disputes that should never have existed.

Below are a few examples of such bad practices, which burden the departments of the national energy ombudsman with irrelevant disputes.

• **When a tariff change must be applied during the billing process, the supplier must use the *prorata temporis*** calculation method. In the event that no contract provision exists, this method is the one set by article 6 of the decree of April 18 2012, relative to bills of electricity or natural gas supply. To each consumption period must be applied the corresponding kWh price. However, the calculation made by the supplier's IT system may be erroneous, as was the case in the dispute between Mr. M. and supplier SÉOLIS: the regulated tariff Tempo had been applied for red and white days on a period of blue days (recommendation n° D2019-11510).

If any doubt remains on the rule to be applied, the national energy ombudsman already reminded suppliers in 2018 and 2019 that for lack of particular provisions, the *prorata temporis* method must be applied in cases of tariff change and the absence of readings, unless weighing coefficients for this are set in the general terms of sale. This recommendation had to be renewed in 2020, notably when a dispute occurred between the supplier PLANETE OUI and Mr. And Mrs. V., who were contesting their billing because the consumptions had not been properly allocated after a tariff change (recommendation n° D2020-06861). Furthermore, PLANETE OUI proved incapable of issuing a corrective bill within the time limit of three months for their customers, who had then left the supplier, which aggravated their inconveniences. PLANETE OUI has still not informed the national energy ombudsman whether it has taken the necessary measures to avoid the repetition of such disputes.

• **Under the provisions of the decree of April 18 2012, suppliers must provide the mandatory particulars on their bills.** Articles 3, 4 and 10 of this regulatory document are very precise and must be strictly complied with, to allow consumers to be informed, e.g., of the simple and free solutions they may have to consult the whole set of prices applied by the supplier, the reference number of the meter, the estimated date of the next bill, the consumption history over a full year, the terms of payment, the contact details of the appropriate department for the processing of claims and the contact details of the national energy ombudsman.

The national energy ombudsman thus had to remind the supplier VATTENFALL, for its dispute with Mr. P., who needed to be reimbursed for an overpayment due to the capacity mechanism, that it was mandatory that this information had to be mentioned on all bills of electricity supply (recommendation n° D2020-03644).

• **Presenting an offer to a customer must abide by the requirements of article L.111-1 of the consumption code, and of the decree of December 3 1987.** Also, it is essential that an estimation of the total amount (al taxes included) to be paid for a full year by a consumer is indicated on this new offer. The desire to differentiate themselves from other competitors may lead some suppliers to displays of creativity, but nonetheless, they must not forget that they are obligated to apply the rules!

The offers from WEKIWI presented « *at a set price with a package discount* » may be seen as an attractive promise when all discounts are accounted for. However, if not all application conditions are met, the consumer will end up with a higher bill than what he/she first believed. Besides, the tariff grid of WEKIWI does not mention that a minimum contractual commitment of one year is required to benefit from such discounts. When a dispute occurred with Mr. L., who had subscribed to such a contract for his supply of natural gas, the national energy ombudsman reminded WEKIWI about its general obligation of fair and comprehensive information (recommendation n° D2020-10648). Furthermore, the comparison tool of the national energy ombudsman now specifies that the discount is bound to a « *price subject to a 12-month commitment* ».

• **Service start fees for gas must be billed only once, and when the service actually starts.** While this is obvious, it is still sometimes forgotten by some suppliers. The national energy ombudsman was referred to a dispute in which the supplier ENGIE

had billed its customer Mr. M. 16 times fees for service start. Even though it would have been more convenient and simpler to reply to the claims of the customer, the supplier ENGIE passed these fees, which the customer was refusing to pay, onto his next bills, and then sent him dunning notices, used the services of a recovery company and even threatened the customer to cut his supply, requesting that the network managers cancel his contracts of gas and electricity supply. The situation was only restored after 10 months, and the consumer sought redress and referred the dispute to the national energy ombudsman (recommendation n° D2020-21557).

To avoid issues due to payment times being too short, and to compliance with the requested termination date, the national energy ombudsman renews the proposals he anounced last year.

PROPOSAL n° 13

ABIDE BY THE TERMINATION DATE REQUESTED BY THE CONSUMERS

In the event a contract of energy supply is terminated, article L. 224-14 of the consumption code specifies that « *the termination takes effect at the date expressed by the consumer, and 30 days at the latest after the termination notice is sent to the supplier* ». Some suppliers read these provisions as an authorization to systematically apply a delay of 30 days before termination.

They display this rule in their general terms of sale, which is a cause for disputes.

The national energy ombudsman proposes that the legal framework could be modified to specify that the termination should be carried out « *at the date requested by the consumer* ».

PROPOSAL n° 14

GIVE CONSUMERS A PAYMENT DEADLINE OF THREE WEEKS AFTER THEIR BILL IS ISSUED

The deadline to pay an energy bill, set by the decree of August 13 2008 relative to the applicable procedure in cases of unpaid electricity, gas, heating and water bills, is « *14 days after the bill is issued* ». Such a delay, which includes the time required to edit and send the bill, as well as the time required, if pertinent, to send a cheque, is too short and too often puts consumers in the situations where they have unpaid bills.

Indeed, given postal delivery times, and internal processing delays from the operators, a consumer usually disposes of only one effective week to pay a bill.

The national energy ombudsman therefore proposes that the decree of August 13 2008 should be modified to extend the deadline to pay a bill to three weeks.

2

THE RESULTS OF THE NATIONAL ENERGY OMBUDSMAN

The decrease in French economic activity, as a consequence of the Covid-19 pandemic, has led to changes in energy consumption, and has made many households and companies more vulnerable. With most of its process now carried out via digital technologies, the departments of the national energy ombudsman have been able to adapt to this situation by organizing teleworking for all of its collaborators.
However, the number of disputes due to the supply of energy keeps on growing, and while the productivity of the mediation department is still improving, 2020 nonetheless saw a lengthening of the processing delays for disputes accepted for mediation.

01 AN INCREASED ACTIVITY IN 2020

Despite repeatedly calling out the operators of the energy market for the past several years to improve their practices, particularly those related to the processing of customer claims, the national energy ombudsman has in 2020 experienced once again a sharp increase in the disputes referred to him.

THE NUMBER OF DISPUTES RECEIVED IN 2020 INCREASED BY 19%

The national energy ombudsman filed 22,807 disputes in 2019. **During 2020, it received 27,203 disputes, i.e., a 19% increase compared to the previous year, which had in turn seen the number of disputes grow by 35%!**

Consumers contact the national energy ombudsman mainly by calling the **toll-free number 0 800 112 212** of énergie-info (10,666 received disputes). They also refer their disputes directly, using the **online tool SOLLEN** (9,039 disputes) or **by mail** (3,945 disputes). The remaining requests are mainly received from the **contact form of the energie-info.fr** (3,454 disputes).

Received disputes concern the electricity supply (65%) much more than the gas supply (21%), but a small fraction of disputes concern both (11%). As in 2019, the overwhelming majority of disputes were filed by individuals (94 %). Just under a third of them (29 %) contested the level of billed consumption, and almost another third (28 %) issues caused by billing (bill, payment and acquittance, price/tariff).

27,203

Number of disputes received in 2020 by the ombudsman (+19% compared to 2019)

2020 saw 1,800 additional disputes filed because of billing compared to 2019! *« I said it previously and will repeat it: it is not normal that, in the 21st century, with the IT tools at our disposal, so many disputes concern billing issues. But what is even less normal is that the concerned suppliers remain incapable of managing these disputes within the timeframe of two months set by the law! The purpose of the services of the national energy ombudsman is not to replace*

suppliers in solving billing issues they were unable to avoid or manage», speaks out Olivier CHALLAN BELVAL.

Once the requests were analysed, to screen out those that did not meet the legal requirements for a mediation **(for details see p.97 in Key Figures)**, 8,595 were deemed receivable in 2020. This number is 19% higher than in 2019. The most prevalent suppliers are TOTAL DIRECT ENERGIE with 2,292 receivable disputes, then EDF with 2,097 disputes, ENGIE with 1,888 disputes and ENI with 1,355 disputes.

The distribution by energy type and consumer type remains similar to disputes received during previous years. However, the percentage relating to the contestation of billed consumption is greater, and amounted to 46% of receivable disputes in 2020, i.e., more than 4,000 cases.

This year saw a new indicator implemented by the ombudsman's departments, which takes into account the responsibility of a supplier in a dispute. This new indicator leads to a ranking subject to analysis **(see Focus at the bottom of the page).**

Of the 8,595 disputes that were received in 2020, nearly half were attributable to contestations on the billed levels of consumptions.

FOCUS

A NEW INDICATOR OF THE NATIONAL ENERGY OMBUDSMAN IN 2020: THE RESPONSIBILITY OF OPERATORS IN DISPUTES IN WHICH THEY ARE INVOLVED

In many cases, several operators are involved in the same dispute, but are not necessarily liable for the issue that occurred. Compared with the general ranking of total receivable disputes, the one for suppliers having the responsibility in a dispute is slightly different: TOTAL DIRECT ENERGIE is still in the lead with 1,345 disputes, followed by ENI (1,287 disputes), ENGIE (1,247 disputes) and EDF (968 disputes).

In order to better understand how active an actor is in the origin of the disputes, the national energy ombudsman assessed for each operator the fraction of disputes in which it is liable compared to the total number of disputes it is involved in. This approach allows cancelling the « volume » effect from the number of disputes for large operators with very big customer bases. What is then observed is that small operators have a greater share of responsibility.

Thus, the supplier ENI is found to be responsible in 91% of disputes in which it is involved, GREENYELLOW in 82%, IBERDROLA in 81%, TOTAL DIRECT ENERGIE and VATTENFALL in 73%, ENGIE in 71%, LECLERC ENERGIES in 64%, EKWATEUR in 55% and EDF in 51%. The responsibility of network managers is more limited: ENEDIS is liable for 46% of cases, and GRDF for 28% of cases.

The number of mediations resulting in an amicable agreement increased by 23% in 2020

The processing of disputes receivable by the departments of the national energy ombudsman led to 7,681 recommendations in 2020. This figure represents an increase of 13% compared to 2019. To deal with this activity growth, the national energy ombudsman continues to capitalize on its experience of recurring disputes to promptly solve disputes using common assessment grids.

The increased resorting of amicable agreements also allows for a reduction in the mediation processing delays: by agreeing to a solution proposed by the teams of the national energy ombudsman, parties succeed in obtaining an amicable agreement more quickly. **The number of amicable agreements thus increased by 23%, from about 4,000 agreements in 2019 to more than 4,900 in 2020.** While amicable agreements amounted in 2019to 59% of the mediation solutions, in 2020 this rate is now of 64%.

Suppliers with which amicable agreements are most often concluded are IBERDROLA, ENI, VATTENFALL and MINT ENERGIE, for which 75 % of the proposals of mediation solutions end up being amicable agreements.

The search for faster solutions in the processing of disputes does not prevent collaborators of the national energy ombudsman expressing regret that there are still too many disputes being processed. Indeed, one consequence of the sharp increase in referred cases over the past few years is that the number of ongoing disputes continues to grow. Thus, 900 disputes deemed as receivable did not find any outcome in 2020 and will have to be concluded in 2021.

Processing delays also lengthened this year. **Indeed, the average delay for terminating a receivable dispute in 2020 was 83 days, i.e. 13 more days than in 2019 and 20 more than in 2018.** This average delay is now close to the maximum regulatory delay of 90 days, within which the national energy ombudsman has to formulate its recommendation. If 24% of files were concluded within two months or less, only 49% were in less than 90 days. This is far less than in 2019 (76%).

This increase of processing delays is a worrisome factor for the future… *« Is the increase of the number of disputes inevitable with opening up the energy market to competition? When we observe what is happening on the highly liberalized British market, where 66,000 receivable claims were filed by the British ombudsman, questions are raised… However, our ambition is not to have the activity of the national energy ombudsman infinitely growing! Quite the opposite, we wish to see the number of disputes diminish, and this is why we constantly encourage, sometimes firmly, suppliers and distributors to improve their practices and to systematically apply our recommendations »*, states Frédérique FERIAUD, managing director.

The follow-up rate of the recommendations from the national energy ombudsman by suppliers and distributors thus increased by 5 percentage points in 2020 compared to 2019, and reached 95%. This is a commendable achievement, even though the goal of reaching 100%, set last year by the national energy ombudsman, was only reached by the supplier VATTENFALL.

However, and conversely, some operators are well below average. The national energy ombudsman points out to them that not following its recommendations is a risky gamble, because if the consumer decides to go to court, they will most likely end up with a similar penalty, or even a steeper one **(see Focus p.63).**

FOCUS

JUSTICE IS SOMETIMES MORE DEMANDING THAN THE NATIONAL ENERGY OMBUDSMAN

Any consumer who refers his/her case to the national energy ombudsman always keeps the option of initiating legal proceedings if he/she is not satisfied with the recommendation issued by the national energy ombudsman, or if the concerned operators refuse to follow that recommendation. The few court decisions taken for such disputes show that, for a supplier or network manager, having a case brought to court often results in outcomes that are much more disadvantageous than the one proposed by the national energy ombudsman.

This is what ENEDIS and EDF experienced in 2020. The first one was convicted in two cases, one in which index readings had been incorrectly transmitted, and the other one where it was liable for damages caused to equipment during a storm. In both cases, tribunals confirmed the amount of financial compensation recommended by the ombudsman, and additionally sentenced ENEDIS to pay a sum of 1,000 Euros to the consumer, under article 700 of the code of civil procedure.

On its part, EDF was brought to court by a consumer due to a dispute for which the ombudsman had recommended the supplier and ENEDIS to share evenly the reimbursement of a wrong billing (problematic meter reading and 14-month exceedance). EDF being the only one brought to court, ended up being convicted and sentenced to reimburse the undue bill, and also pay 500 Euros under article 700 of the code of civil procedure.

The national energy ombudsman considers that what should be learned from such court decisions for suppliers and distributors is that they should better accept its recommendations and implement them!

The level of consumer satisfaction concerning the actions of the national energy ombudsman remains high

As is the case every year, the national energy ombudsman orders a survey about the level of satisfaction of consumers who have referred cases. Carried out by an opinion research company in February 2021, this investigation surveyed 352 people, including 52 professionals, who had referred their cases to the ombudsman in 2020.

