Attention to complaints and enquiries by investors

2023 Annual Report

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Acronyms

AA. PP.	Public administration service
ABS	Asset-Backed Security
AIAF	Spanish Market in Fixed-income Securities
AIF	Alternative Investment Fund
ANCV	Spanish National Numbering Agency
APA	Approved Publication Arrangement
APR	Annual Percentage Rate
ASCRI	Spanish Venture Capital & Private Equity Association
AV	Broker
BIS	Bank for International Settlements
BME	Spanish Stock Markets and Financial Systems
CADE	Public Debt Book-entry Trading System
CC. AA.	Autonomous regions
CCP	Central Counterparty
CDS	Credit Default Swap
CFA	Atypical financial contract
CFD	Contract For Differences
CISMC	CIS Management Company
CNMV	(Spanish) National Securities Market Commission
CP	Crowdfunding Platform
CS	Customer Service
CSD	Central Securities Depository
CSRD	Central Securities Depositories Regulation
DLT	Distributed Ledger Technology
EAF	Financial advisory firm
EBA	European Banking Authority
EBITDA	Earnings Before Interest Taxes, Depreciation and Amortisation
EC	European Commission
ECA	Credit and savings institution
ECB	European Central Bank
ECR	Venture capital firm
EFAMA	European Fund and Asset Management Association
EFSM	European Financial Stabilisation Mechanism
EICC	Closed-ended collective investment company
EIOPA	Occupational Pensions Authority
EIP	Public interest entity
EMIR	European Market Infrastructure Regulation
EMU	Economic and Monetary Union
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange Traded Fund
EU	European Union
EUSEF	European Social Entrepreneurship Fund
FICC	Closed-ended collective investment fund
FII	Real estate investment fund
FIN-NET	Financial Dispute Resolution Network
FINTECH	Financial Technology
FOGAIN	Investment Guarantee Fund

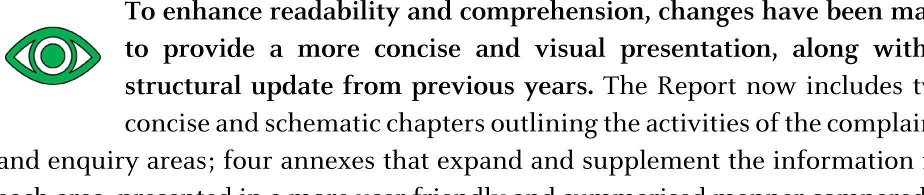
FRA	Forward Rate Agreement
FROB	Spanish Executive Resolution Authority
FSB	Financial Stability Board
FTA	Asset securitisation fund
FTH	Mortgage securitisation fund
GDP	Gross Domestic Product
HF	Hedge Fund
HFT	High Frequency Trading
IAGC	Annual corporate governance report
IARC	Annual report on director remuneration
IAS	International Accounting Standards
ICIS	Collective investment company/scheme
ICO	Initial Coin Offering
IF	Investment Firm / Investment Fund
IFRS	International Financial Reporting Standards
IIMV	Ibero-American Securities Market Institute
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering (for sale/subscription of securities)
IPP	Periodic public information
IRR	Internal Rate of Return
ISIN	International Securities Identification Number
KIID/KID	Key Investor Information Document
Latibex	Market of Latin American Securities
LEI	Legal Entity Identifier
LIIC	Spanish Collective Investment Companies Act
LMV	Spanish Securities Market Act
MAB	Alternative Stock Market
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MARF	Alternative Fixed-Income Market
MBS	Mortgage Backed Securities
MEFF	Spanish Financial Futures Market
MFP	Maximum Fee Prospectus
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MOU	Memorandum Of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
MTF	Multilateral Trading Facility
MTS	Market for Treasury Securities
NCA	National Competent Authority
NDP	National Domestic Product
OECD	Organisation for Economic Cooperation and Development
OIS	Overnight Indexed Swaps
OTC	Over The Counter
OTF	Organised Trading Facility
PER	Price-to-Earnings Ratio
PRIIP	Packaged Retail and Insurance Based Investment Product
PUI	Loan of last resort
RAROC	Risk-Adjusted Return On Capital
REIT	Real Estate Investment Trust
RENADE	Spanish National Registry for Greenhouse Gas Emission Allowances
RFQ	Request For Quote
ROA	Return On Assets
ROE	Return On Equity
SAMMS	Advanced Secondary Market Tracking System

SAREB	Asset Management Company for Assets Arising from Bank Restructuring
SENAF	Electronic Trading Platform for Spanish Government Bonds
SEND	Electronic Debt Trading System
SEPBLAC	The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SGC	Portfolio management company
SGECR	Venture capital firm management company
SGEIC	Closed-ended investment scheme management company
SGFT	Asset securitisation fund management company
SIBE	Electronic Spanish Stock Market Interconnection System
SICAV	Open-ended collective investment company
SICC	Closed-ended collective investment company
SII	Real estate investment company
SIL	Hedge fund with legal personality
SME	Small and Medium Enterprise
SNCE	National Electronic Clearing System
SPV/SFV	Special purpose/financial vehicle
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
STOR	Suspicious Transaction and Order Report
SV	Broker-dealer
T2S	Target2-Securities
TER	Total Expense Ratio
TOB	Takeover Bid
TRLMV	Recast text of the Spanish Securities Market Act
TVR	Theoretical Value of the Right
UCITS	Undertaking for Collective Investment in Transferable Securities
VCF	Venture Capital Firm / Venture Capital Fund
XBRL	Extensible Business Reporting Language

1 Introduction and summary of financial year 2023

1 Introduction and summary of financial year 2023

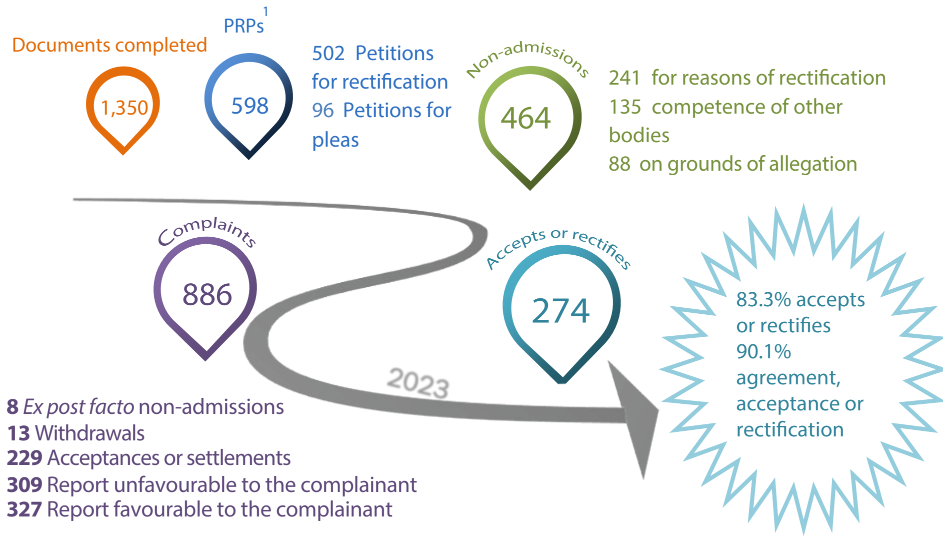
The Annual Report on Complaints details the activities of the CNMV Investors Department in addressing investor complaints, grievances, and enquiries in 2023. Through this Report, the Investors Department fulfils the legal obligation established in Article 30.4 of Law 44/2002, of 22 November, on Financial System Reform Measures.



To enhance readability and comprehension, changes have been made to provide a more concise and visual presentation, along with a structural update from previous years. The Report now includes two concise and schematic chapters outlining the activities of the complaints and enquiry areas; four annexes that expand and supplement the information for each area, presented in a more user-friendly and summarised manner compared to previous years; and this introduction.

Chapter 1 presents the statistics for the complaints area, which received 1,364 submissions, primarily from individuals (96.7%) at the CNMV's offices (60.4%) and via electronic means (55%). As a new feature, the data on national complainants are presented as a percentage of the population registered in 2023, according to the National Statistics Institute (INE). This allows for comparisons between autonomous communities, with the percentage ranging from 0 to 0.0051%, depending on the community.

In 2023, the Complaints Service concluded 1,350 cases, an increase of 10.8% compared to 2022. The following diagram illustrates the main processing data.



1 PRP = Petition for rectification or pleas that the Complaints Service sends to the complainants if there are non-admission grounds that can be rectified or pleaded by the complainant.

Institutions satisfied 90.1% of complainants through agreements, settlements, or acceptance of criteria, or rectifications following decisions in favour of the complainant. The increase in the number of settlements and acceptances that began in 2020 has continued. Moreover, the acceptance of criteria or rectifications in reports favourable to the complainant reached the highest percentage of the last decade, surpassing the average percentage of the last three years. As a result, only 55 complaints across Spain remained unresolved to the satisfaction of the complainant.

The complaints were mainly directed against credit institutions, particularly banks. The foreign entities freely providing services, whose complaints are inadmissible because they fall within the remit of their country of origin, were mainly domiciled in Germany (ten cases) and Cyprus (nine cases). The data on domestic institutions and branches of foreign institutions against which eight or more complaints were resolved are arranged in rankings. These rankings consider the percentage of resolved complaints relative to the institutions' total assets, the percentage of decisions favourable to the complainant, and the percentage of acceptances or rectifications of reports favourable to the complainant. Notably, the method of presenting the ranking by resolved complaints has been modified from previous years to account for the size of the institution, thereby providing a more balanced perspective.

Chapter 2 details the handling of investor enquiries and provides the main data on the enquiries received, broken down by communication channel (whether via the electronic office, telephone, or post), as well as the number of enquiries by the most recurrent topics during 2023.

Annex 1 includes a table that simply and visually compares the two procedures currently in force for the submission and processing of complaints, depending on whether the complainant is classified as a consumer or not. Natural persons and non-profit organisations are subject to a procedure specifically adapted for consumers, harmonised at the European level, with particularities regarding deadlines and grounds for rectification or plea, which are detailed in the annex.

Annex 2 covers international cooperation mechanisms. Within FIN-NET, the network for resolving cross-border financial disputes in the European Economic Area, the Complaints Service has continued its participation in the two annual plenary meetings, as in previous years. This year, to enhance cooperation and information exchange among its members, the Complaints Service promoted an initiative involving the issuance of acknowledgements of receipt by the competent Alternative Dispute Resolution (ADR) entity to the nearby ADR in cases where the latter forwards a complaint.[1] This initiative has been widely accepted by FIN-NET members and has resulted in the development of standardised templates by the Complaints Service, which have been posted on the FIN-NET website. The Complaints Service also belongs to the Network of Financial Services Ombudsman Schemes, which held its 16th annual meeting on 26 September 2023.

1 The nearby ADR, that is, the Complaints Service of the place where the citizen resides, receives the complaint and may transfer it to the competent Complaints Service (competent ADR).

Annex 3 contains the most relevant criteria applied in the resolution of complaints in 2023. The presentation of this information is significantly faster and simpler than in previous years. Each section is divided into two parts: a general part and a specific part. The general part includes the applicable regulations, ESMA guidelines, press releases, question and answer documents, technical guides issued by the CNMV, and the criteria for resolving complaints. The specific part summarises the complaint related to the matter addressed in the general part. This is all accompanied by graphical elements that facilitate the understanding and identification of whether the resolution issued by the Complaints Service was favourable or unfavourable.

Annex 4 provides a description of the most frequently raised subjects in enquiries, along with a list and brief references to the enquiries considered most important during the 2023 financial year.