The overall level of satisfaction lost 8 points, but remains at the very acceptable level of 82% of satisfied consumers. This decrease of satisfaction is also found in the detailed results of the survey, except when people are asked if they would recommend the ombudsman to friends and family: with 91% of people stating « *yes* » a decrease of only 1 point. For the opinion research company, the social and economic context of the health crisis was a major factor in explaining the decrease of the overall satisfaction of surveyed people, more than the reality of what they had experienced with the ombudsman. The survey we will carry out next year will allow confirming or not this analysis.

The first reason why surveyed people were satisfied included the fact that they were provided a solution to their issues, and to do with the promptness with which their files were processed. The qualities of receptiveness, availability and understanding of the collaborators of the national energy ombudsman are then mentioned. Despite the increase in processing delays in 2020 compared to 2019, the satisfaction level remains high overall at 84%.

In the context of the health crisis, the services of the national energy ombudsman swiftly reorganized to maintain their mission of consumer information, and continued processing disputes in mediation

As for a majority of French people, the confinement of March caused by the health crisis caught the departments of the national energy ombudsman unaware. While teleworking before then only concerned a few agents one day per week, the ombudsman only had a few days to set up an organisation based exclusively on remote working for everyone. One of the first issues was to acquire enough IT equipment for all agents, and this proved difficult because of a high demand on the national scale. This procurement delay pushed some of the collaborators to initially work with their personal equipment. Another issue concerned the call centre of the toll-free number (0800 112 212), but the external provider swiftly found a solution to enable all its phone agents to work from home, and the toll-free number was only interrupted for three days.

« *Our collaborators were amazing. They all adapted to the confinement situation, then to the continuation of teleworking the following months. Even for jobs for which it seemed difficult, such as mail management or the telephone switchboard, we eventually found a solution. After the initial technical adjustments at the beginning, we even observed that our productivity was increasing. At the start of the confinement, it became possible to process older disputes, because consumers were sending fewer cases. Then, this higher productivity allowed us to process the new disputes, which were arriving in greater numbers* », details Frédérique FERIAUD.

However, remote working reduced contacts between collaborators, and reduced friendliness and team spirit. Like for any other company, remote management is not ideal to maintain group dynamics. The national energy ombudsman will therefore strive to research what will be the best compromise between teleworking and office working when the crisis is over.

82 %

of consumers calling on the ombudsman are satisfied.

Source: Satisfaction survey carried out in February 2021.

Financial and human means remain stable

The 7,681 recommendations issued by the national energy ombudsman in 2020 are twice the amount of 2017. Yet, over three years, the human resources of the ombudsman have changed very little, and its financial capacity has even slightly decreased.

The 2020 budget, amounting to 5,334,000 Euros represents an increase of 0.3% compared to the 2019 budget, but is 5% lower than that of 2017. *« This stagnation between 2019 and 2020 has to be accepted given a context that saw plenty of public bodies have their finances lowered. Furthermore, with the change brought to article L. 122-5 of the energy code, the way the budget is effectively allocated to the ombudsman is faster since 2020, which has allowed us to save time »*, details Pierre-Laurent HOLLEVILLE, task officer for the general direction.

Overall, 93% of the 2020 budget was spent. The downward trend in several categories of expenditure seems to be sustainable, such as implementing the énergie-info barometer by e-mail rather than by phone. This is also the case with the decreasing number of consumer mail digitizations, because an increasing number of referrals are carried out directly online via SOLLEN. *« Above all, it is the management of the health crisis that has reduced some expenditure items. We had barely any transportation costs, no temporary employment and personnel training could not be carried out in 2020. Conversely, the procurement of office supplies increased because of the sanitary situation (hydroalcoholic gel, masks, ®Plexiglas, etc.), and the budget allocated to acquiring laptop computers for all agents was multiplied by seven »*, explains Béatrice GAUDRAY, head of the administration and finance department. Some expenditure items, notably the ones due to redesigning the price comparison tool and to changes made to the graphic charter were specific to 2020.

The productivity gains achieved over the past few years, notably thanks to digitization and to the improvement of department competency, continued in 2020, despite the specific context of the health crisis. However, this digitization, emphasized with teleworking, is now reaching its limits, as is shown by the lowest rate of disputes processed within 90 days that the ombudsman has ever known (49%). *« Without additional means, and if the number of disputes remains high, or even keeps on increasing, we fear that the quality of service of the national energy ombudsman may deteriorate. Fortunately, the 2021 budget enabled hiring two additional lawyers. Our requests, backed by members of Parliament during the voting process of the finance act, have eventually succeeded. But with the time required to train our two new employees, we will not be able to catch-up the backlog,or handle the flow of files at the start of 2021, which has started with a high volume of disputes »*, indicates Frédérique FERIAUD. Even with the estimated 2021 budget being upgraded to 5,471,000 Euros, if the number of receivable disputes does not start decreasing, the human resources of the ombudsman will not be capable of indefinitely tackling a constant increase in disputes.

> *« Collaborators were amazing. Each and every one of them adapted to the confinement context, and to the continuation of teleworking over the following months. »*
>
> Frédérique FERIAUD

L'INTERVIEW

DANIEL GREMILLET

Senator for Vosges and president of the « Energy » study group in the Senate

The « Énergie-Climat » law of November 2019 includes several measures that allow enhancing consumer information and, consequently, protecting them.

Firstly, article 66 of the law supports the continuation of the opening of energy markets to competition, by granting a legal foundation to the online price comparison tool of the national energy ombudsman and to the quarterly reports of the Retail market observatory of the Energy regulatory commission (CRE).

In addition, the law plans for the adoption of a law, every five years from 2023, setting the objectives and priorities of the actions for the national energy policy. This represents a major progress for Parliament, but also for consumers. Under the impetus of Senate works, this five-years law will determine the objectives of energy retrofitting in buildings, and set the volume of energy saving obligations, in the context of white certificates (C2E), to establish a sustainable path and lower the cost of C2E for consumers, which concentrate on its own a financial volume of more than 3 billion Euros, i.e., 3 to 4% of the energy bill.

« The law plans for mandatory information about consumption levels to be provided to households experiencing fuel poverty, and makes auditing compulsory for energy sinks. »

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In the same spirit, in article 22 the law plans for mandatory information about consumption levels to be provided to households experiencing fuel poverty, and makes auditing compulsory for energy sinks.

Lastly, the law plans to provide assistance with regard to the termination of some regulated tariffs of electricity (TRVE) or gas (TRVG) sales.

I observe that the national energy ombudsman is given an essential role in this context, since it is in charge of the price comparison tool and of the aforementioned information campaigns. I welcome it, because its role is essential to protect the rights of energy consumers, and in particular the most vulnerable ones, by identifying wrongdoings and settling disputes.

THE ACTIVITY OF THE CONSUMER INFORMATION DEPARTMENT INCREASED BY 45% IN 2020

The information mission of the national energy ombudsman grew tremendously in 2020. It experienced an increase of 45% compared to 2019, with more than 3 million people receiving information. Is this the result of confinement? Consumers used the energie-info.fr, website more, which received in excess of 2.6 million visits, compared to 1.7 million in 2019. Half of the traffic was on the price comparison tool, which in 2020 saw its number of visits almost double to 1.3 million visits.

This increase is mainly due to the announced end of the regulated tariffs of natural gas sale in July 2023, and the sending of an official mail encouraging gas consumers having a contract with regulated tariffs to anticipate the tariff end and to compare offers on the website of the national energy ombudsman. In any case, this is a clear sign that consumers now better identify the national energy ombudsman as being the official reference.

A RECORD: 3 MILLION

people obtained information from the ombudsman in 2020 (+45% compared to 2019)

The traffic increase of the energie-info.fr website goes hand in hand with a slight decrease (-4%) of calls made to the toll-free number (0800 112 212), which totals 175,400 calls. The first confinement did not impair the quality of service of the call centre, which after needing some time to organize activities between March 17 and 20 2020 then managed to regain the service quality required by the national energy ombudsman, i.e. to answer at least 95% of calls, and for 60% of cases within 10 seconds. « *The number of processed calls made to the toll-free number has structurally decreased for several years. This is normal, since consumers tend to increasingly obtain information on the ombudsman's website. There is a clear trend to information digitization* », comments Caroline KELLER, head of the information and communication department.

The decrease in the number of consumers contacting the national energy ombudsman reflects the fact that those who do so are usually experiencing greater difficulties. The number of calls processed by the level 2 of the information service « énergie-info » hence increased by 12% in 2020 compared to 2019, with more than 12,400 requests in 2020. Similar to the previous years, 5% of calls processed by the level 2 then became mediation requests through SOLLEN, once the disputes met the legal requirements of receivability.

The institutional website energie-mediateur.fr saw a slight traffic increase in 2020 (+5%), with more than 211,000 visits.

HOW THE NATIONAL ENERGY OMBUDSMAN COMMUNICATES: BETWEEN ADAPTING TO THE HEALTH CRISIS AND INNOVATING

The sanitary context of 2020 has disrupted the usual communication practices of the national energy ombudsman. Due to gatherings being limited or prohibited, all public events, such as press conferences, were cancelled. Thus, the traditional meeting with the press to present the activity report for 2020 could not be held, along with the subject meetings that are usually organised. « *The health crisis has strongly impacted the public statements of the national energy ombudsman, resulting in a global feeling that our media activity was reduced. Yet, this situation was balanced by an increased presence in the digital world, through websites and social networks. Some actions could continue, such as the "Consomag" TV shows, and the énergie-info barometer. Lastly, this particular year we overhauled the price comparison tool of the national energy ombudsman and changed the logo. Eventually, 2020 has allowed us, with time, to enhance the visibility of the national energy ombudsman* », describes Caroline KELLER.

A new logo now brings an increased modernity to the image of mediation and public service of the institution **(see Focus p.69)**. The overhaul of the price comparison tool of the national energy ombudsman will allow it to better suit the needs and uses of web users, and the diversity of supplier offers **(see p.21).**

Four information letters were published, and 15 newsletters were sent to a total of 39,000 contacts. Visual productions also continued, with five « Consomag » TV shows produced jointly with the National institute for consumption (INC), and broadcasted in November and December on the France Télévision channels, notably featuring a new series dedicated to the end of the regulated tariffs of natural gas sales. Ten new videos of « La minute pratique » *(the practical minute)* were also published online in December 2020.

The media visibility of the national energy ombudsman was reduced in 2020, with around half less quotes in 2020 in newspapers, radio and television. The national energy ombudsman issued eight press releases, including one about solicitation published in February 2020 that was massively shared.

> ***With an increased presence in the digital world via websites and social networks, along with the overhaul of the price comparison tool and the change of logo, our visibility was enhanced in 2020.***
>
> Caroline KELLER

FOCUS

THE NEW LOGO OF THE NATIONAL ENERGY OMBUDSMAN

The logo of the national energy ombudsman had not changed since it was created in 2007. The new governmental charter, prescribing public bodies to add the republican Marianne on all their communication materials, as well as the wish to renew the graphical identity of the national energy ombudsman, have led to it researching a new logo. In July 2020, several communication companies were consulted and competed to design this, with a few key criteria: it should adopt the national colours, it must be memorable, there needs be harmonization with Marianne, and it should take inspiration from certain key words (public service, protection, trust, serious, approachable, independent, etc.). Establishing a blue-white-red colour scheme also allows for the price comparison tool of the national energy ombudsman to be distinguished from the comparison tools of private entities that have a commercial purpose.

« One of the proposals for logo that was submitted to us quickly convinced us. After a few adjustments, we finalized these two characters– one blue, one red – extending their hands, with their silhouettes shaping the « M» of the Médiateur (ombudsman). This was the foundation of our new graphical charter, which was applied to all our communication materials: from the letterhead of the national energy ombudsman to social networks and websites », explains Sophie Marin communication officer in charge of the logo change project.

The new visual identity, which symbolizes mediation, was thus developed from November 17 2020, with a specific cartouche for the information service « énergie-info ».

Le médiateur national de l'énergie

An increased presence on social networks, notably with « #VendrediCfini »(1)

Communication of the national energy ombudsman via social networks increased in 2020. The number of subscribers on its Twitter account grew significantly (+13 %), and considerably on its Facebook (+35 %) and LinkedIn (+36 %) accounts. Videos of the national energy ombudsman received 14,000 views on Viméo and Youtube.

#VENDREDICFINI

A new weekly meeting with the ombudsman on social networks to expose bad practices

Around 1,600 Facebook and LinkedIn subscribers, as well as more than 5,000 Twitter followers, are viewing the accounts of the national energy ombudsman on social networks. New dynamics developed when « #VendrediCfini » was created. This hashtag allowed for the organization of a weekly meeting every Friday, which was spotted by media and influencers, notably the newspaper L'Express that pointed out this was a « *first event of this type by a public body*» exposing the bad practices of some energy suppliers or distribution network managers. « *The idea is a simple one: depending on the currentness of cases processed by the teams of the national energy ombudsman, a dispute is selected and the claim of an consumer, who remains anonymous, is described. A brief comment is then added, and, if needed, links to information websites. With «#VendrediCfini», the national energy ombudsman is able to expose shocking, dubious or controversial practices. It may also draw attention to worrying issues. In 2020, communication mainly focused on abusive solicitations. Today, it also targets other recurring bad practices* », states Émilie POURQUERY, communication officer, who initiated this approach.

This new course of action increases awareness on the positions of the national energy ombudsman regarding disputes referred to him. It is highly tracked by the actors of the energy sector, and although web users do not personally utilize the hashtag themselves to state their own experiences, they react and express their views, particularly on Twitter.

(1) "It's Friday, it's over"

THE OMBUDSMEN OF EDF AND ENGIE

Before a consumer may refer his/her case to the national energy ombudsman, the law compels him/her to formulate a claim to the supplier or distribution network manager concerned, which must reply within two months.

Most of the suppliers have both a customer department and a consumer department (which constitutes the second level of claims). The suppliers EDF and ENGIE have also created a corporate ombudsman, to whom their customers may refer cases. This situation can be explained by the fact that corporate ombudsmen already existed when the national energy ombudsman was created in December 2006. The status of the ombudsmen of ENGIE and EDF stipulate that they must be independent from their parent company, and that their activity must first be subject to having an agreement signed with the national energy ombudsman. Indeed, as the ombudsman of the sector, processing all disputes between individual consumers and small businesses legally falls in principle within the scope of competence of the national energy ombudsman.

In order to guarantee that their actions can be properly coordinated, the agreement sets out that the national energy ombudsman and the corporate ombudsmen must transmit to each other files that fall outside their respective scope of competence. Thus, in 2020, 43 referred cases that were not receivable by the national energy ombudsman (mainly concerning energy benefits from the white certificate scheme) were forwarded to the ombudsman of EDF, and three to the ombudsman of ENGIE. Inversely, the ombudsmen of EDF and ENGIE respectively transmitted 18 and 2 files to the national energy ombudsman.

Every year, the national energy ombudsman verifies that the terms of the agreement that binds them together are fully respected by the ombudsmen of EDF and ENGIE. It especially verifies that the solutions it recommends are indeed established fully independently, and that they perfectly comply with consumer rights. In particular, when the national energy ombudsman is requested for a mediation by a consumer who had already referred his/her case to the corporate ombudsman, it examines more closely the discrepancies that may exist with its recommendations.

Thus, it observed in 2020 that **on the 91 referrals processed by the national energy ombudsman after the file had been in the hands of the ombudswoman of the EDF group, 39 recommendations diverged.** The noted differences pertained to the liability of EDF in 17 of the cases, and to the liability of the distribution network manager concerned in 24 of the cases. Regarding the liability of EDF, several cases concern the non-application of article L 224-11 of the consumption code, including Mr. B.'s case. The bill he contested had an adjustment calculated over 18 months of consumption. The national energy ombudsman therefore recommended a deduction of 2,780 Euros +20% of the balance due (1,240 Euros), to which it deducted 1,800 Euros, which the ombudsman of EDF had already granted, i.e., a recommended total of 2,220 Euros. EDF agreed with this solution (n° D2020-08476). If the concerned consumers had not referred their cases to the national energy ombudsman, they would have not been able to receive a total amount of compensations of close to 20,000 Euros. A similar situation exists with the ombudsman of ENGIE, but since it examines fewer disputes, the national energy ombudsman receives fewer cases from it (16 referrals in 2020, including 4 diverging ones).

The national energy ombudsman sent a mail to the ombudswoman of EDF to draw her attention to this situation.

PRACTICAL CASE

A CASE IN WHICH THE OMBUDSMAN OF THE EDF GROUP WRONGFULLY EXCLUDED THE LIABILITY OF ENEDIS

In December 2019, the supplier EDF requested the distribution network manager ENEDIS to carry out operations at the home of its customer Mr. H., and visually check out its meter LINKY, which since August had no longer been transmitting indexes. An ENEDIS technician went to the home on December 23 2019, and replaced the existing three-phase meter, without making an operation report.

The same day, Mr. H. had to call the emergency department of ENEDIS, because several of his electrical devices (garage door, gate, interphone, etc.) had been damaged by a phase failure. After a second visit, the ENEDIS technician simply pointed out that the problem originated from Mr. H.'s home equipment. Mr. H. contested this explanation and requested compensation from ENEDIS for his damaged devices.

Not seeing his claim rightfully solved, Mr. H. referred his case to the ombudsman of the EDF group, who concluded: « *Considering the elements in my possession, I am not capable of changing the position of ENEDIS and will therefore confirm its refusal to reimburse you of the €3,191 that you are claiming, since its liability is not established.* »

Being unsatisfied by this answer, Mr. H. then sent his file to the national energy ombudsman, to which ENEDIS stated that the recommendations of the EDF group « *did not reflect the analysis and conclusion mentioned in its reply, which remains open* », because it had merely stated that « *it could not confirm that no incident had occurred because of the installation of the LINKY meter during the operations on December 23 2019* ».

In these conditions, the national energy ombudsman considered that, contrary to the conclusions of the ombudsman of the EDF group, the liability of ENEDIS in this incident could not be excluded. Thus, it recommended ENEDIS to compensate Mr. H. with an amount of 3,191 Euros, which resulted in the dispute being solved with an amicable agreement.

Recommendation n° D2020-17050

THE « DELEGATE FOR THE AMICABLE SETTLEMENT OF DISPUTES » OF ENEDIS

At the start of June 2020, the national energy ombudsman learned from newspapers that ENEDIS had appointed an « ombudsman ».

This decision from ENEDIS occurred in ignorance of the applicable regulatory and legal provisions. Indeed, a « national ombudsman for consumption » must be initially approved by the Commission for assessing and monitoring consumption, under articles L. 615-1 et seq. of the consumption code. In addition, under article L. 612-5 of the consumption code, **any entity that intends to carry out an activity of consumption mediation in the energy sector is obligated to first sign an agreement with the national energy ombudsman.**

The national energy ombudsman drew the attention of ENEDIS on this issue, and after both entities communicated, the person was appointed the title of « mediation delegate », then « delegate to mediations », before a final decision was made to give him the title of « delegate for the amicable settlement of disputes for ENEDIS ».

Nonetheless, and despite these terminological adjustments, the national energy ombudsman considers that the mission of the job holder, who remains the same person, is to « *amicably settle disputes within a timeframe of 90 days* », and very much resembles corporate mediation, to the risk of creating confusion in the minds of consumers.

Incidentally, the national energy ombudsman has doubts as to whether the creation of a third level of recourse brings any benefit to the customers of ENEDIS, whether individual consumers or small businesses. In addition, the implemented solution cannot guarantee the independency, neutrality and efficiency required here, which allow for true consumer protection.

Therefore, it brought the matter to the president of the Commission for assessing and monitoring consumption (CECMC), even though ENEDIS has since agreed to clarify communications regarding the role of the national energy ombudsman as is required by legal and regulatory documents.

ENEDIS, which did not sign an agreement with the national energy ombudsman, cannot perform consumption mediation.

L'INTERVIEW

MARC EL NOUCHI

State Councillor, president of the Commissionfor assessing and monitoring consumption (CECMC)

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In 2016, France transposed the directive of 2013 that harmonises on the European scale the rules regulating consumption mediation. The aims being pursued are to reinforce consumer trust with regard to the purchase of goods and services, as well as to provide guarantees in cases of disputes with companies. In the context of this transposition, France chose to make mediation free, voluntary and unrestrictive for consumers, and for it to be implemented in all business sectors, regardless of the legal nature of the mediating bodies. It is important that the ombudsman is viewed as being an independent, impartial and competent third party, acting within the framework of a transparent and efficient process. Its statements are lawful and fair, with its proposals to solve disputes needing a legal foundation and having to be seen as rightful and fair by consumers. A body created in 2016, CECMC has referenced close to a hundred mediation entities. Today, it strives above all to have these entities abide by their obligations and to verify that consumers may effectively call out an ombudsman if they need to do so.

> *Let us keep in mind these essential principles: it is better to prevent and avoid these disputes, and in the event where they do occur, to settle them amicably rather than resorting to a lengthy and costly trial.*

Corporate ombudsmen, who only exist in France and Spain, had to adapt to the new rules created by the transposed directive, and in some cases coordinate with the national ombudsmen such as the national energy ombudsman. In principle, the law granted these public ombudsmen a competence in their operational sector, and high statutory independence. The processing of a large volume of disputes by a same ombudsman guarantees some budgetary efficiency, and allows the public ombudsman to homogeneously and fairly process similar disputes.

The national energy ombudsman is achieving his mission when, in order to reduce the number of disputes, he recommends to professionals to change their practices or when he makes proposals to improve regulations. As is the case when he informs consumers about their rights or publicly exposes, notably in his yearly report, the recurring bad practices of some professionals. Let us keep in mind these essential principles: it is better to prevent and avoid these disputes, and in the event where they do occur, to settle them amicably rather than resorting to a lengthy and costly trial.

02 KEY POINTS OF 2020

In addition to the proposals for improvement set out in the previous chapter to better protect consumer and increase their trust in the energy market, the national energy ombudsman wishes to address several key points of 2020.

TOTAL DIRECT ENERGIE MUST SWIFTLY IMPROVE THE OPERATIONS OF ITS CUSTOMER SERVICE

It must notably redress the situation regarding the way it bills its customers.

The supplier TOTAL DIRECT ENERGIE, created after the merger of TOTAL SPRING and DIRECT ÉNERGIE, became the third actor in France, in terms of number of customers, for the supply of energy. A subsidiary of the TOTAL group, it must implement its best practices toward customers, notably to satisfy as promptly and efficiently as possible their requests, and to process and answer swiftly and fairly the claims they send.

Yet, this is not always the case today, and in 2020 **TOTAL DIRECT ENERGIE was identified by the national energy ombudsman as being the supplier with the poorest consumer claim methods.** The rate of disputes received by the national energy ombudsman from residential customers is 115 per 100,000 contracts of electricity or gas supply, an increase of 22 compared to 2019. The dispute rate of TOTAL DIRECT ENERGIE remains significantly higher than the rates of EDF (38) and ENGIE (93), the two companies with which the comparison is the most pertinent. Additionally, half the disputes concerning TOTAL DIRECT ENERGIE are deemed receivable by the national energy ombudsman, compared to a third for other suppliers. And above all, the claims it receives from its customers are very often left without any answer!

The number of disputes receivable by the national energy ombudsman in 2020 concerning TOTAL DIRECT ENERGIE increased by 53 % compared to 2019. It is today the supplier with the highest number of disputes, with 2,292 disputes recorded on SOLLEN in 2020, including 2,148 for residential customers. « *As the year progressed, we have made the unpleasant observation that the national energy ombudsman was increasingly referred to cases involving TOTAL DIRECT ENERGIE. At the start of 2020, these disputes already amounted to 18 to 23 % of the total number of monthly receivable disputes, and eventually reached 35% at the start of 2021. TOTAL DIRECT ENERGIE was incapable of reacting when it received the first warnings, and our feeling is that we process its first level claims far too often* », speaks out Catherine LEFRANCOIS RIVIÈRE, head of the mediation department.

A warning by the national energy ombudsman had already been sent to the supplier TOTAL DIRECT ENERGIE in December 2019, but despite the promises made and willingness shown by the supplier's representatives, issues lingered and even became worse.

Similar issues are found in the mediation process, during which TOTAL DIRECT ENERGIE often does not reply to the requests of the ombudsman. Far too often, it is incapable of implementing the amicable agreements that were concluded within the agreed time limit **(see p.62)**. This has compelled the national energy ombudsman to renew its requests, multiple times a highly time-consuming exercise for its departments.

Occurring issues also include:

• Poorly processed preliminary claims, such as cases where an index read on an electricity meter has been used to calculate the gas consumption of a consumer, and where the unique action taken by TOTAL DIRECT ENERGIE was to freeze the energy supply of its customer! (recommendation n° D2020-18874). Sometimes, the claim is not even processed, e.g., in the case of this consumer who was asked by TOTAL DIRECT ENERGIE to pay a bill… which had already been paid to TOTAL SPRING! (recommendation n° D2020-19144).

• Bills not issued within the regulatory time period, particularly cases where a consumer cancels his/her contract **(see Practical cases p.76).**

• Cases in which service start indexes are erroneous, and where therefore the adjustments indicated by the manager of the electricity distribution network are taken into account only several months later, and even sometimes incompletely (recommendation n° D2020-16340) or without the national energy ombudsman being aware of it, even though a mediation is ongoing (recommendation n° D2020-18196).

• Rules that are not complied with, notably cases of errors made on the identification of delivery points / metering & estimation points that are not corrected by applying the relevant procedure (recommendations n° D2020-18950 et D2020-18663). Very often, the corrective procedures for overestimated indexes due to a change of supplier are not applied either **(see Practical Cases p.76).**

« ***All these issues compel the departments of the national energy ombudsman to show a red card to TOTAL DIRECT ENERGIE for 2020!*** *TOTAL DIRECT ENERGIE, which belongs to a renowned international group, and is amongst the three largest suppliers of energy in France, must treat its customers better! The people we talk to in this company are aware of the issue and show a willingness to improve. Yet, they have proven incapable of doing so until now. This situation has lasted for far too long and TOTAL DIRECT ENERGIE must right that ship without any further delay* », assesses Olivier CHALLAN BELVAL.

PRACTICAL CASE

A FEW EXAMPLES OF ISSUES INVOLVING TOTAL DIRECT ENERGIE

Below are a few examples involving TOTAL DIRECT ENERGIE that the national energy ombudsman has had to process through mediation, even though these disputes should have been solved upstream by the supplier, without forcing the customer to refer their case to the ombudsman.

Mr. M. contested his gas bill, which seemed higher than what TOTAL DIRECT ENERGIE had stated when he had subscribed to his supply contract. This person suspected that an error had been made when the meter was read. In fact, there was no problem: the consumption indexes were accurate (the consumer had confused the index in m3 and the energy consumption in kWh) and the supplier, taking into account an increased consumption level, had raised the monthly payments so the customer would avoid an adjustment bill too high at the end of the year. The shortcoming of the supplier TOTAL DIRECT ENERGIE was to be incapable of explaining this to its customer! (recommendation n° D2020-06712). A similar case was a consumer contesting the taxation level applied to his bills, which became a **dispute that should never have occurred, simply because TOTAL DIRECT ENERGIE did not reply to its customer's claim!**

Recommendation n° D2020-09301

Mr. K. did not receive any adjustment bill or a new payment plan when he requested monthly payments for his gas consumption. The national energy ombudsman was referred to this billing dispute, which TOTAL DIRECT ENERGIE was incapable of solving on its own, a fact that it acknowledges. By not allowing its customer to spread out its expenses with monthly payments, the supplier TOTAL DIRECT ENERGIE did not even comply with its own general terms of sale! It also failed to fulfil its own obligation to bill its customer at least once a year. It will have to make an adjustment bill for 14 months or less of consumption, in compliance with article L. 224-11 of the consumption code.