2 Complaints

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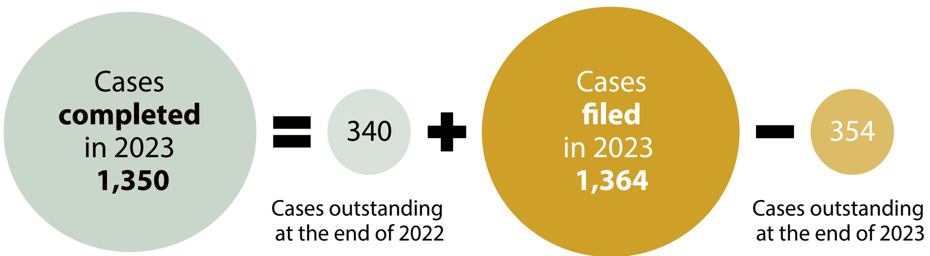
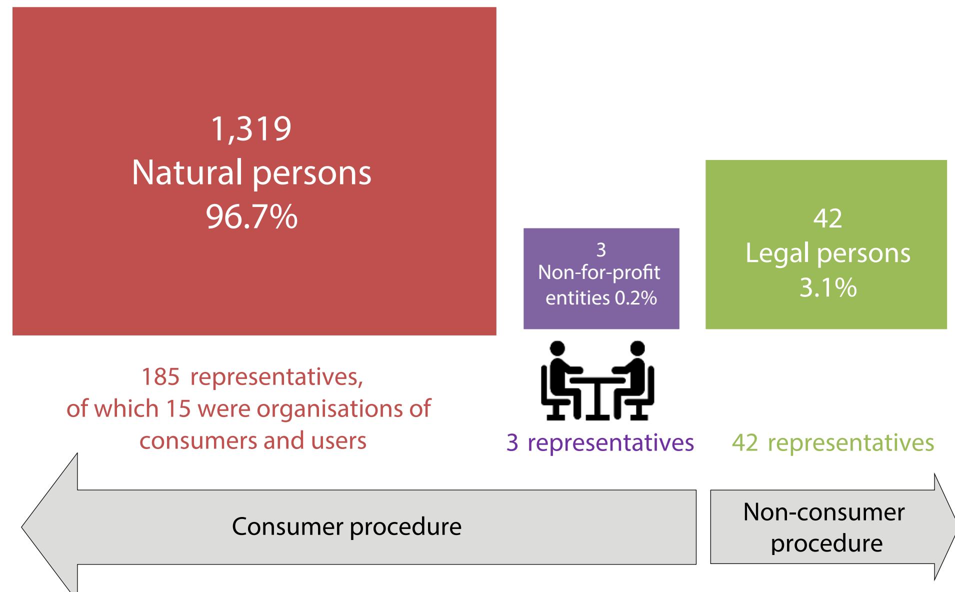
2 Complaints

In 2023, the Complaints Service completed 1,350 proceedings, marking an increase of 10.8% compared to 2022. The number of documents submitted by investors requesting the initiation of a complaint was similar to the previous year. However, both 2022 and 2023 saw an increase compared to the levels prior to 2022, indicating a sustained upward trend in the number of complaints. Specifically, the number of documents filed reached 1,364 in 2023 and 1,371 in 2022, compared to 1,254 in 2021, 1,242 in 2020, 1,077 in 2019, and 1,018 in 2018. The processing data for the documents related to the 2023 financial year are shown below:



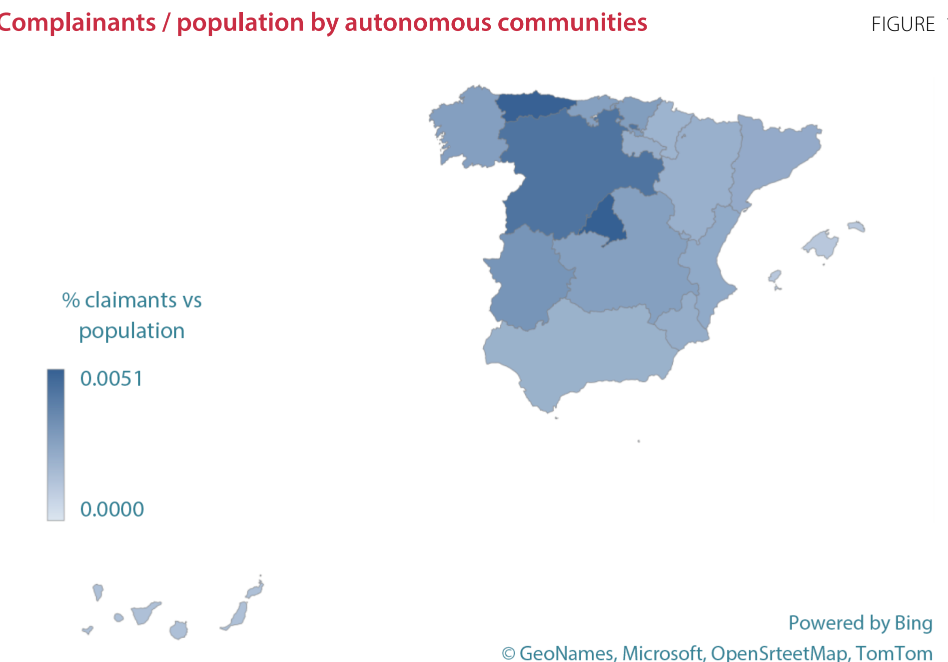
2.1 Complainants, place and manner of submission of documents in 2023

Investors who lodged complaints in 2023 were mainly natural persons, with 14% choosing to act through a representative in the procedure. Natural persons and non-profit entities follow a procedure specifically tailored to consumers, harmonised at the European level and detailed in Annex 1. The following figure shows the details of the types of complainants, the involvement of representatives, and the applicable procedure.



Considering the domicile of the 1,348 national complainants, Madrid, Asturias, and Castilla y León are the Autonomous Communities with the highest number of complainants relative to the registered population. The map shows the geographical distribution of complainants as a percentage of the registered population in 2023, according to the INE.

Complainants / population by autonomous communities FIGURE 1



Source: CNMV.

Of the 16 complainants not residing in Spain, 56.3% were from European Union (EU) countries, while 43.8% were from non-EU countries. The number of complainants per country is shown in the figure below.

Non-resident complainants by country of origin FIGURE 2

Non-EU countries EU countries

France, 4
Austria, 2
Portugal, 1
Czech Republic, 1
Brazil, 2
Hong Kong, 1
United States, 1
Andorra, 1
Switzerland, 1
Colombia, 1

Source: CNMV.

The majority of complaints were lodged at the CNMV's offices, mostly via telematic means. The Complaints Service received:

– 60.4% of complaints from the electronic and physical registers of the CNMV's offices.

– 39.5% from the Bank of Spain.

– 0.1% from the Insurance and Pension Funds Directorate-General (DGSFP).

These complaints were referred by:

– 1.5% of cases, via a Municipal Consumer Information Office (OMIC) or the Directorate General for Consumer Affairs.

– 1.2% of cases, via a consumer association.

– 0.2% of cases, via another body.

– In the remaining 97.1% of cases, without the intervention of the aforementioned bodies or associations.

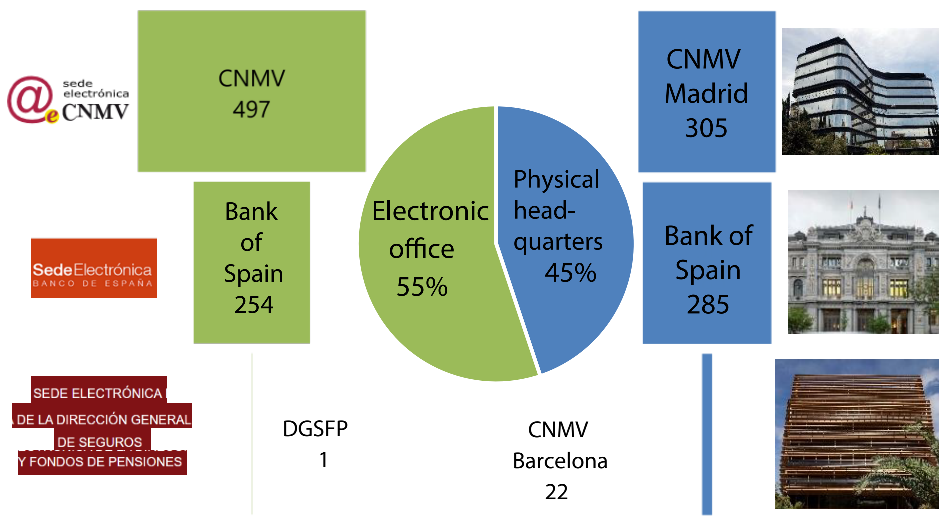
Investors submitted 55% of the complaints telematically:

– Using a digital certificate or the Cl@ve system at the Bank of Spain, the DGSFP, and the CNMV's electronic registry (263 cases).

– By means of a username and password identification system at the CNMV's electronic registry (234 cases).

The remaining 45% were submitted to the physical registers at the CNMV's Madrid and Barcelona offices and to the Bank of Spain, as shown in the figure below.

Place and manner of submission of documents FIGURE 3



Source: CNMV.

2.2 Processing of the documents

The documents received go through the following stages: verification, pre-processing, processing, resolution, and follow-up. Once the documents submitted by complainants are received, the Complaints Service verifies them and, if there are grounds for non-admission that can be rectified or contested, formulates petitions for rectification or pleas to the complainants (see Annex 1).

The documents are directly rejected if there are grounds for non-admission that cannot be rectified or contested (e.g., when they fall under the jurisdiction of other national or international financial complaints services). This also applies if, after a petition for rectification or pleas, the complainants do not respond or respond inadequately within the given timeframe (14 calendar days for consumers or 10 business days for non-consumers). If the complaint falls under the remit of other complaints services, it is referred directly to the appropriate service.

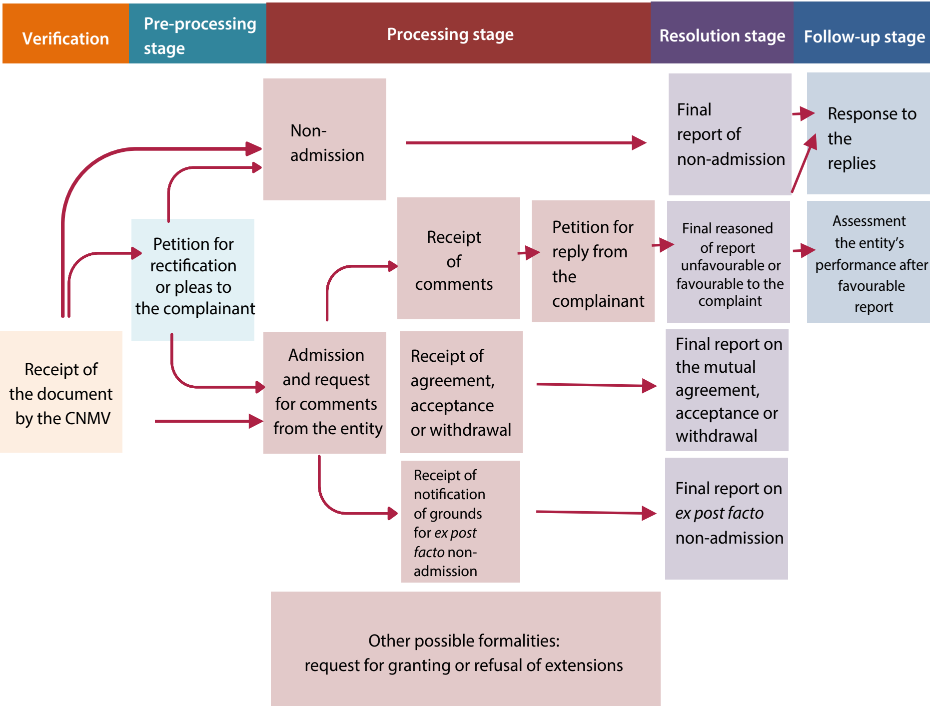
The documents are accepted if the requirements are met from the outset, or if the complainants correctly respond to petitions for rectification or pleas. In these cases, the Complaints Service forwards the complaint to the institution, which must provide its comments within 21 **calendar days** or 15 **business days**, depending on whether the complaint was submitted by a consumer or not.