Recommendation n° D2020-16979

Mrs. O. changed three times her electricity supplier during the autumn of 2020. As was stated in the procedure, the change index was calculated by the distribution network manager, since no meter reading or self-reading had been carried out. This index allows suppliers – the former and the new one – to respectively issue the termination bill and the service start bill. Since the index had been overestimated, the bill of the second supplier should have compensated for the bill of the first supplier. But TOTAL DIRECT ENERGIE reactivated a contract for Mrs. O., instead of making the corrections it needed to do. The national energy ombudsman reminds once again this supplier that it should have applied the procedure created for such cases, i.e., to correct the indexes of the first supplier change, instead of carrying out a new service start for a customer who had not wished or requested it.

Recommendation n° D2020-18875

THE SUPPLIER ENI IMPROVED, BUT FURTHER EFFORTS ARE STILL REQUIRED

The previous activity report of the national energy ombudsman also focussed on the numerous shortcomings of the supplier ENI: inaccurate billings, payments being wrongly charged, termination bills issued too late or even not at all, and abusive, or even fraudulent, solicitation practices, etc. This spotlight put on the bad behaviour of the supplier ENI seems to have encouraged it to strive for improvement. « *The number of disputes received in 2020 in which the supplier ENI is involved "only" increased by 2 %, and the number of receivable disputes decreased by 5 %. This supplier changed its stance, acknowledged there was a problem and at last took care of improving its information system. Moreover, it processes mediated disputes better, with the communication between the supplier and the departments of the national energy ombudsman being easier than before. Recommendations are almost fully followed (at 99 %) and implementing them requires far less mail from us. Progress from ENI is appreciable, but it must continue to lead to a true decrease of disputes, which remains too high. The supplier ENI is still under close scrutiny, notably regarding abusive solicitation* », comments Frédérique FERIAUD, managing director.

This mixed position of the supplier ENI is reflected by the number of disputes it receives from its residential customers, per 100,000 contracts of electricity or natural gas supply: it decreased by 22 compared to 2019, but standing at 307 in 2020, it remains the one with the highest rate amongst all suppliers!

Amongst the practices that are still problematic in mediation, the contestation of billed consumption levels represents the highest, amounting to 37% of receivable disputes involving the supplier ENI. Then come the billing issues (21%), payments and instalments (13%) and business practices (13 %). Since the supplier ENI is often directly involved in disputes, the number of recommendations the national energy ombudsman issued to it increased by 14%, i.e. 1,412 recommendations in 2020, with 82% of those being amicable agreements.

Even though the supplier ENI has significantly improved its compliance rate to recommendations, it must however cease resorting to dunning processes for cases of unpaid bills during an ongoing mediation, whether by itself or with recovery companies. This not a proper practice.

Furthermore, there are still too many disputes relative to dubious business practices during aggressive or abusive solicitation: 829 of those were signaled to the departments of the national energy ombudsman in 2020 **(see Practical cases p.78).**

PRACTICAL CASE

STILL TOO MANY BILLING ISSUES FOR THE SUPPLIER ENI

The mediation progress achieved by the supplier ENI should certainly not prevent it to keep on striving to drastically reduce the billing issues it experiences, extent of which is shown by the examples below.

Mrs. subscribed to an offer of energy supply with the supplier ENI, which did not apply the set tariff. Faced with the overbilling sent to her, the consumer forwarded several claims to her supplier, which remained unsuccessful. « *When replying to the customer, the supplier ENI had sent a tariff grid that did not match the correct contract! Being more careful with its processing of claims would have allowed that sort of dispute to be avoided, which is particularly infuriating for consumers* », comments Catherine LEFRANCOIS RIVIÈRE. Eventually, the action of the departments of the national energy ombudsman was needed to solve this dispute, even though it was a simple one!

Recommendation n° D2020-24397

Two persons bearing the same name were charged with monthly payments that did not correspond to their consumption levels. In fact, the supplier ENI had logged their bank details on the account of third customer, probably another namesake. The many claims sent to the supplier ENI could not solve the issue, and once again the action of the departments of the national energy ombudsman was required to provide a satisfying solution to the customers concerned.

Recommendations n° D2020-23732 and D2020-23075

Mrs. B. underwent the far too frequent case of monthly payments that were poorly adapted to her consumption. The supplier ENI had proceeded on its own to changing the amount of monthly payments after a first adjustment bill. But the following year, the underestimation of the monthly amounts eventually led to a new adjustment bill with an inflated amount.

Recommendation n° D2020-22316

Below is another simple dispute that consumers cannot manage to solve on their own, even with the help of a social worker. This was the case of Mrs. A., who received a bill for more than 14 months of consumption, as well as two years of subscription. Yet, the consumption code expressly forbids this, as stated in its article L. 224-11, which the supplier ENI should have spontaneously applied! However, the national energy ombudsman must still regularly and systematically remind it, and recommends the strict application of the law.

Recommendation n° D2020-21805

TOO MANY ISSUES WITH THE SUPPLIERS EKWATEUR AND GREENYELLOW, WHICH MUST SWIFTLY ADDRESS THE SITUATION

With the opening of the energy markets to competition, new energy suppliers have entered those markets and have grown for the past several years. With these new suppliers, consumer choice broadened, and all the more so with the creativeness these suppliers employ in their offers. But this should not be detrimental to consumers, or to their compliance with existing rules and procedures. In 2020, the attention of the national energy ombudsman was particularly brought on the practices of two « young » suppliers, EKWATEUR and GREENYELLOW, due to a significant number of disputes with regard to their customer portfolio, and also because of their inappropriate behaviour during the mediation process.

The national energy ombudsman firmly urges these two suppliers to swiftly implement practices that will be more respectful to consumers. This is what GREENYELLOW agreed to do (see Focus p.80).

Aggressive or abusive solicitation practices are another worrying issue regarding new suppliers entering the market. Indeed, they usually resort to hiring service providers or intermediaries, such as SELECTRA **(see the extract on solicitation, p. 21)** to attract new customers. Yet, they should be aware that in the end it is in fact the energy supplier that has established the supply contract, and that it is obligated to check that the consumer has given his/her full agreement and that no problem remains about his/her contractual willingness. Thus, energy suppliers are liable for the actions of their providers, which must act in their name, being careful to properly assess the upcoming monthly payments of the new contract, and not to have consumers committed against their will. In disputes occurring after subscriptions have been made through solicitation (recommendations n° D2020-15040 and D2020-07023), particularly with underestimated and misleading monthly amounts **(see also p. 17)**, the energy suppliers must acknowledge that they are themselves liable, and not transfer responsibility onto their business partners.

The supplier EKWATEUR, which is a start-up deemed as promising by *French Tech* in 2020, must properly fulfill the basic duties of an energy supplier, such as accurately billing its customers, collecting self-readings, etc. Yet, as is shown by the dispute of the supplier EKWATEUR with its customer Mr. R., this is not always the case. Here, the consumer saw his termination bill calculated on the basis of a wrong service start index. Even though the index was corrected by the distribution network manager two days after the termination notice, the supplier EKWATEUR did not take it into account in its corrected bill, and still had not done so when the national energy ombudsman sent it its recommendation ten months later (recommendation n° D2020-12368).

The national energy ombudsman also observed that the supplier EKWATEUR kept on proceeding with recovery procedures during mediation processes, even though, in principle, this is a period during which it is not proper practice to use them (recommendation n° D2020-17987, a case in which a consumer received eight threats of power cut for unpaid bills).

The lack of consideration of the supplier EKWATEUR towards its customers is sometimes particularly shocking: « *In a dispute with Mr. A., the national energy ombudsman simply requested compensation from EKWATEUR, because it had not readjusted the payment plan of the consumer so as to avoid a too high yearly adjustment (recommendation n° D2020-19329). Yet, the supplier EKWATEUR refused to compensate its customer because it considered that such a readjustment could be carried out only once a year. For the national energy ombudsman, this is an inadmissible position, because it considers that EKWATEUR, as any other supplier of energy, has a duty of fairness and advice toward its customers. Moreover, it observes that the other energy suppliers agree with this customer relation approach, and make sure to readjust the monthly amounts when needed* », explains Christian SOULETIE, head of the electricity division.

The method by which the customer portfolio of the supplier EKWATEUR has grown over the past few years « in packets », with bids made on bundled energy purchase, compels it to particular care to ensure it avoids the sort of dispute it had with Mr. S. This consumer, who was already a customer, saw his supplier EKWATEUR refuse his subscription to their offer « Énergie moins chère ensemble 2019 » (“Cheaper energy together”, an offer negotiated by the consumer association UFC-Que Choisir), with their explanation being that Mr. S. had failed to pay a bill. This reason was all the more unjustified in that

the so-called unpaid bill was wrong and had been established on the basis of an erroneous index. The national energy ombudsman thus recommended the supplier EKWATEUR to correct the erroneous bill and allow Mr. S. to retroactively benefit from the new offer (recommendation n° D2020-13186).

FOCUS

THE NATIONAL ENERGY OMBUDSMAN REMINDS THE SUPPLIER GREENYELLOW THAT IT MUST MANDATORILY REPLY PROMPTLY TO THE OBSERVATION REQUESTS IT FORMULATES

The supplier GREENYELLOW is the source of numerous disputes that could easily be avoided. With a rate of 299 disputes per 100,000 contracts, it stands very close to the supplier ENI. The regrettably mundane billing issues caused by erroneous indexes are observed yet again. Thus, Mr. B. had been wrongly billed because of a faulty meter, but the supplier GREENYELLOW did not make any adjustment after ENEDIS had corrected the indexes. Not only could this situation have (and should have) been avoided, but the duration of the mediation made it worse it, since the supplier froze the energy supply during the procedure (recommendation n°D2020-09571). In a certain number of cases, the supplier GREENYELLOW kept on sending dunning letter, threatening to cut off the electricity supply, during the mediation process (recommendation n°D2020-20961 for instance) when other suppliers usually commit to not do so. « *Overall, and in addition to these bad practices that need corrected, the supplier GREENYELLOW must change its behaviour toward both its customers and the national energy ombudsman during the mediation process. Far too often do we have to repeat our requests to obtain information, sometimes even about simple bills! It is unacceptable that this supplier does not to forward the items required to carry out mediation, even though this obligation is expressly set out in the energy code. The times required to implement the agreed solutions that were formalized with an amicable agreement are also a recurring issue, which is often observed with the less diligent operators. Thus, there are cases in which the compensation set in the amicable agreement still is yet to be paid by the supplier GREENYELLOW, several months after the procedure* (recommendation n° D2020-14197) », reports Catherine LEFRANCOIS-RIVIÈRE, head of the mediation department.

THE NEW ENTRANTS TO THE ENERGY MARKET STILL SOMETIMES LACK RIGOUR

The competition that has developed on the energy market, with currently nearly 40 suppliers proposing offers of energy supply to individual customers, probably partially explains the number of dysfunctions observed by the national energy ombudsman. This market constantly opens up new opportunities to consumers. However, it also creates tensions between suppliers wishing to expand their customer portfolios. Consumers should not be affected by the consequences of this race for customer. « *Whether they are independent entrants, subsidiaries of major groups or the outcome of mergers between former operators,* ***the new actors of the energy markets must not forget the rules by which they are subject to in their capacity of suppliers of energy.*** *Some of them currently still lack rigour. They must still learn the rules pertaining to the supply of electricity and gas, and must strictly comply with those rules because they guarantee the quality of the service provided to consumers and increase their trust. We are here to remind them of this!* », exclaims Olivier CHALLAN BELVAL.

Amongst all these rules, there is one that the national energy ombudsman particularly wishes to address: **the requirement of maintaining fair and respectful relations with customers, who are not yet familiar with the terms and conditions relating to their electricity and gas supply.** It is therefore imperative that suppliers pay systematic attention to providing customers with clear, comprehensive and educational information.

For example, the supplier WEKIWI has created a digital offer with a one-year commitment, in which financial benefits are mainly based on obtaining discounts. « *In reality however, it is not always possible to meet the conditions that give all the discounts. After a year, the consumer end ups with a higher bill than what he/she had thought. This type of offer, as the ones indexed on market prices* ***(see p.19)****, must be clearly explained to consumers. This is why we have adapted the ombudsman's comparison tool and added a new filter; "indexed price", and demand suppliers that they provide accurate information for this section of the website, so that consumers using our online tools have the right information at the right time* »,explains Florian MEUNIER, project manager.

Other shortcomings were observed in 2020 from new suppliers and resulted in « *generic* » recommendations. They are notably:

- too complex billing systems, which prevent consumers from fully understanding what they are billed with (supplier SOWEE);
- the failure to mention some information on bills, even though it is mandatory under the decree of April 18 2012 relative to bills concerning electricity or natural gas supply (supplier VATTENFALL);
- the lack of indication about off-peak hour schedules on bills (supplier LECLERC ÉNERGIES);
- the failure of suppliers to adapt their information systems to the four possible time ranges of the supply tariff, which prevents consumers from subscribing to certain offers (supplier LECLERC ÉNERGIES);
- the absence of modification of the tariff option (FTA) in the case of a « short use » supply option (supplier MEGA ENERGIE, see p.33) ;
- only allowing payments by bank transfers, even though other payment methods (notably cheques and cash) must be given in at least one offer (supplier OHM ÉNERGIE).

PRACTICAL CASE

A METER INVERSION THAT TOOK ALMOST A YEAR TO SOLVE!

Since 1991, Mr. R. had been a customer of ENGIE for his gas supply at the regulated sale tariff. In November 2019, he realized his contract had been cancelled, even though he never requested it. After analyzing the file, the national energy ombudsman understood that Mr. R.'s neighbour had signed a contract with EDF, with its service start having wrongly been formulated on the metering point of Mr. R.'s home. The existing procedure for cases of meter inversion should have been applied by EDF, which should have requested ENGIE in writing to reactivate the contract of the consumer. The « backdating » to the initial commercial conditions of Mr. R. must then be carried out by ENGIE, taking care to maintain continuity in billing. Almost a year after the incident, the situation was still not resolved, despite the claims of the consumer four months after the error was discovered. The ombudsman therefore requested EDF to act in consequence, and recommended an upgrade of the financial compensation it was proposing to Mr. R.

Recommendation n° D2020-12969

RED CARD

THE ISSUE OF UNEXPLAINED CANCELLATIONS MUST BE ADRESSED UPSTREAM, SO THEIR NUMBER CAN BE DURABLY REDUCED

In the cases of errors made on the delivery or metering points that have already been mentioned **(see p. 52),** consumers often end up seeing the cancellation of their contract of gas or electricity supply, without a clear understanding of why it has happened. What then follows is a true obstacle course, first to understand what is happening, and second to identify which steps to follow, and finally to get suppliers to handle the issue correctly, i.e., by strictly applying the procedure designated for such cases by the Energy regulatory commission.

The departments of the ombudsman are very frequently requested for help in those matters, with around 3,500 requests per year.

Indeed, unexplained cancellations increased by 30% in 2020 compared to 2019, and today amount to 6% of the receivable disputes that must be processed by the mediation department of the national energy ombudsman. « *As soon as a customer undergoes such an inconvenience, he/she systematically sends a claim to his/her supplier. And it is of the utmost importance that suppliers process these claims properly if we do not want to see that type of dispute grow for the national energy ombudsman* », explains Caroline LHERAUD, lawyer and task officer.

One of the most probable explanations for this increase in the number of unexplained cancellations is that as the volume of consumers changing suppliers increases, this will automatically multiply the occurrences of errors. Nonetheless, suppliers do have the capability of detecting these errors and must strictly apply the following procedure: contacting the distributor in order to identify to which supplier the PDL or PCE should be attached, and implementing with that supplier the pertinent corrective procedures. This would result in each consumer being billed (see, e.g., recommendation n° D2019-19174). Above all, a consumer undergoing such an inconvenience must be able to benefit from the contract he/she had subscribed to before the wrongful cancellation, via the implementation of a « backdating » procedure. This is particularly essential when the consumer was benefitting from a supply contract under the regulated tariffs of gas sales **(see Practical case p.82).**

The suppliers of electricity and gas must compel themselves to a certain level of rigour when applying these procedures of exception, which were defined through a dialogue, under the auspices of the Energy regulatory commission.

The national energy ombudsman, observing that these errors have sometimes highly detrimental consequences for consumers, has put forward several proposals so that stricter and more stringent regulations can be applied **(see Proposal n° 12 p.54).**

3,500 REQUESTS PER YEAR

for issues of unexplained cancellations

L'INTERVIEW

CLAIRE HÉDON

National ombudswoman

As the national ombudswoman, I have the competence to defend public service users, but I do not intervene in disputes of a commercial nature with energy suppliers. However, I could initiate actions within the framework of my mission to fight discrimination if, for instance, someone is facing a refusal when trying to subscribe to an energy supply contract because of a discrimination criterion forbidden by the law.

The managers of the electricity or natural gas networks are regularly referred to by the National ombudswoman, in the context of claims involving the installation of structures for the distribution of electricity or natural gas on private properties, without any easement agreement being formalized, or any declaration of public interest being established. This brings me to take action to recall the applicable law, and request the dispute to be settled with an amicable agreement, whether by regularizing the easement or by displacing the contentious structure.

It is regrettable that households with low incomes are thus pushed into a genuine obstacle course to obtain this essential assistance.

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Regarding fuel poverty, the cheque energy is a solution for vulnerable households, allowing them to receive financial assistance, particularly towards paying their energy bills. Since the scheme was generalized on January 1st 2018, a surge of claims toward the National ombudsman was observed, with several specific situations not having been anticipated by public authorities. A few improvements have been noticed, but the coordination between taxation authorities, which issue the documents required by the people concerned, and the Agency for services and payments, which issues the cheques, has yet to be achieved. We do manage to restore the rights of the households concerned, but this situation sometimes creates delays of several months, or sometimes several years, for households that have been declared eligible after lengthy and complex procedures. It is regrettable that households with low incomes are thus pushed into a genuine obstacle course to obtain this essential assistance.

ENEDIS HAS IMPROVED THE PROCESSING OF DISPUTES IN MEDIATION, BUT ISSUES LINGER ON THE FIELD

Last year in its activity report, the national energy ombudsman expressed his regrets about the difficulties it was experiencing when processing mediation requests it was receiving involving ENEDIS. Its voice has been heard and responded to with the « industrial and human project » set up by the president of ENEDIS, which, notably, has the purpose of increasing the awareness of its agents to a better processing of disputes in mediation. The relationship between the departments of the national energy ombudsman and the « Consumer » department of ENEDIS have become more seamless, faster and more efficient, which not only allowed putting management in a better position to deal with a large amount of pending files, but also to work with increased trust.

This situation has also allowed progress to be made in the processing of disputes relating to electrical risers. In its newsletter n° 41 of November 2020, the national energy ombudsman published the principles it considers should be applied for that matter, which its departments are requested to implement when carrying out mediation. ENEDIS made known it was agreeing with these principles and stated it was committed to apply them.

However, not all problems have been fully solved, and the national energy ombudsman regrets that it still observes, when it processes disputes referred to it, that at the regional level of the distribution network manager there is still a lack of awareness about the quality of the relationship it must maintain with its customers, and that the handling of consumer requests in the field must be further improved.

THE CONNECTION TO THE PUBLIC ELECTRICITY DISTRIBUTION NETWORK REMAINS A SOURCE OF DISPUTES

The connection to the electricity distribution network remains the source of a certain number of disputes referred to the national energy ombudsman, and are mainly caused by the quality of works, or their lateness. It appears that the issue is often due to the absence of any interlocutor from ENEDIS to follow-up files, to requests being badly transmitted in the departments of the network manager, to a lack of reply to the letters of consumers, to the late sending of cost estimates or to a lack of follow-up on on field works. Several times it was even observed that an initial cost estimate for a connection already being paid by a consumer, was then disputed by a technician of the distribution network manager during a visit under the pretext of unanticipated technical constraints, even though these constraints could have been planned for when the initial cost estimate was established. This is a cold shower for consumers intending to rent a property, or move into one, seeing their project brutally and unexpectedly stopped, and postponed to an uncertain and possibly distant date.

Insufficiently bound by procedures, notably regarding schedules, ENEDIS, having the duty of always proposing to consumers a « best cost solution », abstains far too often from justifying the selected technical solution, or bills consumers with undue costs. Even though there are no material damages, as may happen in cases of a meter change resulting in a phase inversion, the financial consequences may prove to be a true burden for consumers.

In the case of Mr. D., the initial cost estimate to switch to a three-phase 36 kVA included digging a trench to lay a new cable. During these works, the electrician noticed that a cable was already in place and could have been used. The consumer sent a claim to receive compensation for the charged expenses, which could have been avoided. The national energy ombudsman had to act to negate the technical arguments of ENEDIS justifying its refusal, and to have it agree to reimburse the consumer of an amount close to 6,000 Euros (recommendation n° D2020-15197).

« *There are two main types of disputes: either delays in the works to connect a building to the electricity network, or inadequate technical solutions In the first case, ENEDIS acknowledges its lateness, but is unwilling to compensate consumers, who may undergo delays of several months before being able to move into their new homes or rent their properties* », says Lorraine VERON, lawyer and senior task officer for the departments of the national energy ombudsman. In October 2019, Mr. K. requested a connection for a house he intended to rent. The works should have been carried out by ENEDIS by August 2020 at the latest (i.e., an expected timeframe of 10 months!), but a first operation carried out by the electricity distribution manager in September proved unsuccessful, and the connection was only achieved in March 2021. The national energy ombudsman considered that ENEDIS was liable for this delay, and requested it to compensate Mr. K. with 80% of the rent he should have received over the five months (recommendation n° D2020-22728), which it agreed to do.

« *The second type of dispute is due to technical solutions that are inadequate, or poorly explained by ENEDIS. The consumer is in no position to negotiate, and the situation stalls. This is a frequent case when the land on which a home must be connected does not directly lead to a public road. Extending the network is then much more costly, and the consumer must go through the national energy ombudsman, or even through CORDIS (Committee for settling disputes and sanctions), to succeed*», adds Lorraine VERON.

Therefore, the national energy ombudsman generally recommends ENEDIS to further improve its procedures and methods. It also recommends that it should never forget that it is its duty to fairly inform consumers, who are not experts in electricity connections, to the best of their interests throughout the entire connection procedure.

FOCUS

IN THE CASE OF AN INTERVENTION FOR UNPAID BILLS, THE DISTRIBUTION NETWORK MANAGER MUST NOT BILL CONSUMERS WITH « POINTLESS TRIP » FEES

When consumers are facing financial difficulties and can no longer pay their energy bill, the supplier must make sure that their situation does not worsen. Yet, the distribution network manager R-GDS in the Bas-Rhin Department billed « pointless trip » fees when the concerned consumer was absent during an intervention for unpaid bills. A consumer cannot be charged with such fees since, by nature, an intervention for unpaid bills is scheduled without any appointment being made with a consumer. Furthermore, this practice does not comply with the service catalogue approved by the CRE for distribution networks managers.

In a generic recommendation (recommendation n° D2020-00546), the national energy ombudsman has reminded the distribution network managers that they are not allowed to bill « pointless trip » fees in cases of interventions made for unpaid bills and that could not be carried out because the consumer was absent.

THE STATUS OF ELECTRICAL RISERS MUST CHANGE

Article 176 of the law ELAN of November 2018 guiding the evolutions of the housing, planning and digital sectors has clarified the legal and patrimonial status of electrical risers, and has thus ended the legal uncertainties resulting from contradictory court decisions, which sometimes attribute their ownership to the electricity distribution network, and sometimes to real estate co-owners.

Thus, the law added into the energy code a chapter called: « Electrical risers », in which are notably found the articles L. 346-1 et seq.

One would have thought that after these legal provisions had been established, that the issues concerning the renovation of electrical risers would be fully solved. Nonetheless, this is not the case, because ENEDIS and CoRDIS still consider electrical risers as being « collective electrical connections ». What results from this approach is that requests for a power increase or for the creation of an individual branch are processed as being connection changes, and are at the expense of the person making the request.

Yet, the financial consequences of such an analysis may prove particularly unfair. Indeed, under the provisions of articles L. 342-6 and L. 342-11, it is no longer possible for ENEDIS to charge co-ownerships with a contribution for connection costs that is not covered by the network utilisation tariff, as it used to do previously.

PRACTICAL CASE

ENEDIS MUST ESTABLISH A JOINT SITUATIONAL ANALYSIS BEFORE AND AFTER CARRYING OUT WORKS

In a co-owned property, ENEDIS decided to replace a very old and dilapidated riser. The works were carried out in June 2019, but resulted in damage and faulty works that compelled the co-ownership to carry out repairs and to complete the finishing works, which ENEDIS refused to pay for.

When analyzing this dispute that was referred to it, the national energy ombudsman first noticed that ENEDIS was not disputing its capacity as project manager for the refurbishment works of the building riser, and that, within those conditions, it was liable for the works (and not the service provider that had carried out works). It then recommended that ENEDIS should bear the financial burden of the *« total repairs of caused damages, with no profit and no loss »*, in compliance with the jurisprudence of the court of cassation.

More generally, the national energy ombudsman also recommended ENEDIS to systematically establish a joint situational analysis, before and after carrying out of works in a building, either itself or via a service provider. Unless it establishes such an analysis, and is capable of bringing the proof of the damages for which it is liable, it will have to financially take over the repairs.

Recommendation n° D2019-22312

Henceforth, its only option is to turn to the person who requested an increase of the subscribed power or an installation of an additional meter, which requires changes on the riser, and charge that person with the contribution set by the energy code.

Yet, the amount in question can be significant (several thousand Euros) when an old riser is needed to be refurbished in order to satisfy a request for an increase of electrical power. And this solution results in charging the first consumer who requests a power increase with the entirety of the contribution, even though the works carried out on the riser will be to the benefit of all the users connected to that riser!

The national energy ombudsman therefore proposes a change of law **(see Proposal n° 15 below).**

PROPOSAL n° 15

A CHANGE IN THE LAW SO THAT ELECTRCICAL RISERS WOULD CONSTITUTE A « NETWORK ELEMENT » AND NO LONGER A « COLLECTIVE CONNECTION » »

The national energy ombudsman wants to avoid the issue wherein works carried out to refurbish a riser in the context of a request for a power increase are charged to the consumer who first makes such a request. Its proposal is that a change of law would swiftly remedy the situation, which had not been anticipated when the law ELAN was voted, and which results in a particularly unfair and misunderstood solution for electricity consumers.

This legal provision would plan for electrical risers to constitute a « network element » and no longer a « collective connection ».

This would translate as adding a new article to the energy code, L. 346-6, which could be expressed as follows:
« Article L. 346-6: Electrical risers that are integrated into the public network of electricity distribution, under articles L. 346-2 and L. 346-3, constitute elements of this network and are no longer, as of this integration, collective connections. The works required to renew or reinforce them are at the expense of the network manager concerned. »

THE LAW MUST CHANGE THE LEGAL STATUS OF THE « PARISIAN END » OF GAS

The part of the gas pipe located between the meter and the individual device that shuts off the gas, found in the common areas of a building or inside a home, is called the « Parisian end ». In Paris and a few other cities, if it was installed before 1994, the property and responsibility for this part of piping is subject to legal debates, and generates uncertainties, notably about its maintenance and who would be liable in the case of an accident.

Disputes are sent to the ombudsman about this, and while there are not many they nonetheless confirm that what is required is to change the legal status of this part of piping, especially when considering the safety issues at stake. Thus, Mr. G., after smelling the typical odour of a gas leak in his home, saw his gas supply cut by GRDF. The leak causing these odours was coming from the « Parisian end » of the installation, and the manager of the gas distribution network stated it was up to Mr. G. to undertake repair works. A month and a half later, after a chaotic period during which the actors shifted the burden of carrying out the works onto each other, these works were eventually completed at the expense of Mr. G. and the co-ownership syndic. After he unsuccessfully requested GRDF to reimburse him for the costs incurred, Mr. G. referred his case to the national energy ombudsman (recommendation n° D2020-19864), as had done Mrs. B. a few months before for yet another case of repair costs on the piping of a « Parisian end » (recommendation n° D2019-08725).

In both cases, the national energy ombudsman was only able to establish the legal specificity of this piping section, often poorly known even by professionals and subject to controversies. It proposes, which it has done on several previous occasions, that a legal provision should be implemented to clarify the legal status of this network section. It observes that there is now a general agreement to have the law changed, to establish that it is the distribution network manager that is responsible for the network up to the meter, thus including the « Parisian end ».