During the processing of the complaint, it may be established that the institution has accepted the complaint, the parties have reached an agreement, the complainant has withdrawn, or there is an *ex post facto* reason for non-admission. In such instances, the Complaints Service closes the case without issuing a final reasoned report.

If not, once the institution's comments are received, the Complaints Service forwards them to the complainant, who must reply within 21 **calendar days** or 15 **business days**, depending on whether they are a consumer or not. Once the reply has been received, or the reply period has elapsed without a response, the Complaints Service issues a reasoned report on the merits of the case, which may be either favourable or unfavourable to the complainant.

The Complaints Service then asks the institutions to communicate whether they accept the criteria outlined in the reports favourable to the complainant and to rectify the complainant's situation. It assesses the institutions' responses to these requests. Additionally, it responds to the replies to the non-admissions or unfavourable reports that complainants sometimes submit.

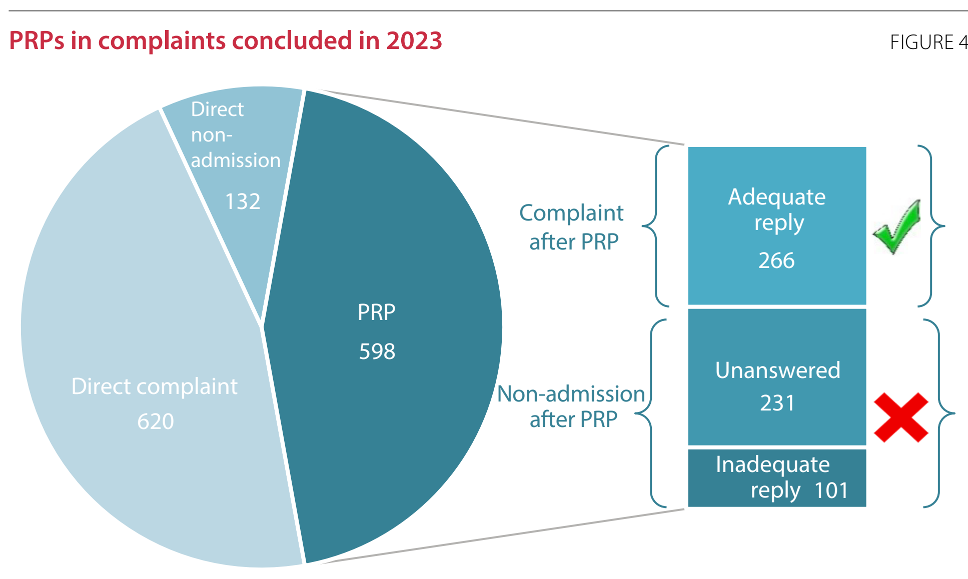
The following diagram summarises the aforementioned procedures.



2.3 Petitions for rectification and pleas

In 2023, it was necessary to ask the complainant to address a ground for non-admission or rectify the complaint in 598 of the complaints that were completed. Of these petitions for rectification or pleas, 44.5% were answered appropriately, and consequently, the complaint was upheld. In contrast, complainants either did not reply or replied insufficiently to 38.6% and 16.9% of these petitions, respectively, which resulted in the complaints being rejected as inadmissible.

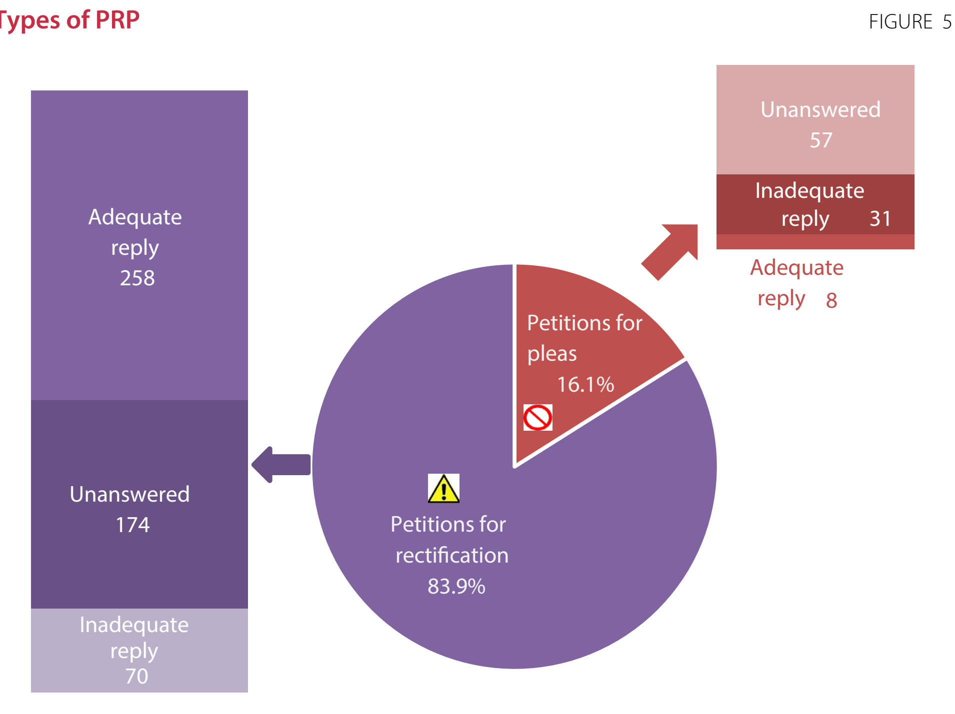
PRPs in complaints concluded in 2023 FIGURE 4



Source: CNMV.

In terms of the type of petition, 83.9% were for rectification, and about half of these were adequately replied to. The remaining 16% were petitions for pleas, more than half of which were not answered, and a third were answered but did not discredit the grounds for non-admission.

Types of PRP FIGURE 5



Source: CNMV.

More than a third of the reasons for petitions for rectification were due to deficiencies in proving compliance with the prior complaints procedure before the Customer Service Department (CSD) or the Customer Ombudsman of the entity. These deficiencies can be divided into four categories:

i) Failure to provide documentation accrediting the complaint (167 cases).

ii) Submission of a complaint document lacking a stamp, acknowledgement of receipt, or other proof of correct receipt by the institution's CSD, and no response from the institution (80 cases).

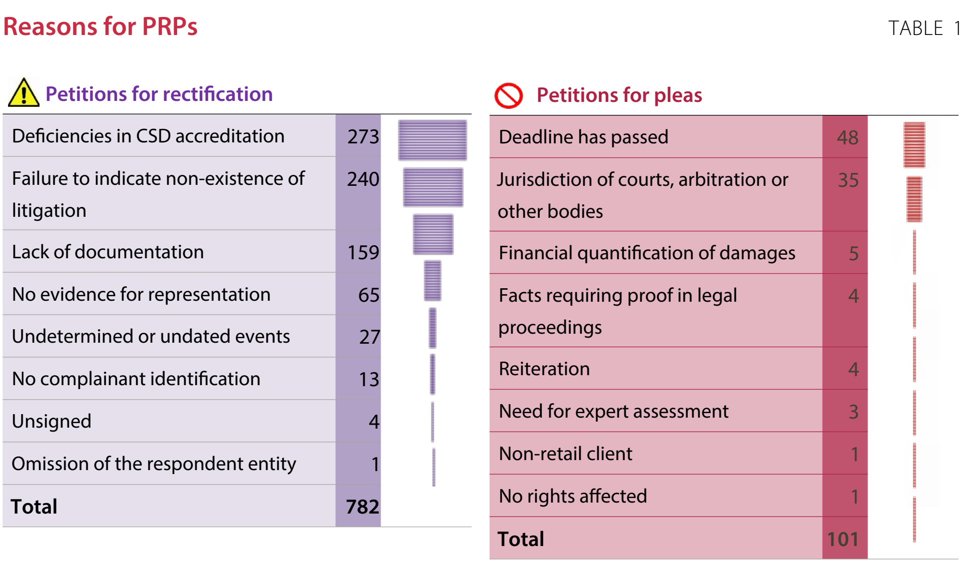
iii) Provision of a complaint document received by the institution, but without one or two months – depending on whether the complainant is a consumer or not – having elapsed since acknowledgement of receipt, and without a response from the institution (18 cases).

iv) Provision of a response from the institution, albeit referring to facts other than those complained about before the Complaints Service (8 cases).

Nearly half of the reasons for petitions for pleas were based on missing the deadline for lodging complaints.

Table 1 provides a breakdown of the grounds for petitions for rectification and pleas. It is common for requests for rectification to be made on several grounds, which is why the 782 grounds for rectification exceed the 502 petitions for rectification submitted. However, in the case of petitions for pleas, multiple grounds for non-admission are rarely involved. Thus, there were 101 grounds for non-admission reported in the 96 petitions for pleas. For further information on these grounds for rectification and pleas, refer to Annex 1.

Reasons for PRPs TABLE 1



Petitions for rectification	
Deficiencies in CSD accreditation	273
Failure to indicate non-existence of litigation	240
Lack of documentation	159
No evidence for representation	65
Undetermined or undated events	27
No complainant identification	13
Unsigned	4
Omission of the respondent entity	1
Total	**782**

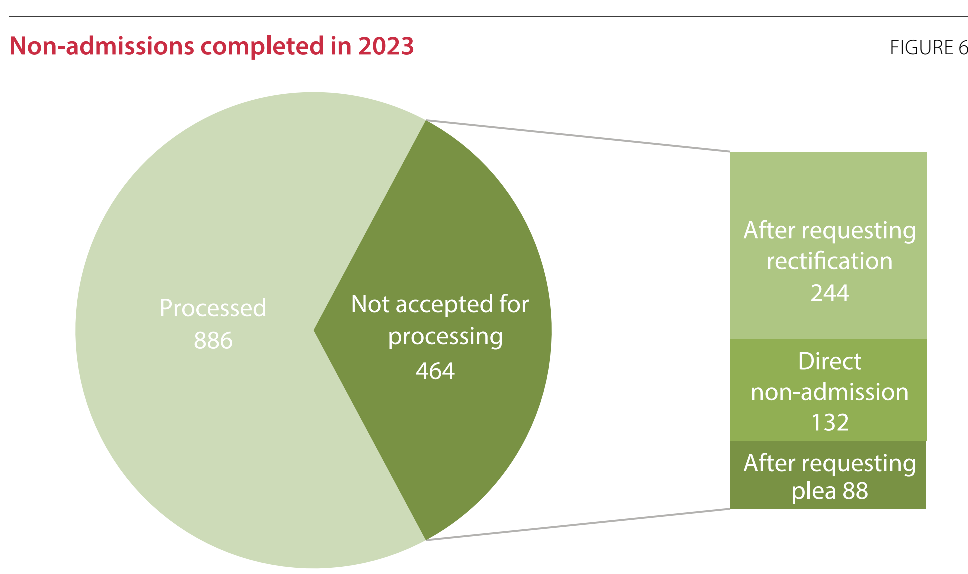
Petitions for pleas	
Deadline has passed	48
Jurisdiction of courts, arbitration or other bodies	35
Financial quantification of damages	5
Facts requiring proof in legal proceedings	4
Reiteration	4
Need for expert assessment	3
Non-retail client	1
No rights affected	1
Total	**101**

Source: CNMV.

2.4 Non-admissions

The documents not admitted for processing totalled 464, marking an increase of 6.7% compared to the previous year. These non-admissions usually occur after a petition for rectification or pleas has been sent to the complainant. However, in some cases, the non-admission occurs directly without undergoing this prior petition process.

Non-admissions completed in 2023 FIGURE 6



Source: CNMV.

Half of the non-admissions are due to complainants failing to reply in due time to the petitions for rectification or pleas sent to them by the Complaints Service. As a result, the document submitted lacks the necessary documentation or requirements to be admitted for processing. In 21% of the cases of non-admission, complainants respond to the petition for rectification or pleas, but some reason for non-admission remains. This is mainly due to deficiencies in proving compliance with the prior complaint procedure before the institution's CSD and missing the deadlines established in the regulations for submitting complaints.