Until the law is voted in, the national energy ombudsman recommends to GRDF that it spontaneously carries out immediate repairs of these installations, at its own expense, when a gas leak is reported on a « *Parisian end* ».

PROPOSAL n° 16

THE « PARISIAN END » MUST BE INTEGRATED INTO THE GAS DISTRIBUTION NETWORK TO END AN ABSURD SITUATION!

The part of the gas piping located between a meter and the individual gas shut-off device, located in the common areas of a building or inside a home, is called the « Parisian end ». In Paris and a few other cities, the ownership and responsibility of this piping part is subject, when it was installed before 1994, to a complex legal debate, which creates uncertainties, notably regarding its maintenance and in the event of an accident.

The national energy ombudsman proposes that this absurd situation, which is historical and of which consumers are not really aware, should be ended.

Similar to what was done for electrical risers, a legal provision is required to transfer ownership and integrate Parisian ends with the gas distribution network. Thus, the responsibility of maintaining the gas distribution network would be borne everywhere in France on the entire gas installation located before each meter.

The draft law called « 4D », which should be voted on this year, includes provisions that will allow integrating both risers and Parisian ends into the gas distribution networks. As is proposed for electrical risers, what is merely needed is to add provisions similar to the ones mentioned in the proposal n° 15, to give full effect to this integration.

SUPPLIERS MUST FORWARD TO THE DISTRIBUTION NETWORK MANAGERS THE CONTACT DETAILS OF THE ELECTRICITY AND GAS CONSUMERS SO THEY CAN FULFILL THEIR MISSIONS

Several disputes referred to the national energy ombudsman in 2020 have shed light on the need for managers of electricity and gas distribution networks to have at their disposal the contact details of consumers so as to be able to fulfill their missions. The two following practical cases **(see Practical case p.92)**, illustrate the issues that may arise from a lack of communication about the situation of a consumer and his/her contact details, notably when there are billing errors, or a worst-case scenario in cases of safety hazards. « *When processing these disputes, we realized that distribution network managers did not systematically have at their disposal the contact details of the consumers, which would allow communicating with them easily by phone, text messages or emails if needed. Indeed, it appears that when a contract is signed with a consumer, only the supplier obtains the contact details, and some of them refuse to forward them to the distribution network manager, on the grounds (on the pretext?) of personal data protection, even though the latter is an integral part of the "single" contract of energy supply. This situation is problematic because it hinders the achievement of their missions of public service for the distribution network managers*», regrets Catherine LEFRANCOIS RIVIÈRE, head of the mediation department.

By invoking in particular the general rules on data protection (GDPR), some suppliers indeed refuse to forward the contact details of their customers to the distribution network managers, even though they are charged with fulfilling a mission of public service and, in addition, are signatories of the contract called a « single contract ». They often state they fear to be disavowed by the Commission nationale informatique et libertés (CNIL, National Commission on Informatics and Liberty), but what cannot be ruled out is that they do not wish for distributors to be able to easily communicate with their customers. « *I understand that suppliers are concerned with complying with CNIL regulations, but as is shown by the cases referred to me, there is also a question of consumer safety at stake. Therefore, I drew the attention of the president of the CRE on the need to officially bring the matter to the CNIL to ascertain its position about it* », adds Olivier CHALLAN BELVAL.

PRACTICAL CASE

DISTRIBUTION NETWORK MANAGERS MUST KNOW THE CONTACT DETAILS OF CONSUMERS, SO THEY CAN COMMUNICATE WITH THEM AND FULFILL THEIR PUBLIC SERVICE MISSION

The referral from Mrs. P. to the national energy ombudsman shed light on the fact that communication should be enhanced between suppliers and distribution network managers. This consumer had paid her gas consumption for several years, even though her gas suply had been cut by GRDF for safety reasons. However, this information about cutting the gas supply had not been forwarded to the supplier ENI, and it kept on billing Mrs. P. In addition, the consumer had been placed under guardianship, which ENI did not inform GRDF about. In these conditions, GRDF could not send a letter to the guardian to access the meter and log an index.

Beyond the issue of estimated consumptions being billed for an inactive meter, the national energy ombudsman recommended the manager of the gas distribution network to inform suppliers without delay when it observes a serious and immediate hazard regarding the equipment of one of their customers (cut, restoration). It also requested that the supplier informs the distributor of any change in the contractual details of its customers (contact details, change of contract holder, guardianship). Since this recommendation deals with the relation between these operators, the national energy ombudsman informed the CRE of it.

Recommendation n° D2019-22471

A similar situation has also occurred with the electricity supply: the national energy ombudsman signaled it to ENEDIS in a case where it did not inform EDF of a cut-off meter for a consumer.

Recommendation n° D2019-22435

Another case involves ENEDIS in a situation where a power cut occurred at Mrs. V.'s home, following a fire in the source station of the distribution network. The consumer was absent and some of her electrical appliances were damaged because of the extended power cut. If ENEDIS had informed Mrs. V. of this electricity cut, she could have made arrangements accordingly. The absence of such a communication mechanism had adverse consequences for the consumer.

The national energy ombudsman therefore recommended ENEDIS to find a solution that would allow it to swiftly inform consumers in cases of power cuts, indicating the planned timeline until power is restored.

Recommendation n° D2019-20423

SUPPLIERS OF LIQUEFIED PETROLEUM GAS (LPG) MUST PROVIDE COMPREHENSIVE AND TRANSPARENT INFORMATION TO CONSUMERS ABOUT PRICE CHANGES

Consumers utilizing liquefied petroleum gas (LPG) for heating or cooking often benefit from supply contracts with set prices over two years. When the contract ends, the supplier proposes them a new tariff. Because of the volatility of oil prices, on which the prices of LPG are mainly indexed, prices may vary greatly and bewilder uninformed consumers. The national energy ombudsman is then referred to disputes from consumers honestly surprised by such price changes. « *The freedom granted to liquefied gas petroleum suppliers to freely set their prices cannot be questioned by the national energy ombudsman, who can only verify and enforce that the consumer receives proper information beforehand about possible changes of sale prices, under article L. 224-22 of the consumption code. Consumers must therefore remain highly vigilant and must not hesitate to question tariff changes imposed on them when they seem unreasonable compared with the prices set by competitors* », states Caroline LHERAUD, lawyer and task officer for the departments of the national energy ombudsman. **What we observe nonetheless is that the « best available offer » is not always proposed to consumers, even though the LPG supply is not subject to fierce competition.**

Two other types of dispute may also originate from the cancellation of an LPG supply contract. The first is due to cancellation fees, which are often very high. However, one should keep in mind that article L. 224-22 of the consumption code allows any customer to cancel his/her contract, free of charge, when he/she refuses new contractual terms: the national energy ombudsman had the opportunity to remind this to ANTARGAZ at the beginning of 2020 (recommendation n° D2019-16078).

The second category of dispute concerns the removal of the propane tank, which is usually owned by the supplier. « *When a consumer changes his/her supplier of liquefied petroleum gas, or changes his/her energy supply or sells their home, the removal of the tank must occur within three months after the cancellation, under article L. 224-3 of the consumption code. Unfortunately, some suppliers, notably PRIMAGAZ, only do this belatedly, and we are compelled to remind them of their obligation* », adds Caroline LHERAUD.

This is for instance the case of Mr. B., who after having purchased a house supplied with propane gas, wished to change his heating mode. The LPG supply contract had been cancelled by the previous owner in October 2019, but by January 2020 the tank had still not been removed by PRIMAGAZ. It was still in place in June 2020 when the national energy ombudsman issued its recommendation. In these conditions, the dispute was signaled to the DGCRF (recommendation n° D2020-04536).

03 KEY FIGURES OF 2020

INFORMATION AND COMMUNICATION

3 MILLION
consumers
informed by the national energy ombudsman

BY THE TOLL-FREE NUMBER 0 800 112 212

97,000
for the list of suppliers

175,500

78,000
calls processed by advisors

BY THE OMBUDSMAN'S WEBSITES

2.6 MILLIONS
on energie-info.fr

50 % used the price comparison tool

2.8 MILLION
visits

212,000
on energie-mediateur.fr

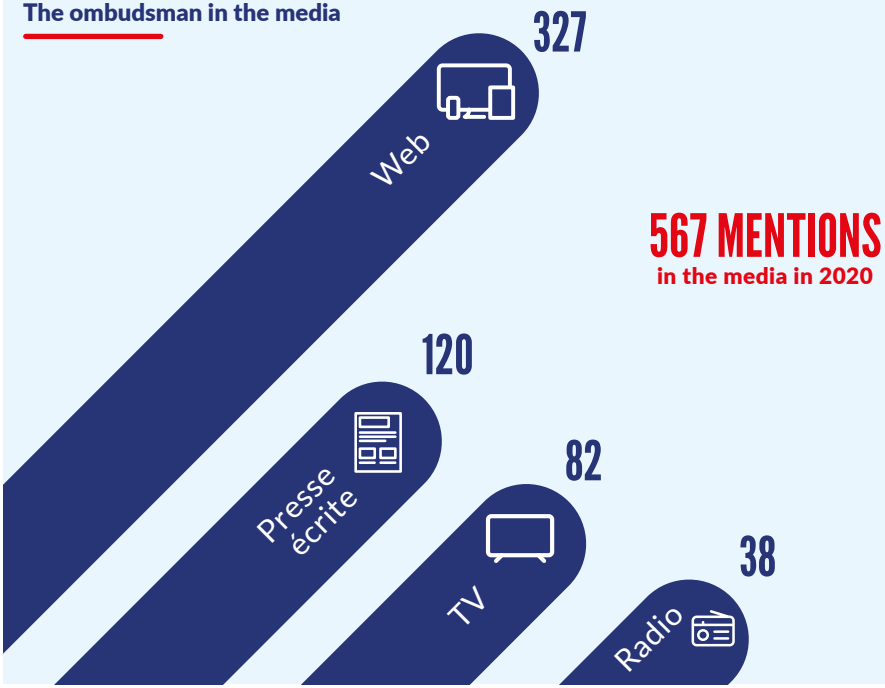
12,413 COMPLEX REQUESTS WERE PROCESSED
including 86% within two days

Evolution of visits to the websites

énergie-info energie-info.fr

Le médiateur national de l'énergie energie-mediateur.fr

The ombudsman in the media



567 MENTIONS
in the media in 2020

The ombudsman on social networks

1,670 subscribers on **Facebook**

5,170 subscribers on **Twitter**

1,522 subscribers on **Linkedin**

Information broadcasted by the ombudsman

5 CONSOMAG TV SHOWS each viewed by **2 M** people

4 INFORMATION LETTERS were sent, i.e. **9,793** mails

15 ELECTRONIC LETTERS were each sent to **1,736** subscribers

RECEIVED DISPUTES

Reception method

Phone
10,666

Mails
4,044

27,203 RECEIVED DISPUTES
with 8,595 receivable for mediation

E-mails and contact forms on energie-info.fr
3,454

SOLLEN
9,039

Profile of claimants

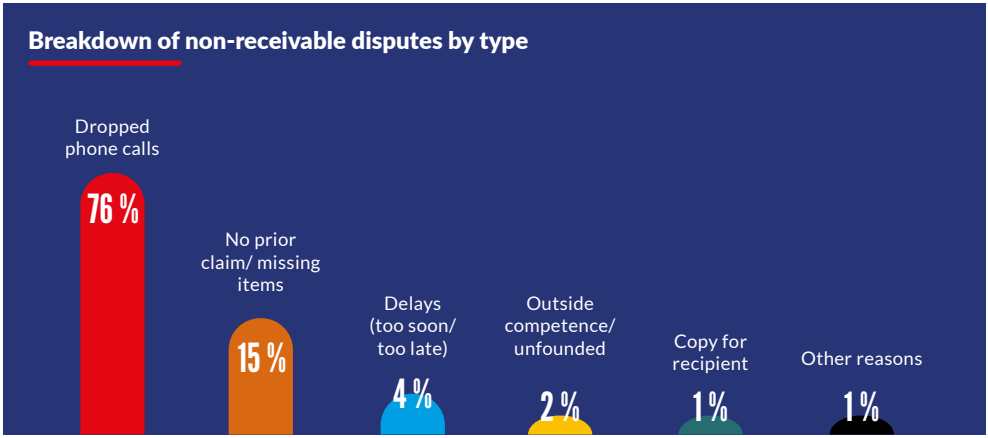
94 % individuals

6 % of professionals and non-professionals

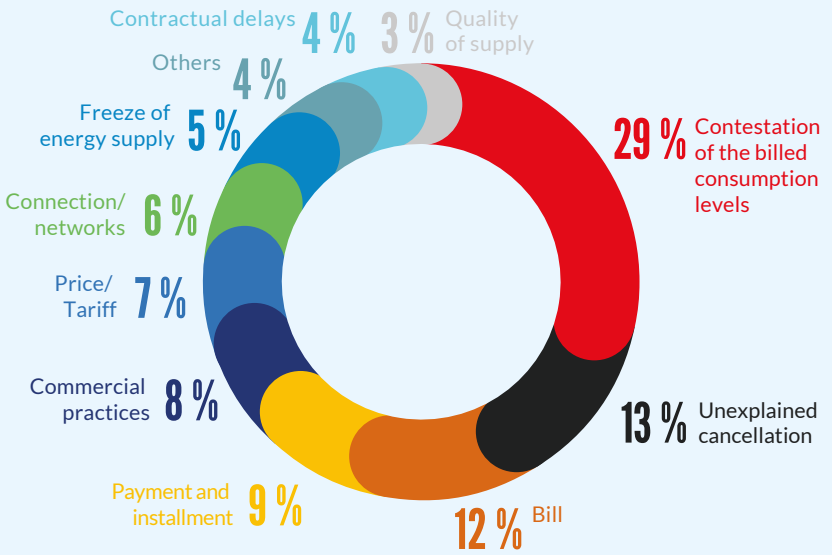
93 % directly by claimants

7 % by third parties (family, association, elected people, etc.)

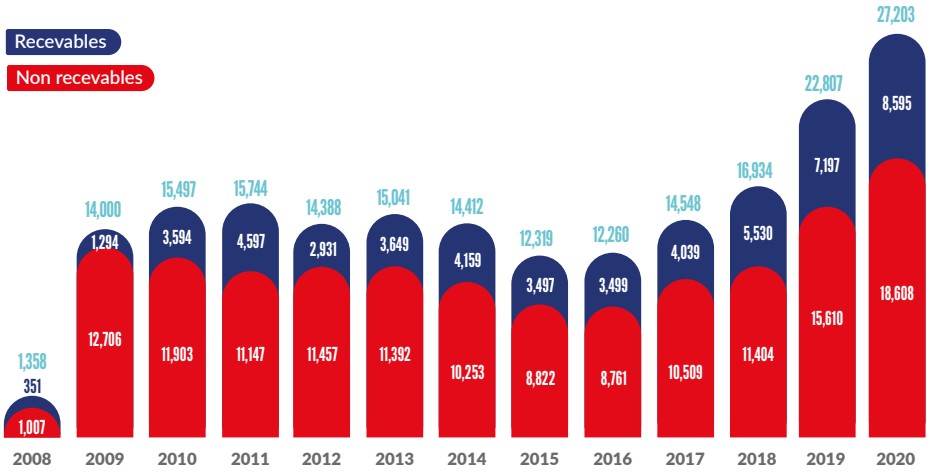
Breakdown of non-receivable disputes by type



Breakdown of the 27,203 received disputes by type

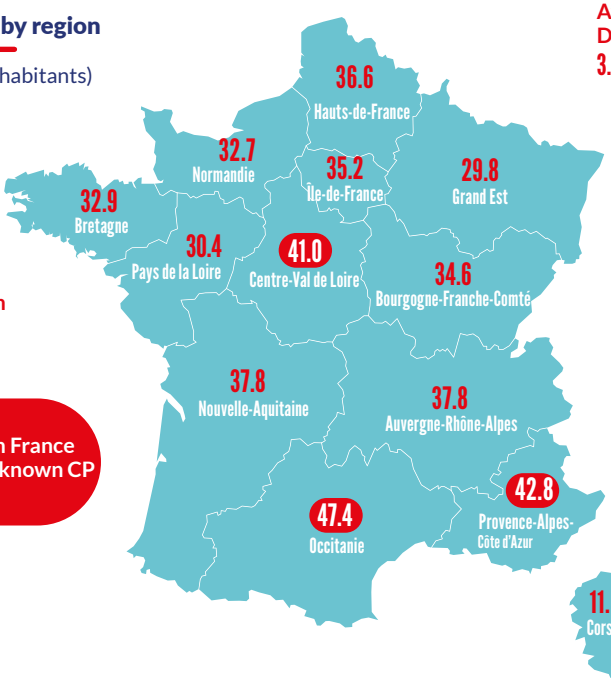


Evolution of the number of received disputes



Dispute rate by region

(for 100,000 inhabitants)



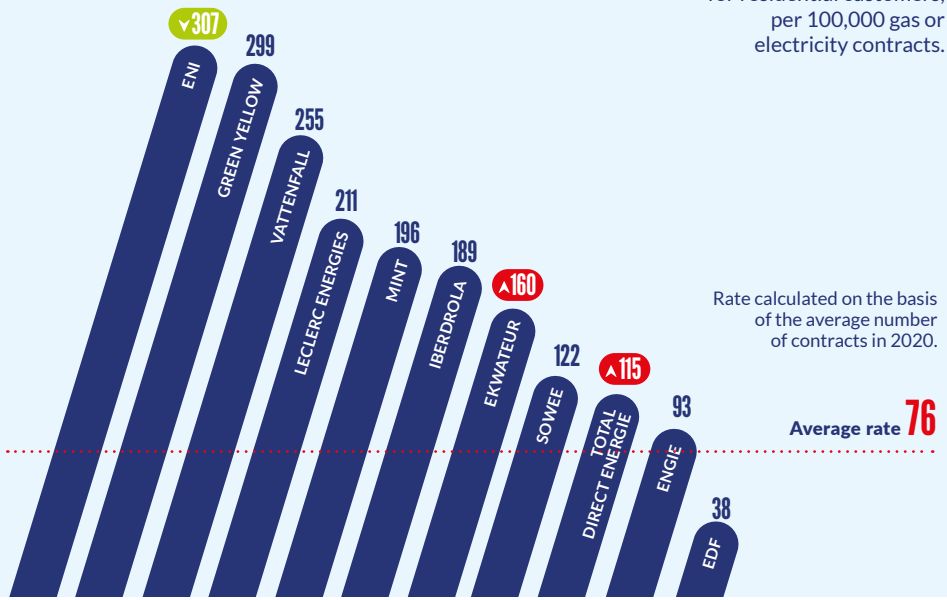
Average for metropolitan France
36.7

Average for metropolitan France + DOM + unknown CP
38.0

Average DOM
3.8

Dispute rate by supplier

Disputes received in 2020 for residential customers, per 100,000 gas or electricity contracts.



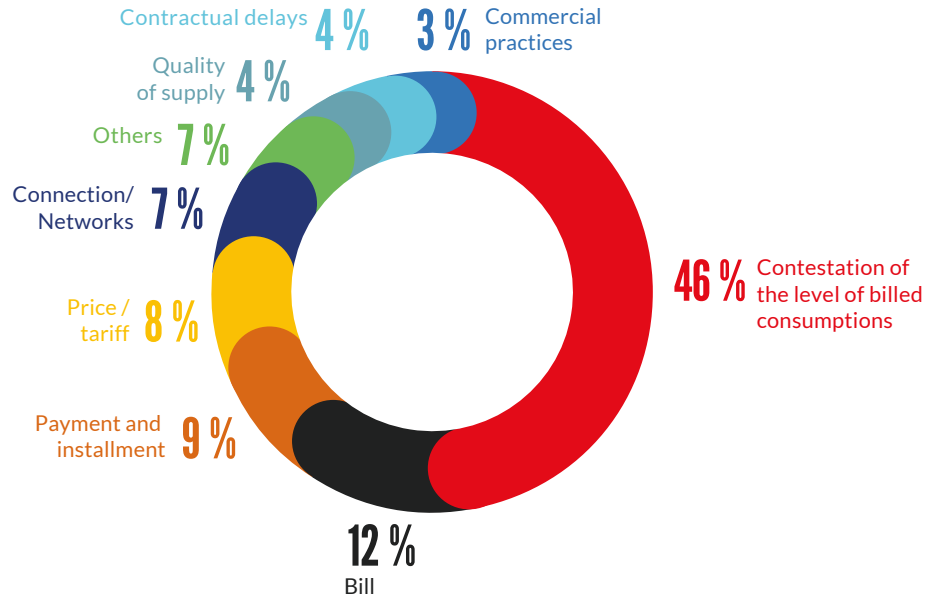
Rate calculated on the basis of the average number of contracts in 2020.

Average rate 76

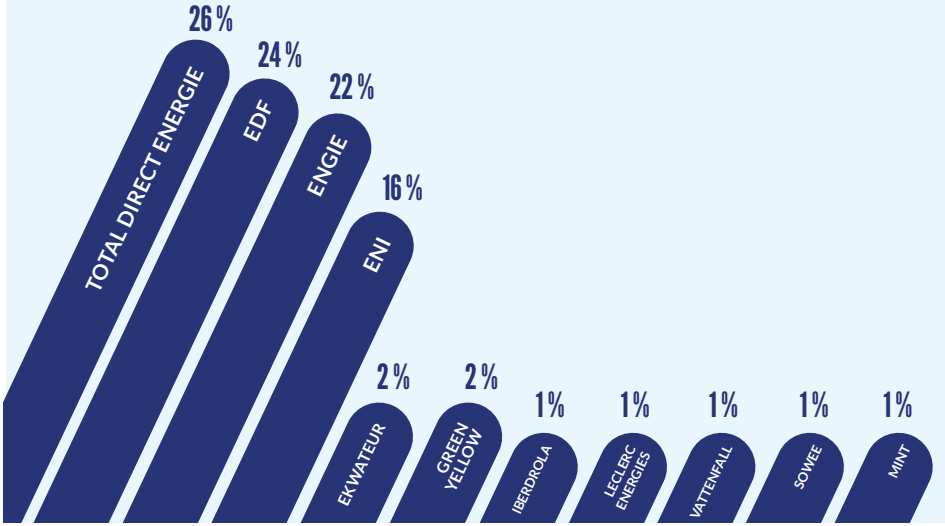
** For reasons of fairness, disputes received by corporate ombudsmen or those suppliers that have one are also accounted for.*

The graph only features national suppliers with more than 100,000 customers in the area of ENEDIS/GRDF.

Breakdown of the 8,595 receivable disputes by type



Distribution of receivable disputes by supplier



DISPUTES PROCESSED IN MEDIATION

64 % of amicable agreements

83 DAYS on average to process a receivable dispute

88 % of mediations fully followed up by operators

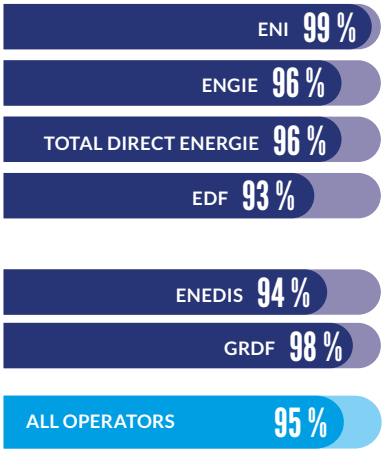
7,681 RECOMMENDATIONS AND AMICABLE AGREEMENTS IN 2020

49 % of receivable files closed within 90 days

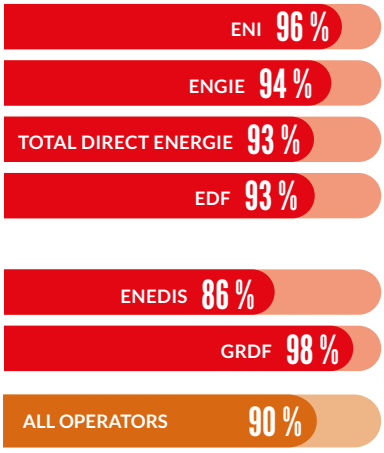
697 EUROS average amount granted

Followed recommendations

Financial and non-financial



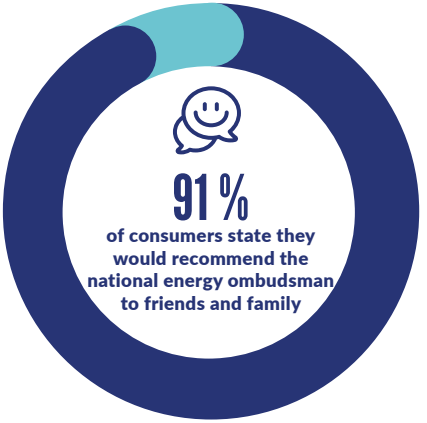
Financial *(% granted on average)*

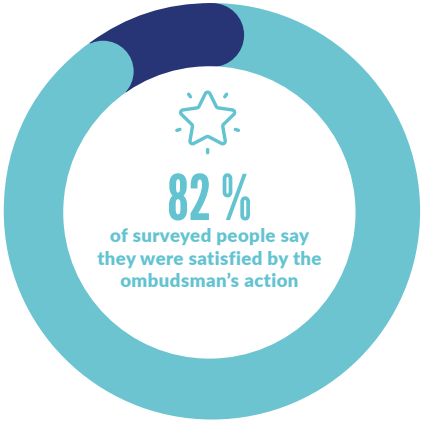


Note: the graph only features suppliers having been subject to at least 500 recommendations .

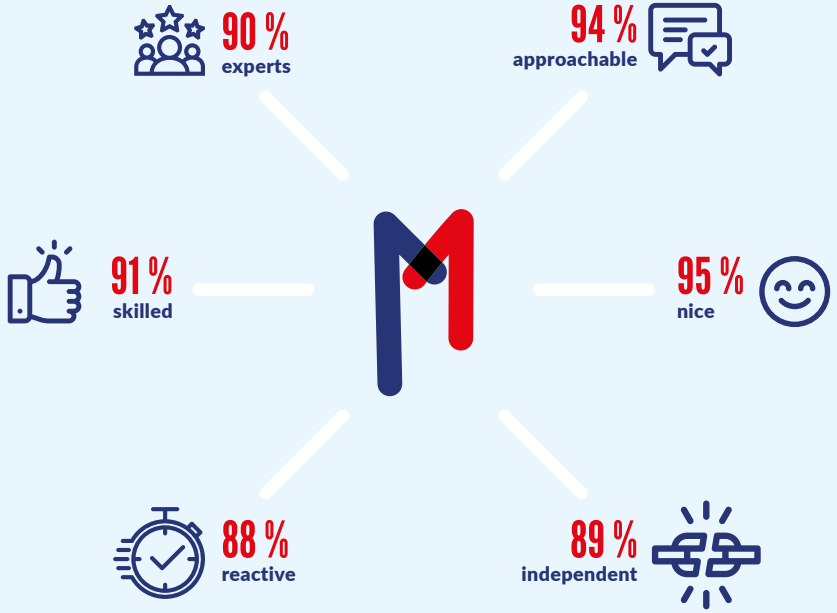
Consumer satisfaction

Telephone survey conducted by the company Market Audit from February 2 to 5 2021 with a sample of 352 respondents who had referred their cases to the national energy ombudsman.





The ombudsman's teams are deemed



ORGANISATION OF THE INSTITUTION

Ombudsman

Olivier CHALLAN BELVAL

Managing director

Frédérique FERIAUD

Head of the department **Administration & finances**

Béatrice GAUDRAY

Head of the department **Médiation**

Catherine LEFRANÇOIS-RIVIÈRE

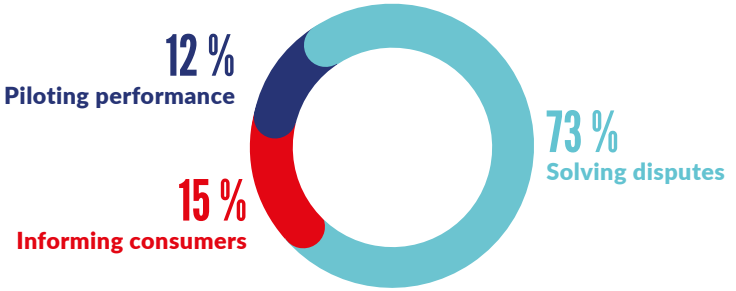
Head of the department **Information & communication**

Caroline KELLER

Appointed national energy ombudsman on November 25 2019 for a six-year mandate, Olivier CHALLAN BELVAL had been state councillor since December 1999. He notably served in the litigation division, then in the division of public works.