The remaining 29% of non-admissions correspond to cases where the issues raised fall within the jurisdiction of other bodies. This lack of jurisdiction usually becomes apparent at the start of the proceedings, resulting in the direct non-admission (132 cases) of the document submitted. Occasionally, however, this is only discovered after a petition for rectification or pleas has been made (3 cases).

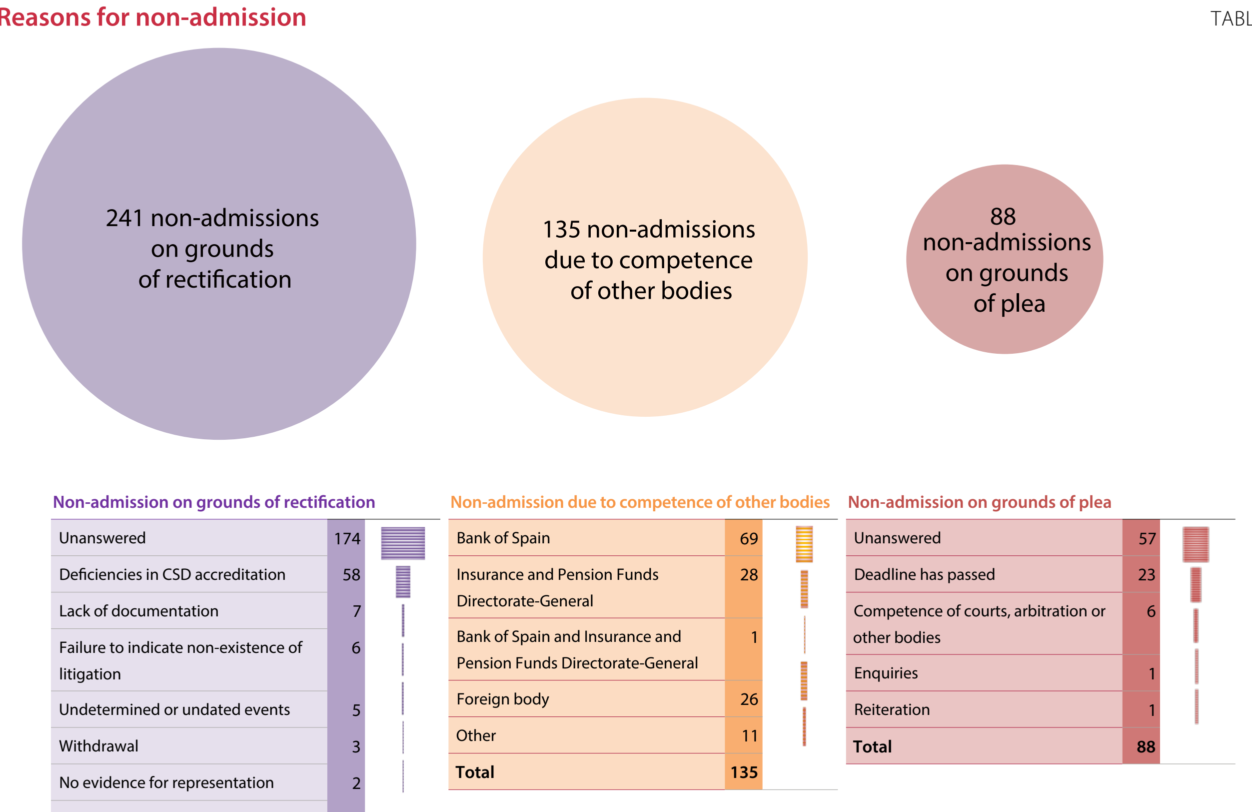
The Complaints Service rejects complaints that fall under the remit of another national financial complaints service (such as the Bank of Spain or the Directorate General for Insurance and Pension Funds). In these cases, the complaint is forwarded to the appropriate body for assessment. Complainants can turn to any of the three national complaints services operating in the field of financial services. The recipient of the complaint must assess whether the issue relates to the provision of investment, banking or insurance services and, as appropriate, handle it or refer it to the relevant complaints service.

Complaints may also be inadmissible if the matter falls within the jurisdiction of a foreign financial dispute resolution body. In such cases, the Complaints Service provides the complainants with information about the appropriate international body. If this body belongs to the FIN-NET financial dispute resolution network, the Complaints Service offers to arrange for the complainant to transfer their complaint to that body, if they so wish. FIN-NET has members in most countries of the European Economic Area (i.e. the European Union, Iceland, Liechtenstein and Norway). The nationality of the entities against which these complaints were directed can be found in the section on respondent entities.

Table 2 shows the number of inadmissible proceedings along with the reasons for non-admission, including grounds for rectification, jurisdiction of other bodies, and pleas that were raised. In cases of non-admission due to rectification issues, it should be noted that some complainants who responded to the petition for rectification did not address more than one reason. Consequently, the 78 reasons for rectification exceed the 64 complainants who replied. Additionally, three complainants requested that their document be closed before the complaint was accepted.

Reasons for non-admission

TABLE 2



Non-admission on grounds of rectification

Unanswered	174
Deficiencies in CSD accreditation	58
Lack of documentation	7
Failure to indicate non-existence of litigation	6
Undetermined or undated events	5
Withdrawal	3
No evidence for representation	2
Total	**255**

Non-admission due to competence of other bodies

Bank of Spain	69
Insurance and Pension Funds Directorate-General	28
Bank of Spain and Insurance and Pension Funds Directorate-General	1
Foreign body	26
Other	11
Total	**135**

Non-admission on grounds of plea

Unanswered	57
Deadline has passed	23
Competence of courts, arbitration or other bodies	6
Enquiries	1
Reiteration	1
Total	**88**

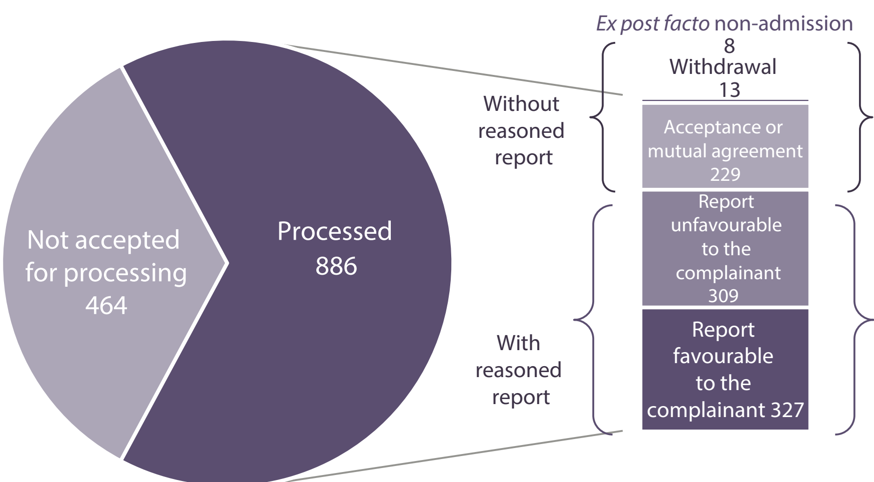
Source: CNMV.

2.5 Complaints

The Complaints Service resolved 886 complaints in 2023. Compared to the previous year, there was a 2% increase in complaints resolved without a reasoned final report and an 18.2% increase in those resolved with a reasoned final report. The figure below shows the types of resolution issued.

Resolution type of complaints concluded in 2023

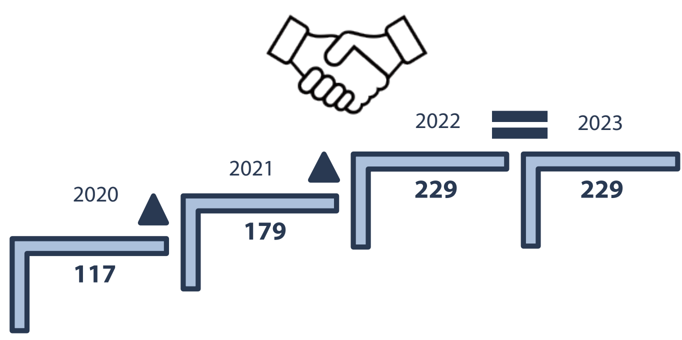
FIGURE 7



Source: CNMV.

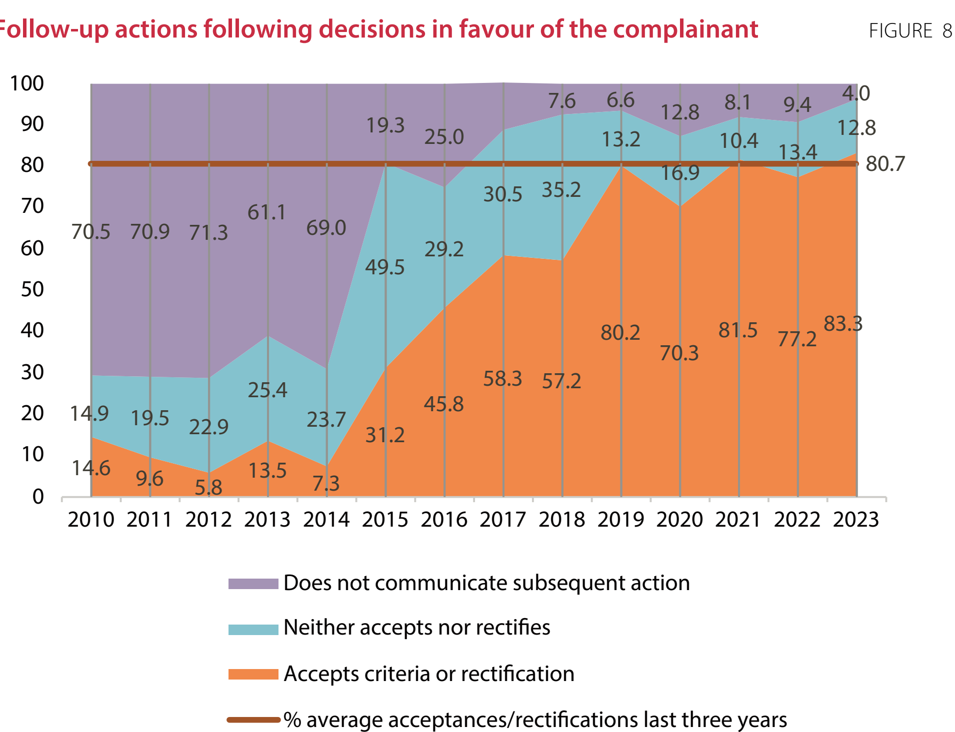
Institutions accepted or reached an agreement with the complainant in more than a quarter (25.8%) of the complaints processed, consolidating the increase in settlements recorded in recent years. In these cases, the institutions satisfy the complainant during the proceedings, which therefore conclude without a reasoned report on the merits of the case. The number of acceptances and mutual agreements reached in recent years is shown below.

Number of acceptances or mutual agreements:



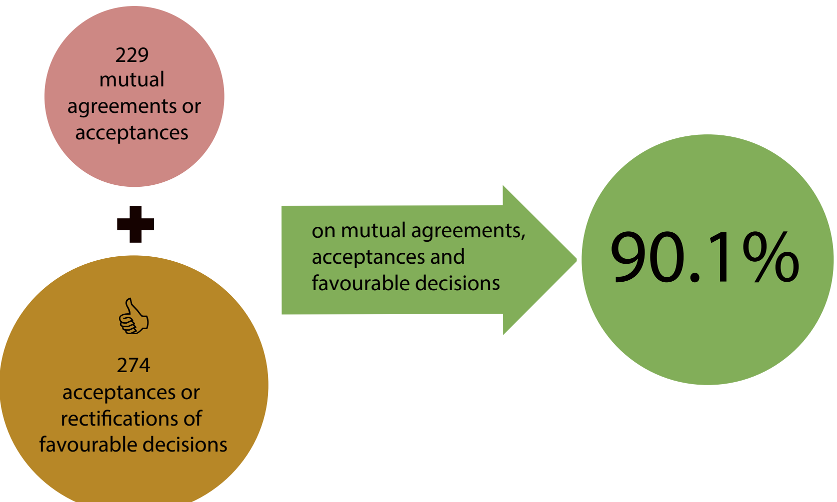
In 36.9% of complaints handled in 2023, complainants received a report favourable to their claims, and it is common for institutions to accept the conclusions of these reports or rectify the situation with their customers. In 2023, institutions reported that they accepted the report's criteria or rectified the situation with the complainant in 83.3% of the complaints concluded with a report favourable to the complainant. This represents the highest percentage in the last decade and exceeds the average of the last three years. As a result, only 55 complaints in Spain, where the customer was deemed to be correct by the CNMV, were not followed up by any subsequent action in favour of the customer by the institution.

Follow-up actions following decisions in favour of the complainant FIGURE 8



Source: CNMV.

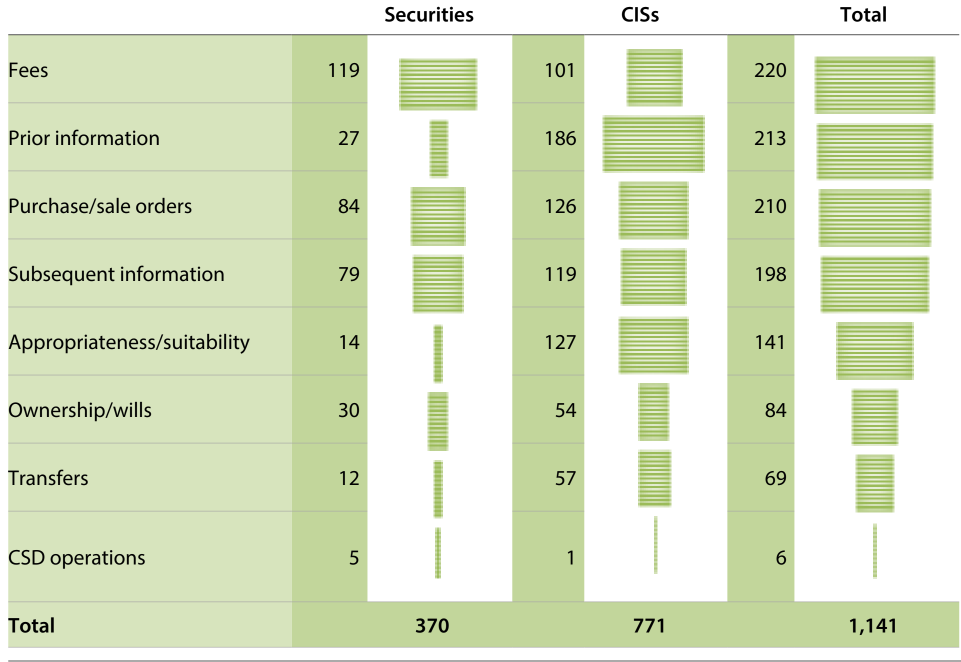
Taking all the above into account, institutions satisfied 90.1% of the complainants through agreements, settlements, acceptance of criteria, or rectifications following favourable decisions for the complainant.



In 34.9% of the complaints processed, the report was unfavourable to the complainant, as the facts complained of were in line with regulations on transparency and customer protection or with good financial practices and customs.

The most common causes of complaints were related to fees charged by institutions (19.3%), pre-purchase information provided by institutions (18.7%), incidents in purchase and sale orders (18.4%), and post-purchase information provided by institutions (17.4%). Complaints related to shares or units of collective investment schemes (CIS) accounted for 67.6% of the total, while those related to other types of securities made up the remaining 32.4%. Table 3 provides a breakdown of the causes of the 886 complaints resolved in 2023. These causes are varied, showing a different distribution depending on whether they relate to CISs or other securities. The number of causes is higher than the number of complaints resolved, as the same case may have multiple causes of complaint.

Reasons for complaints processed in 2023 TABLE 3



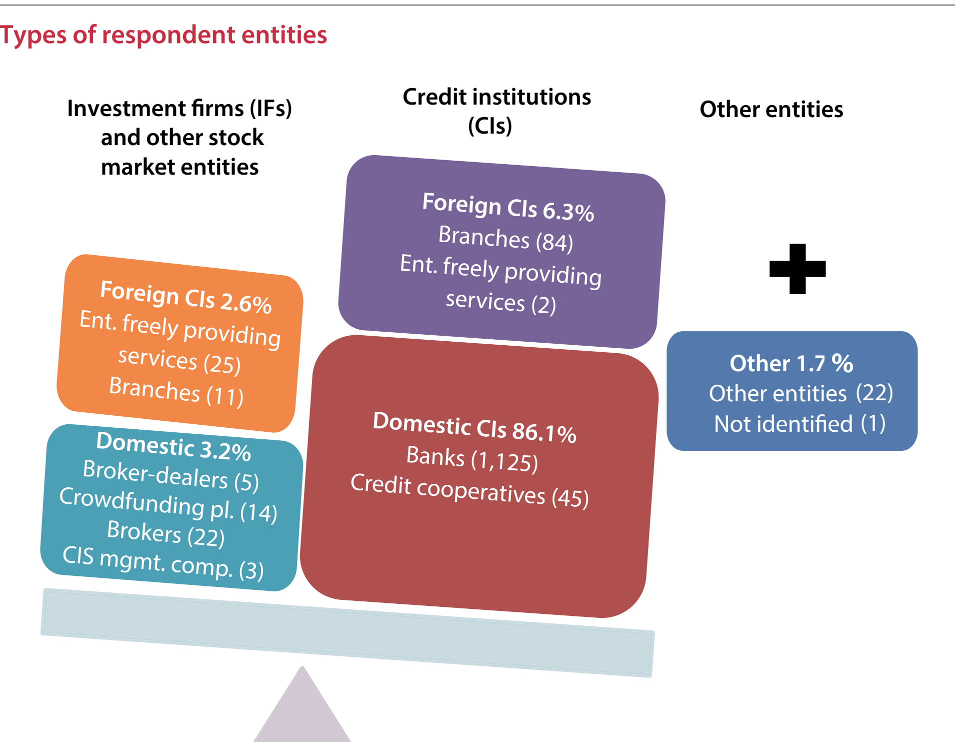
	Securities	CISs	Total
Fees	119	101	220
Prior information	27	186	213
Purchase/sale orders	84	126	210
Subsequent information	79	119	198
Appropriateness/suitability	14	127	141
Ownership/wills	30	54	84
Transfers	12	57	69
CSD operations	5	1	6
Total	**370**	**771**	**1,141**

Source: CNMV

2.6 Respondent entities. Types, rankings and CSD data

The complaints were primarily directed against credit institutions, particularly banks. Below are the types of entities involved in the 1,350 complaints resolved in 2023, totalling 1,359 institutions, as some complaints were directed at more than one entity.

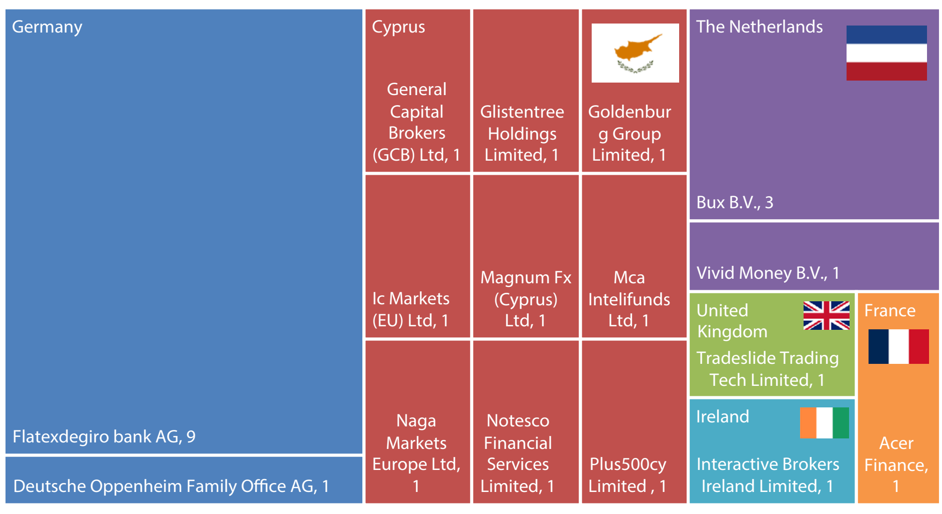
Types of respondent entities



Source: CNMV.

Foreign entities freely providing services originated from Germany (10 cases), Cyprus (9 cases), the Netherlands (4 cases), and France, Ireland, and the United Kingdom (1 case each). As mentioned above, these cases are deemed inadmissible as they fall under the jurisdiction of the international financial dispute resolution body. Complainants will receive information about this body and offered a transfer to it if it is a member of FIN-NET. The figure below shows the entities that provided investment services from their home countries.

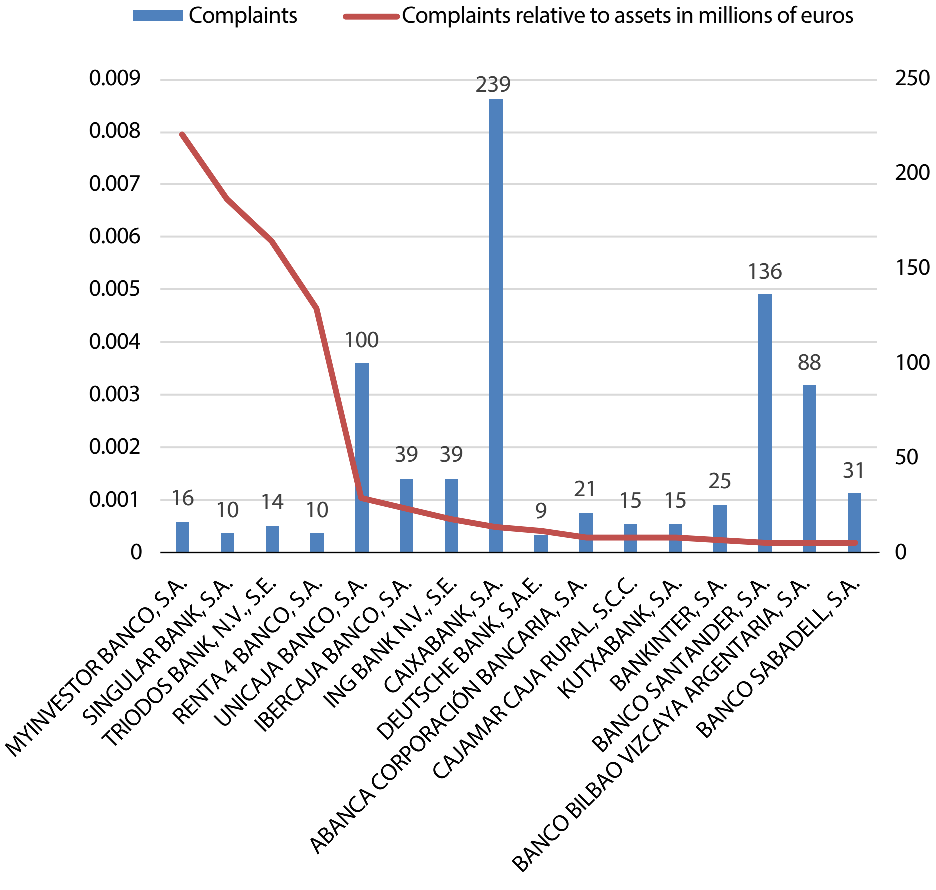
Foreign entities freely providing services according to their country of origin FIGURE 9



Source: CNMV.

While a higher number of complaints were admitted against larger institutions, this figure is put into perspective when the total assets of the individual institutions are considered. The following figure shows the 16 institutions that received eight or more complaints that were admitted and resolved without subsequent *ex post facto* non-admission. These institutions account for 91.3 % of the decisions issued in 2023. They are listed in the figure based on the ratio of complaints to assets in millions of euros as at 31 December 2023 for each institution.