As for the energy field, he was director general of the Energy regulatory commission (CRE) from 2003 and then commissioner for the CRE from 2011 to 2015. He was a member of the Committee for settling disputes and sanctions (CoRDiS) of the CRE from March to November 2019.

Distribution of personnel by mission



Teams as of December 31 2020

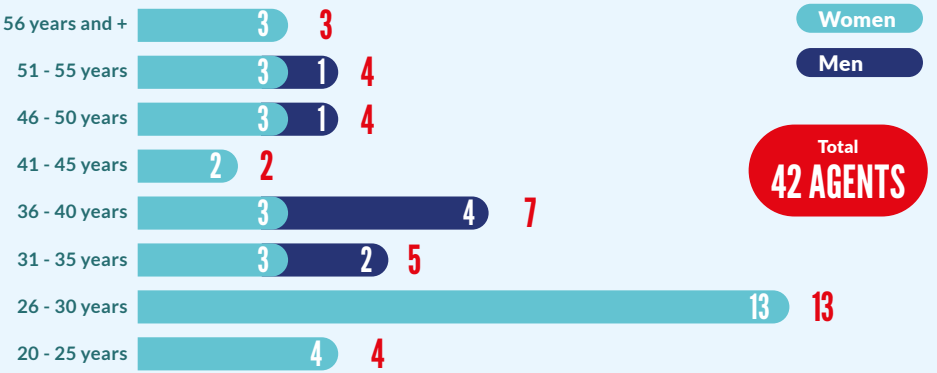
42
Incumbent agents as of 12/31/2020

37
Average age of collaborators

41
authorized full-time positions

41
effective full-time positions

Age pyramid of the national energy ombudsman agents



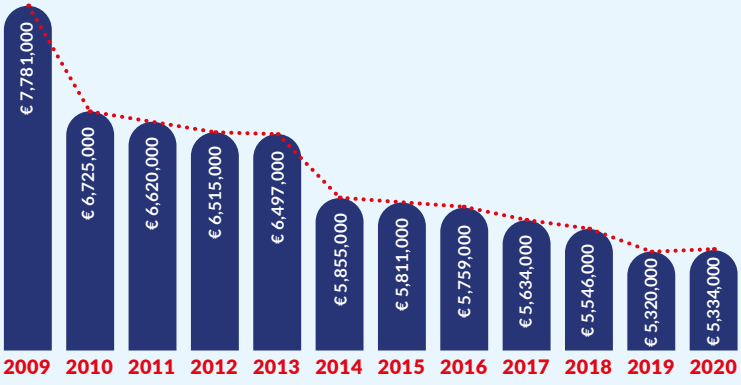
Budget by programme

Missions	Estimated budget	Completed budget	% completion
Informing consumers	€1,092,500	€1,004,976	92 %
Solving disputes	€2,140,100	€1,880,799	88 %
Piloting performance	€2,101,485	€2,088,270	99 %
TOTAL	**€5,334,085**	**€4,974,045**	**93 %**

Completed budget distribution by budgetary item

Items	Amount in €	%
Personnel	**€2,834,280**	**57.0 %**
Non-personnel budgetary items:	**€1,911,217**	**38.4 %**
Rent and rental expenses	€919,263	18 %
Information actions to the general public	€194,144	4 %
Other communication expenses	€5,108	0 %
External services provided for the consumer information website énergie-info	€284,924	6 %
Other operational expenses	€165,078	3 %
Training	€1,735	0 %
Logistical and IT support	€90,903	2 %
Depreciation charge	€229,187	5 %
Provisions for risks	€20,875	0 %
Investments	**€228,548**	**4.6 %**
TOTAL	**€4,974,045**	**100 %**

Estimated budget



ANNEX

GENERIC RECOMMENDATIONS ISSUED IN 2020

The generic recommendations propose changes to the actors of the energy market, with a view to improving market operations for the benefit of consumers, and of preventing disputes.

5 %
partially followed

14 %
not followed

81 %
followed

40
generic recommendations issued in 2020 by the ombudsman

i.e.
443
since it was created

REMINDER ON REGULATIONS

Audience	Recommendation	Reference
IND HEATING	In its capacity of supplier, a local distribution company must enforce articles L. 616-1 and R 616-1 of the consumption code, and mention in its general terms of sale the terms by which consumers may refer to the national energy ombudsman, as well as in the reply mails sent after they received a consumer claim.	D2019-12275
IND LPG	The supplier must provide information to its customers prior to any LPG price change under the provisions set in article L. 224-22 of the consumption code, for ongoing contracts or those renewed since November 1 2014. Notably, the supplier must allow its customers to terminate their contracts without any costs when they refuse new contractual terms.	D2019-16078
IND ELEC GAS	The supplier must comply with the provisions of article L. 224-14 of the consumption code that state that the termination must occur « at the date decided by the consumer » and specify that in all events it must not exceed a duration of 30 days from the request. This mention therefore cannot allow for systematically terminating within a period of 30 days.	D2019-16222
IND ELEC	The supplier must display on its bills the off-peak hours periods when proceeding to billing, in compliance with article 4 of the decree of April 18 2012.	D2020-01687
IND ELEC	The supplier must be in compliance with article 13 of the decree of April 18 2012 by proposing offers that enable consumption to be paid via other means than banking transfers, and by consequently modifying its general terms of sale.	D2020-03111
IND ELEC GAS	In its capacity as supplier, a local distribution company must clearly display on its bill of electricity or natural gas supply sent to consumers the period during which the customer may forward indexes to be taken into account when the new bill is issued, and the terms for this forwarding, in compliance with article 4 of the decree of April 18 2012 relative to bills of electricity or natural gas supply, their terms of payments and the conditions to carry over or reimburse overpayments.	D2020-03264
IND ELEC	The supplier must issue bills that comply with the decree of April 18 2012 relative to bills of electricity or natural gas supply regarding the information set by articles 3, 4 and 10, notable amongst which are the terms by which a consumer may refer to the national energy ombudsman.	D2020-03644

IND Individual PRO Professional Electricity Gas LPG Heating network

REMINDER ON REGULATIONS (CONT.)

Audience	Recommendation	Reference
IND ELEC	The supply must abide by the decree of April 18 2012 by applying a *prorata temporis* method of consumption distribution in the event prices change between two readings, or to mention in its general terms of sale the weighing coefficients in use.	D2020-06861
IND ELEC	The supplier must implement a means of payment by postal order, in compliance with article L. 224-12 of the consumption code.	D2020-08180

CHANGE OF SUPPLIER/TERMINATION

Audience	Recommendation	Reference
PRO GAS	The supplier must ensure that solicited professional customers are fully aware of the penalties they may incur if they terminate their previous contract prematurely. For that matter, suppliers should collect a written statement from their future customers certifying they are aware of this. This mention must be explicit and should not be a mere box to tick or a clause of the general terms of sale.	D2019-17077
IND GAS	The supplier must advise consumers to terminate their contracts when they are changing homes and specify that in failing to do so they carry the risk of having to pay for the consumption of the next occupant of their former home.	D2019-18315
IND ELEC GAS	The supplier must systematically inform customers subscribing to an energy supply contract when moving into a new home of the benefits of cancelling the energy supply contracts established for the former home.	D2019-19191
IND GAS	The supplier must systematically collect a self-reading to switch customers from an offer at the regulated tariff to a market offer and not use an index that was read previously.	D2020-00257
IND GAS	The supplier must never resort to charging service start fees when carrying out a simple change of offer.	D2020-00257

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NETWORK

Audience	Recommendation	Reference
IND GAS	The distribution network manager must ensure the same level of safety to all network users, and proceed, without delay, to take all the necessary measures to transfer into the network granted by the law all the « Parisian ends ».	D2019-08725
IND ELEC	In all cases where works are carried out in a building, by itself or a service provider for which it is responsible, the manager of the electricity distribution network must establish a joint situational analysis before and after the works. In the absence of such an analysis, it must bear the costs of repairing damages for which it cannot demonstrate that it is not responsible for.	D2019-22312

METERING

Audience	Recommendation	Reference
IND ELEC	In the event an error is detected on the allocation of a delivery point to a customer, the supplier must implement the corrective procedures defined for this by the consultative bodies under the auspices of the Energy regulatory commission. These procedures demand from the supplier that detected the delivery point error to firstly communicate with the distributor so it can identify which the delivery point should be re-allocated, and secondly that it implements with that supplier the appropriate corrective procedures so that every consumer is, if needed, billed with his/her own consumption, and not one of a third party.	D2019-19174
IND ELEC	When a meter is shut down for safety reasons, the manager of the electricity distribution network must: - inform suppliers of this without delay, - and cease forwarding the estimated consumptions to be billed to the suppliers.	D2019-22435
IND GAS	For safety reasons, the manager of the natural gas distribution network must not charge consumption on a meter that was shut-down by its agents.	D2019-22471

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GENERAL AND PARTICULAR TERMS OF SALE

Audience	Recommendation	Reference
IND CHALEUR	In its capacity of supplier, the local distribution company must change the article 4.3 of its general terms of sale - « Measuring and monitoring heating » - in order to specify the nature of monitoring measures, and not lead customers to believe that the periodical monitoring could be assimilable to a metrological control carried out by a certified laboratory, if it is not the case.	D2019-12275
IND ELEC	The supplier must include in the general terms of sale signed by its customers the periods of peaks hours and off-peak hours that are applicable to their contract.	D2020-01687
PRO ELEC	When supply costs are not specified (for customers using a power of 36 kVA), the supplier must change the way its offers and general terms of sale are presented and indicate all the components of the TURPE that must be added to the prices of subscription and kWh, so that consumers, even professional ones, can compare with full knowledge their prices with those of the competition.	D2020-11659
PRO ELEC GAS	Prior to the signing of a contract, the supplier must inform its professional customers of the necessity to check whether they will be billed with expenses in the event they cancel their ongoing contract prematurely, and with a specific mention in the particular terms of sale, distinct from other clauses.	D2020-13438
PRO ELEC GAS	The supplier must add into the particular terms of sale applicable to professional customers a specific and explicit mention that recalls the existence, and calculation method, of billed expenses if the contract is prematurely cancelled. This information should be displayed jointly with a numerical illustration with the purpose of allowing the customer to assess the cancellation fees he/she could incur in the event he/she cancels his/her contract prematurely.	D2020-13438
PRO ELEC	Regardless of its duration, the supplier must not mention in its general terms of sale a « non-binding offer » wherein the contract binds the consumer over a commitment duration.	D2020-16055

TARIFF ADVICE

Audience	Recommendation	Reference
IND GAS	The supplier must change its practices, along with its general terms of sale for its contracts of natural gas supply, to automatically propose to its customer, whether they are at the regulated sale tariff or with a market offer, the tariff option that best matches the fall due yearly consumption.	D2019-16400

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BILLING

Audience	Recommendation	Reference
IND ELEC	In its capacity of supplier, the local distribution company must, in the event of a tariff change, adapt the *prorata temporis* calculation of estimated consumptions to the specificities of the TEMPO tariff. For this tariff, the *prorata temporis* calculation must take into account the tariff periods in blue, white and red days.	D2019-11510
IND ELEC	The supplier must take into account the readings forwarded each month by LINKY to propose to its customers adaptations to their monthly installments.	D2019-18846
IND ELEC	The supplier must propose to consumers with monthly installments a readjustment of the monthly amounts of the installment plan when an intermediate monthly reading shows that their amount is incompatible with their foreseeable annual consumption.	D2020-01687
IND ELEC	The supplier must systematically propose to customers to modify their monthly installment plan when the readings forwarded monthly by the meter LINKY show that the monthly amounts are not consistent with the level of true consumptions.	D2020-05758
IND ELEC	The supplier must improve the information displayed on its bills about the deduction calculation conditions set by the contract.	D2020-10648
IND GAS	The supplier must change its practices, along with the general terms of sale for its contracts of natural gas supply, to automatically propose to its customers the tariff option that best matches the fall due yearly consumption.	D2020-16933

UNPAID BILLS

Audience	Recommendation	Reference
IND GAS	In its capacity of distribution network manager, the local distribution company must cease billing pointless trip fees due to an intervention for unpaid bills that could not be carried out because the consumer was absent, since no prior appointment is required for this service.	D2020-00546

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INFORMATION

Audience	Recommendation	Reference
IND ELEC	The manager of the electricity distribution network must implement a solution, under the terms defined by it, that allows informing consumers as swiftly as possible about power cuts that will impact their equipment and the time required to restore power.	D2019-20423
IND GAS	The manager of the gas distribution network must inform suppliers without any delay when an immediate and serious hazard is observed on the equipment of one of their customers (cut, restoration).	D2019-22471
IND GAS	The supplier must regularly inform the distribution network manager of any change regarding the contractual data of its customers (contact details, change of contractholder, guardianship).	D2019-22471
IND ELEC	When a customer asks a question about the price of a service from the distribution network manager, the supplier must communicate this information directly, without inviting the customer to peruse the service catalogue to find this information themselves.	D2020-01687
PRO GAS	The supplier must abide by its duty of fairness it has toward its customer by communicating all the items that constitute the sale price of gas supply. This implies that it specifies in its contracts the value of the current supply tariff when the contract is signed and, if needed, the rental tariff of the meter and the release device. It must also renew this information every time these tariffs change.	D2020-02864
IND ELEC	The supplier must abide by its general duty of fair and comprehensive information that binds it by adding to the information displayed on its tariff grid that the application of deductions on the kWh price is conditional to a contractual commitment of a year at the shortest. It must also display the kWh price excluding deductions that applies for energy on a non-package basis and in the event of a cancellation before the one-year deadline.	D2020-10648
IND LPG	The supplier must enhance the information relating to the scale in effect on January 1 of each year, and specify the actualized value of the CNL index (National committee of rental companies – Distribution activity with transporters and fuel) and the details of how the indexation of tank removal fees is calculated.	D2020-16306

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The national energy ombudsman is not liable for the comments said in the interviews.
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Liberté
Égalité
Fraternité

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