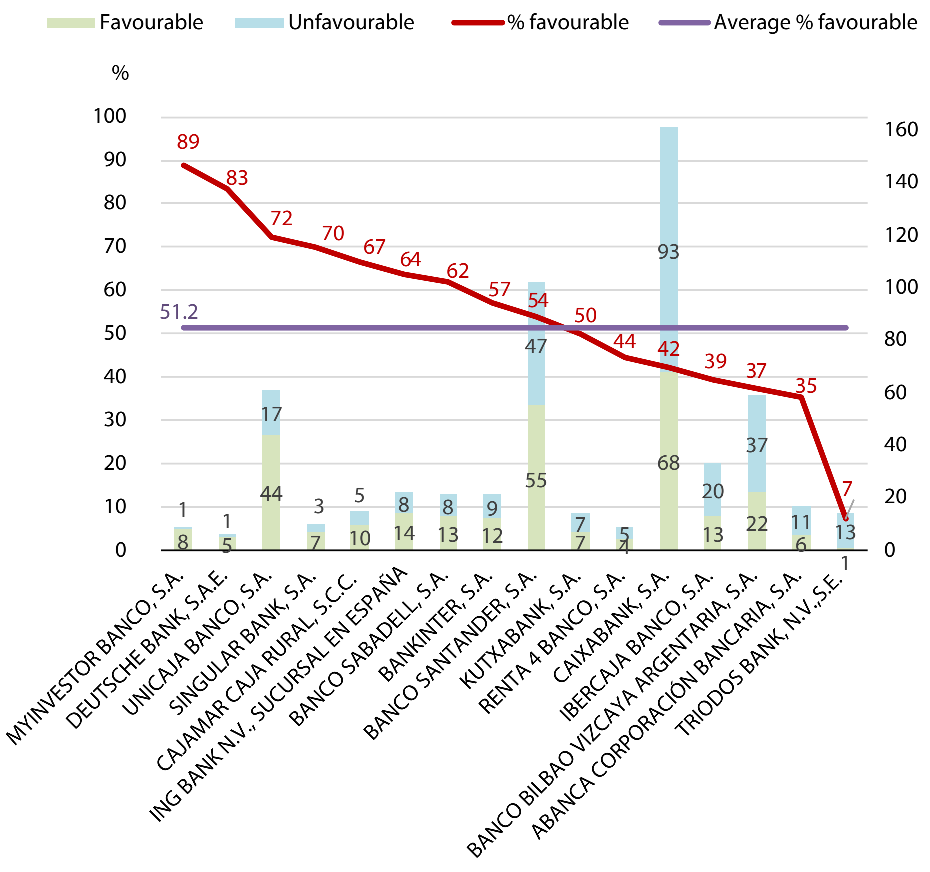
Ranking of entities according to complaints resolved on assets total in millions of euros FIGURE 10



Source: CNMV and Bank of Spain.
If we exclude the complaints in which the entity responsible for the incidents was an absorbed entity, there would have been 232 complaints processed against Caixabank, S.A. and 90 against Unicaja Banco, S.A., with both entities retaining their positions in the ranking.
In addition to the information shown in the figure, the Complaints Service issued 77 decisions on 37 institutions with fewer than eight complaints.
Some complaints were directed against more than one institution, which is why the number of decisions (884) exceeds the number of proceedings concluded with a reasoned final report or by acceptance, mutual agreement or withdrawal (878).

In the cases where the Complaints Service issued a reasoned report, 51.2% of the decisions were in favour of the complainant. Nine institutions exceeded this average percentage. The figure shows the number of favourable versus unfavourable decisions for each institution, ranked by the highest to the lowest percentage of favourable reports based on the reasoned reports issued by the Complaints Service.

Ranking of entities by percentage of decisions favourable to the complainant FIGURE 11



Source: CNMV.

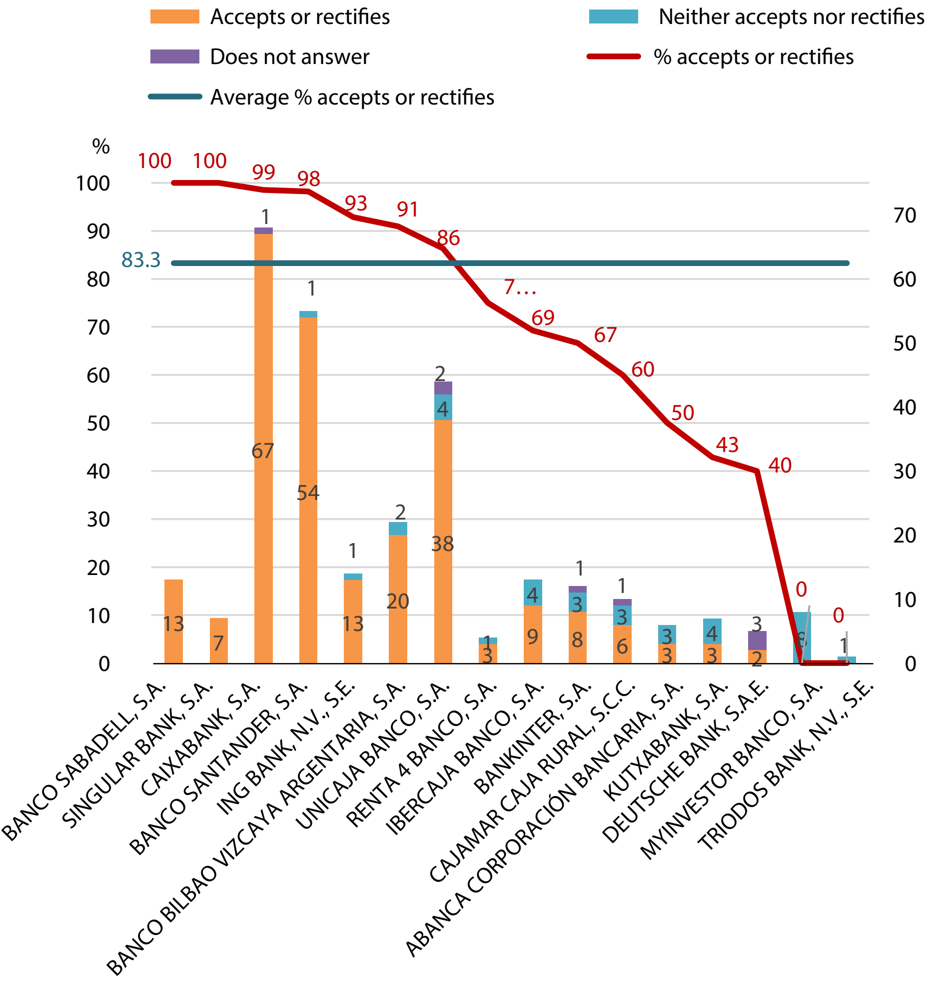
If we exclude the complaints in which the entity responsible for the incidents was an absorbed entity, 51 reasoned reports would have been issued against Unicaja Banco, S. A. (37 favourable to the complainant and 14 unfavourable to the complainant) and 154 reasoned reports against Caixabank, S. A. (63 favourable to the complainant and 91 unfavourable to the complainant), with both entities retaining their positions in the ranking .

In addition to the information shown in the figure, the Complaints Service issued 40 decisions in favour of the complainant and 28 against. These favourable and unfavourable decisions were issued for 36 of the 37 institutions with fewer than eight complaints.

Some complaints were directed against more than one institution, which is why the number of decisions favourable or unfavourable to the complainant (329 and 313, respectively) is higher than the number of proceedings concluded with a final reasoned report favourable or unfavourable to the complainant (327 and 309, respectively).

In general, institutions with the highest number of decisions favourable to the complainant accept criteria or rectify the complainant's situation at rates higher than the average of 83.3%. As shown in the figure below, seven institutions exceeded this average, and six of them had at least 13 decisions in favour of the complainant.

Ranking of institutions by percentage of acceptances or rectifications of decisions in favour of the complainant FIGURE 12



Source: CNMV.

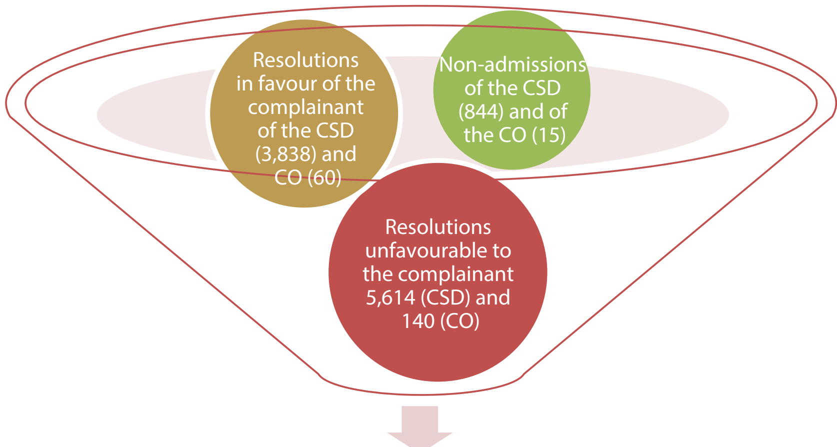
If we exclude the complaints in which the entity responsible for the incidents was an absorbed entity, 37 decisions in favour of the complainant would have been issued against Unicaja Banco, S.A. (31 accepted or rectified, 4 neither accepted nor rectified, and 2 did not reply) and 63 decisions in favour of the complainant would have been issued against Caixabank, S.A. (62 accepted or rectified, and 1 did not reply), with both entities retaining their positions in the ranking.

In addition to the information shown in the figure, the Complaints Service issued 40 decisions favourable to the complainant (28 accepted or rectified, 7 neither accepted nor rectified, and 5 did not reply). These favourable decisions were issued for 25 of the 37 entities with fewer than eight complaints.

Some complaints were directed against more than one institution, which is why the number of decisions favourable to the complainant (329) is higher than the number of proceedings concluded with a final reasoned report favourable to the complainant (327).

Taking into account the data provided by the banks on the work of their Customer Service Departments (CSD) and Customer Ombudsmen (CO), only a small number of complainants had to turn to the Complaints Service as a second instance. In this context, the Complaints Service requested specific information about the complaints received by institutions against which more than six complaints were processed. As shown below, these entities' CSDs and COs concluded 10,511 complaints in 2023, while the Complaints Service handled 722 complaints against these entities, representing only 6.9% of the complaints concluded by the respective institutions in 2023.

Data of prior complaints to the entities' CSDs and COs



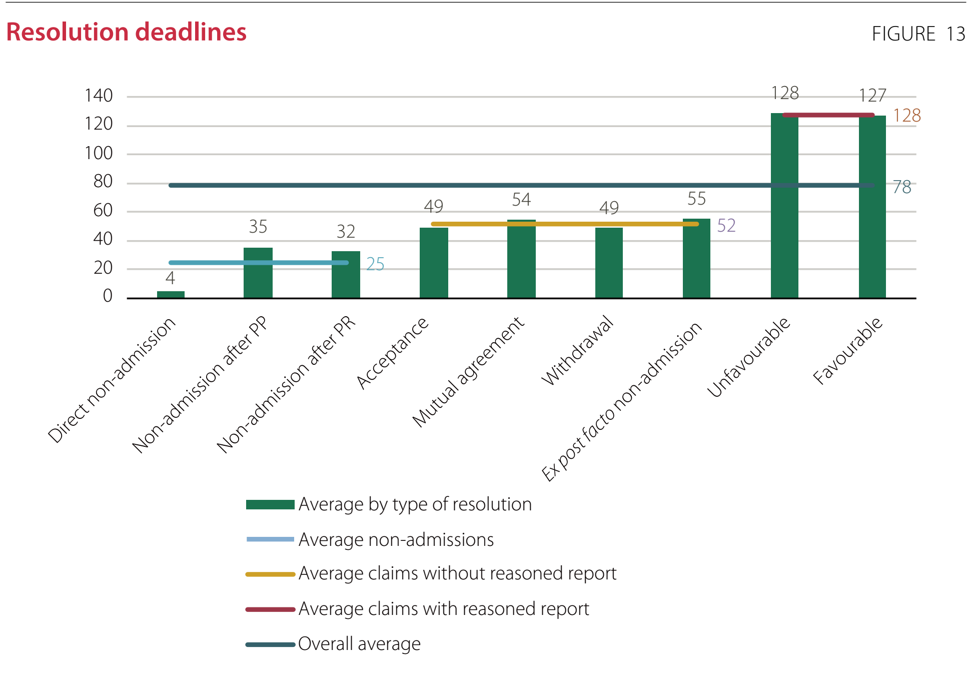
Complaints processed before the Complaints Service with prior resolution:
- favourable of the CSD (115) or the CO (3) and
- unfavourable of the CSD (589) or the CO (15)

Source: Information provided by the 17 institutions against which the Complaints Service handled more than six complaints in 2023. While these data provides a general and approximate overview of the actions taken by the institutions' CSDs and COs, the results should be interpreted with caution. It is not possible to confirm whether the criteria used to collect and provide the information were consistent across all institutions, although clearer guidance is issued each year on what should and should not be included in the information provided.

2.7 Resolution deadlines

The average time taken to resolve complaints was 78 days. The figure below shows the average resolution time by type, and it can be seen that this increases with the number of procedures and the need for the Complaints Service to study and analyse the received documents (see section 2.2 on document processing).

Resolution deadlines FIGURE 13



Source: CNMV.

3 Enquiries

3	**Enquiries**	**41**
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3.2	Most recurrent subjects of enquiry	42

3 Enquiries

The CNMV's Investors Department responds to enquiries on matters of general interest relating to the rights of users of financial services and the legal routes for exercising such rights. These requests for advice and information are referred to in Article 2.3 of Order ECC/2502/2012, of 16 November, which regulates the procedure for submitting complaints to the Bank of Spain, the CNMV and the Directorate General for Insurance and Pension Funds.

In addition to the enquiries defined in the aforementioned order, the Investors department assists investors in searching for information available on the website (www.cnmv.es). This information is found in the official public registers and in other documents disseminated by the CNMV.

It also deals with **all types of letters**, including **opinions, grievances or any other proposal** from investors on matters concerning the CNMV.

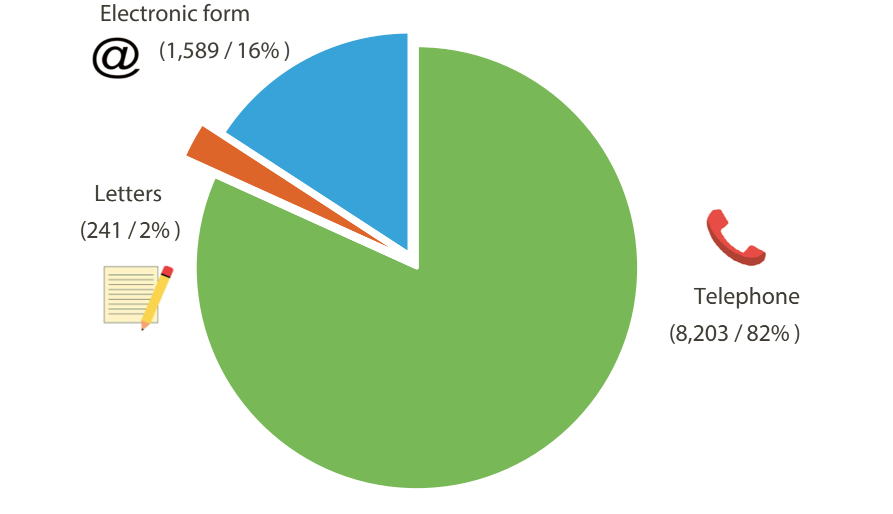
3.1 Enquiry channels and volume

The enquiry channels are: by telephone; by means of a letter filed with the CNMV's general registry; by post or electronically, or by filling in the electronic form expressly enabled on the CNMV's website for the submission of investor enquiries:

Submission and follow-up of individual complaints, grievances and enquiries by investors (cnmv.gob.es)

During 2023, the **total number of enquiries received (10,033 enquiries) increased by 4.2% compared to 2022**. The average response time was 23 calendar days, excluding telephone enquiries, which are addressed on the same day.

FIGURE 14

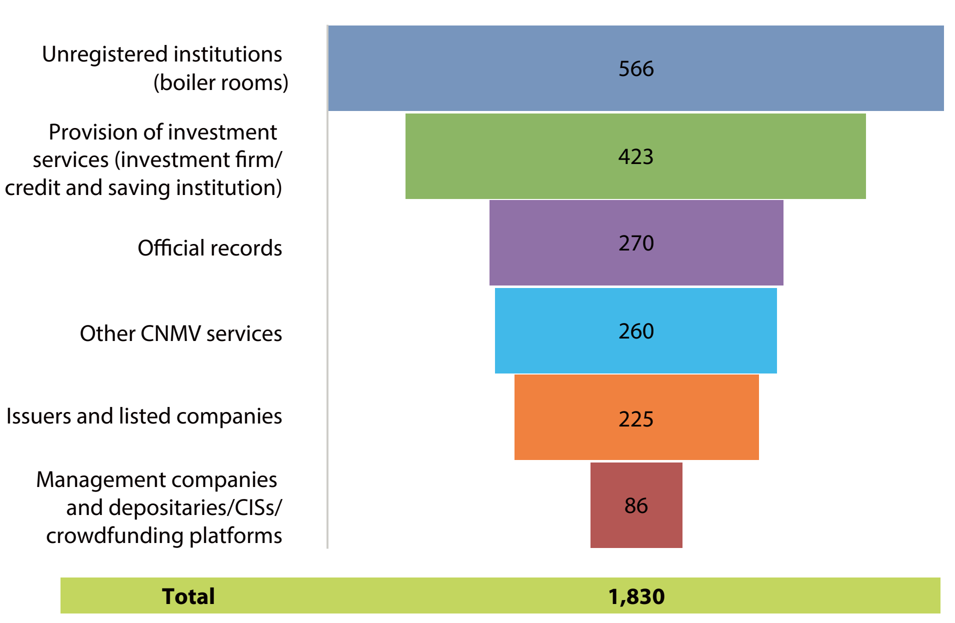


Source: CNMV.

3.2 Most recurrent subjects of enquiry

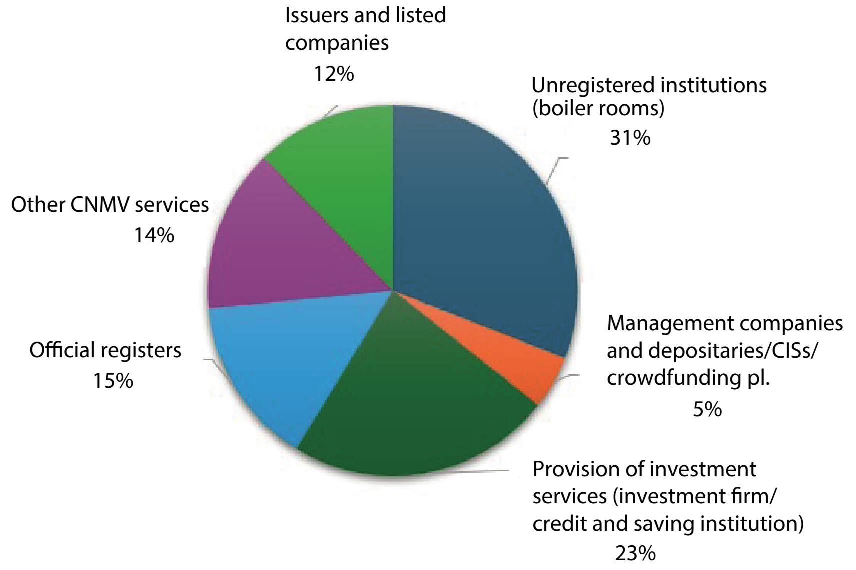
The questions and issues most frequently raised by investors in their written enquiries (excluding telephone enquiries) were similar to those of previous years. However, as in other years, new issues also arose from specific events during the 2023 financial year.

FIGURE 15



Source: CNMV.

Percentage distribution of subjects of enquiry FIGURE 16



Source: CNMV.

Annex 1 Procedures for the submission and processing of complaints

Annex 1 Procedures for the submission and processing of complaints

	If the complainant is a consumer	If the complainant is not a consumer
Applicable regulations	Procedure adapted to **Law 7/2017.**	Procedure of **Order ECC/2502/2012** and of **Circular 7/2013**.
Who can complain	**Retail** investors who are: – **Natural persons**. – Foundations, public benefit associations and other **non-for-profit entities.**	**Retail** investors who are: – **Self-employed**. – Commercial companies and other **for-profit** entities.
When you can complain	When you receive a **response** to your complaint from the entity's CSD or CO, or if **more than one month** has passed without a response.	When you get a **response** to your complaint from the entity's CSD or CO, or if **more than two months** have passed without a response.
Minimum content of the complaint	– **Complainant:** name and surname(s) or company name, Tax ID number, address and telephone number. – If there is a **representative**, a document verifying representation. – **Respondent entity** and, if applicable, the specific office. – **Reason or cause** of the complaint, written in a precise, clear, and understandable manner. – **Date** on which the events being complained about occurred. – **Statement** that the dispute is not currently pending resolution or litigation before administrative, arbitration, or jurisdictional bodies. – **Response** to the complaint from the entity's CSD or CO, or a document certifying that the deadline has passed without a response. – Place, date, and **signature**. – Any relevant **document** or data to support the complaint.	
Method for sending complaint	sede electrónica CNMV Electronically through the form on the website.[1] We have a guide[2] and a video[3] to present the system and explain the different features. Through the PDF form,[4] or any other free document, addressed to the Servicio de Reclamaciones C/ Edison, 4, 28006 Madrid – C/ Bolivia 56 (4.ª planta), 08018 Barcelona.	
Reasons for rectification	If any requirement of the minimum content is missing, the complainant is asked to rectify it within **14 calendar days**. In particular, to verify the prior complaint to the CSD or CO, it must: – Relate to the same facts as those complained about before the Complaints Service. – Include the response from the CSD or CO and the document submitted to the CSD or CO, indicating the date of receipt by the institution to verify, if applicable, that **one month** has elapsed without a response	If any requirement of the minimum content is missing, the complainant is asked to rectify it within **10 business days**. In particular, to verify the prior complaint to the CSD or CO, it must: – Relate to the same facts as those complained about before the Complaints Service. – Include the response from the CSD or CO and the document submitted to the CSD or CO, indicating the date of receipt by the institution to verify, if applicable, that **two months** have elapsed without a response.

1 https://sede.cnmv.gob.es/SedeCNMV/LibreAcceso/RQC/Reclamaciones_Consultas.aspx
2 https://www.cnmv.es/DocPortalInv/OtrosPDF/PPT_InstrucReclamElectro.pdf
3 https://www.youtube.com/watch?v=zYkQvaJKzuY
4 https://www.cnmv.es/DocPortalInv/OtrosPDF/ES-FormularioreclamacionequejasCNMV.pdf

	If the complainant is a consumer	If the complainant is not a consumer
Reasons for pleas	If any of the following reasons for non-admission apply, the complainant is required to make a statement within **14 calendar days**: – **If more than one** year has elapsed since the complaint was filed with the institution's CSD or CO. – **If more than five years** have elapsed since the events being complained about occurred until the complaint was filed with the institution's CSD or CO. – If the complaint is **unfounded**, does not affect the rights and legitimate interests of the consumer, or its content is **vexatious**. – If the dispute has been settled or brought before a court, falls within the competence of **administrative, arbitration, or judicial bodies**, or is pending litigation. – If the complainant is **not a retail customer**. – If resolving the complaint requires an **expert assessment** in a technical field outside the scope of the complaints procedure. – If the facts can only be **proven in court**. – If the dispute concerns the **economic quantification of damages** or another financial valuation. – If it is an **enquiry**, it will be processed as such and the interested party will be informed accordingly. – If previous complaints with identical or substantially similar content and grounds, regarding the same subject and object, are **reiterated**.	If any of the following grounds for non-admission apply, the complainant is required to present their arguments within **10 business days**: – If the statute of limitations for actions or rights that the complainant may exercise has expired, and in any case, if **more than six years** have passed since the events occurred without the complaint being filed. – If the complaint **lacks grounds** or does not refer to **specific** transactions. – If the content of the complaint falls within the competence of **administrative, arbitration, or judicial bodies**, or is pending litigation before these bodies. – If the complainant is **not a retail customer**. – If resolving the complaint requires an **expert assessment** in a technical field outside the scope of the complaints procedure. – If the facts can only be **proven in court**. – If the dispute concerns the **economic quantification of damages** or another financial valuation. – If it is an **enquiry**, it will be processed as such and the interested party will be informed accordingly. – If previous complaints with identical or substantially similar content and grounds, regarding the same subject and object, are **reiterated**.
Processing of the complaint	If the complaint meets the admissibility criteria, or the cause for non-admission is rectified or disproved, the Complaints Service will: – Notify the complainant of the complaint's admission. – Forward the documents to the institution, allowing **21 calendar days** for their response. – If the institution submits any allegations, these will be forwarded to the complainant, who will then have **21 calendar days** to reply. – Should the complainant's reply contain new information or require further clarification, the institution will be granted an additional **21 calendar days** to respond.	If the complaint meets the admissibility criteria, or the cause for non-admission is rectified or disproved, the Complaints Service will: – Notify the complainant of the complaint's admission. – Forward the documents to the institution, allowing **15 business days** for their response. – If the institution submits any allegations, these will be forwarded to the complainant, who will then have **15 business days** to reply. – Should the complainant's reply contain new information or require further clarification, the institution will be granted an additional **15 business days** to respond.
Completion of the complaint	The Complaints Service has **21 calendar days** to reject a complaint or **90 calendar days** to resolve an admitted complaint.	The Complaints Service has a total of **four months** to finalise the complaint proceedings.

Annex 2 International cooperation mechanisms

Annex 2 International cooperation mechanisms		**51**
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Annex 2 International cooperation mechanisms

A.2.1 Financial Dispute Resolution Network (FIN-NET)

The Financial Dispute Resolution Network (FIN-NET) is a network dedicated to the out-of-court resolution of cross-border disputes between consumers and providers in the financial services sector within the European Economic Area (EEA).[1] FIN-NET was established by the European Commission in 2001 to facilitate access to extrajudicial complaint procedures for cross-border financial disputes within the EEA. The Complaints Service joined FIN-NET in 2008.

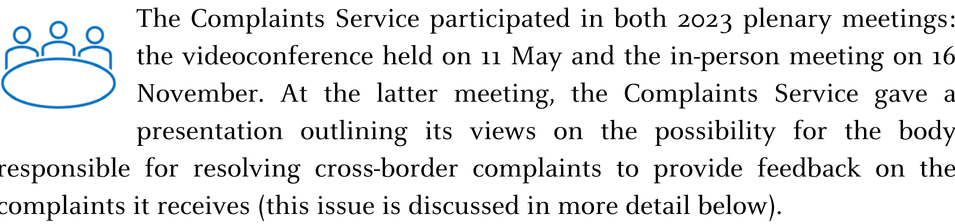
In addition, there are FIN-NET partners which are dispute resolution bodies from European countries or territories outside the EEA where the ADR Directive[2] (Alternative Dispute Resolution Directive) does not apply.

FIN-NET members commit to a Memorandum of Understanding (MOU), which sets out the mechanisms and conditions of cooperation to facilitate the resolution of cross-border disputes.

Furthermore, since September 2018, the Complaints Service has been a member of the FIN-NET Steering Committee. This 12-member committee is responsible for the FIN-NET work programme, which is discussed at plenary meetings.

➢ Plenary meetings

The FIN-NET plenary assembly meets twice a year. These meetings primarily serve to report on EU regulatory developments in the fields of alternative dispute resolution[3] and financial services, national regulatory developments in individual Member States, and any new issues affecting their respective areas of alternative dispute resolution. Additionally, the meetings provide a platform for exchanging and sharing concrete examples of complaints. In other words, the discussions cover not only investment products but also banking and insurance products.



The Complaints Service participated in both 2023 plenary meetings: the videoconference held on 11 May and the in-person meeting on 16 November. At the latter meeting, the Complaints Service gave a presentation outlining its views on the possibility for the body responsible for resolving cross-border complaints to provide feedback on the complaints it receives (this issue is discussed in more detail below).

---

1 FIN-NET has members in most countries of the European Economic Area (EEA) i.e. the European Union, Iceland, Liechtenstein and Norway

2 Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution in consumer matters, which amends Regulation (EC) No. 2006/2004 and Directive 2009/22/EC

3 Alternative dispute resolution (ADR) refers to any type of body or department that resolves complaints out-of-court between investors and entities providing investment services.

➢ Acknowledgments of receipt in cross-border complaints

According to point 5.3 of the aforementioned MOU, in the case of a cross-border complaint (from a citizen residing in one country against an investment firm established in another FIN-NET member country), the Complaints Service in the citizen's country of residence (the local ADR) that receives the complaint can:

i) Transfer the complaint to the competent Complaints Service (competent ADR).

ii) Inform the consumer to contact the competent ADR directly.

iii) Even resolve the complaint, provided that the investment services company accepts its jurisdiction and it has the competence to do so.

Point 5.4 of the FIN-NET MOU states that, once the competent ADR has received a cross-border complaint, it is responsible for attempting to resolve it, in accordance with its legal obligations and in compliance with the ADR Directive.

In the case of the Spanish Complaints Service, when it receives a complaint against an entity providing investment services in Spain under the freedom to provide services, and whose home country belongs to the FIN-NET network, it informs the complainant of its lack of competence to resolve the issue. It also provides the contact details of the competent ADR in the entity's home country and offers the complainant the option, upon request, to have the Complaints Service transfer the complaint to the relevant ADR.

If the complainant opts for the latter, the Complaints Service forwards the complaint to the competent ADR, informing the complainant that the institution is established in the complainant's home country and that the complaint is being forwarded in accordance with paragraph 5.3.a) of the MOU.

However, the MOU does not impose any further obligations on the competent ADR in such cases, such as acknowledging receipt of the complaint to the nearby ADR or providing updates on the resolution of the complaint. Consequently, given that cross-border complainants often request information from the Complaints Service on the progress of their complaint, it was considered necessary to propose within FIN-NET that the relevant ADR should at least acknowledge receipt of the complaint to the nearby ADR.

The Complaints Service brought up this issue at the first meeting of last year (11 May), where it was agreed to conduct a survey to gather the views of other members. With the assistance of the European Commission's DG FISMA, a questionnaire was prepared, which saw a high level of participation. The main finding was that the vast majority of members felt that acknowledging receipt of complaints forwarded by a nearby ADR was important or very important.

In light of the survey results, the Complaints Service made a presentation at the second meeting of 2023 (16 November), explaining the motivation behind the survey and its findings, and proposing the creation of standardised acknowledgement of receipt forms. Following the

acceptance of this suggestion by the other members, the Spanish Complaints Service proceeded to prepare these templates. They have recently been uploaded to the FIN-NET website in the "Documents" section, and all members have been duly informed.

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FIN-NET's mission

FIN-NET membership

Plenary meetings

Documents

Documents

- Memorandum of understanding
- Standardised template for the acknowledgment of the receipt: Complaint admitted
- Standardised template for the acknowledgment of the receipt: Complaint not admitted

In conclusion, the Complaints Service believes that such initiatives – suggested and driven by the Service itself in this case – enhance the exchange of information between different ADRs in cross-border complaints.

A.2.2 International Network of Financial Services Ombudsman Schemes (INFO Network)

In 2017, the Complaints Service joined the International Network of Financial Services Ombudsman Schemes (INFO Network). Established in 2007, this network aims to collaboratively enhance dispute resolution by exchanging experiences and information across various areas: schemes, functions and management models, codes of conduct, use of information technology, as well as managing systemic issues and handling cross-border complaints.

INFO Network members are entities that function as independent out-of-court dispute resolution mechanisms within the financial sector. Depending on their competencies, these entities provide dispute resolution services to consumers in the following areas: banking, investments, insurance, credit, financial advice, and pensions/retirement.

The 16th INFO Network Annual Meeting was held on 26 September 2023 in Kuala Lumpur. In addition to discussing the organisation's institutional matters, these events offer participants valuable international networking opportunities and the chance to exchange experiences and knowledge.

Annex 3 Most relevant criteria applied in the resolution of 2023 complaints

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Annex 3 Most relevant criteria applied in the resolution of 2023 complaints

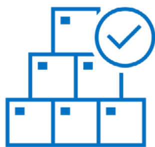
This annex provides a general overview of the most relevant criteria applied in resolving complaints in 2023.

These criteria are derived from the interpretation of sector-specific regulations and generally accepted and recognised best practices among market participants. They result from the supervisory duties assigned to the CNMV and are applied to the specific cases reviewed in each of the complaints processed in 2023.

As such, these criteria are specific to the time and circumstances in which they were applied. Future regulatory changes or variations in the specific circumstances of each case could lead to adjustments in these criteria.

The criteria applied in the resolution of complaints in previous years, which expand on and complement those contained in this report, are available in the publications[1] on the CNMV website.

A.3.1 Appropriateness of marketing/simple execution



The appropriateness assessment means that, when providing services other than investment advice or portfolio management, the firm must ask the client or potential client to provide information about their knowledge and experience in the investment field relevant to the specific type of product or service being offered or requested. This is to enable the firm to determine whether the investment service or product is suitable for the client.[2]

Firms providing investment services must ensure that the information about the client's knowledge and experience includes:[3]

i) The types of services, transactions, and financial instruments with which the client is familiar.

ii) The nature, volume, and frequency of the client's transactions in financial instruments, and the period over which these transactions have been carried out.

1 https://www.cnmv.es/portal/publicaciones/publicacionesgn.aspx?id=23&lang=en

2 Article 205.1 of the Securities Markets and Investment Services Act 6/2023 of 17 March.

3 Article 55.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

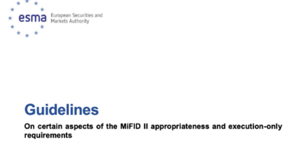
iii) The level of education and the profession, or where relevant, the previous profession of the client or potential client.

If, based on the information obtained, the firm considers that the investment product or service is not appropriate for the client, it must warn the client. If the client provides insufficient or no information, the firm must warn the client that this lack of information prevents it from determining whether the envisaged investment service or product is appropriate for them.[4]

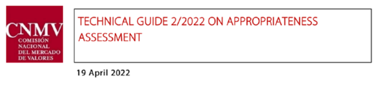
On 19 April 2022, the CNMV announced the adoption of ESMA guidelines on certain aspects of MiFID II's appropriateness and simple execution requirements,[5] along with the approval of a technical guide for appropriateness assessment.[6]

➢ Reliability of information provided by clients

Companies must take reasonable steps and have the appropriate tools to ensure the information provided by their clients is reliable and consistent, avoiding undue reliance on clients' self-assessment. If the information collected is not sufficiently reliable and consistent, it is equivalent to not having received adequate information for carrying out the appropriateness assessment, and firms will issue the corresponding warning.[7]



To ensure the consistency of customer information, firms should analyse all the information collected as a whole. They should be vigilant in identifying significant inconsistencies between different data points to address the most critical potential discrepancies or inaccuracies. Regardless of the means used to collect information, firms should ensure that the assessment of customer information is conducted consistently.[8]



In terms of the analysis of the information gathered and checking of consistency, the CNMV's Technical Guide states that institutions must adopt measures and take reasonable steps to verify that the information provided by customers is generally reliable, accurate, and consistent. To this end, institutions should analyse whether there are situations that are a priori atypical, which would be expected not to occur or to occur only occasionally or in isolation. This aims to identify groups of customers for whom the available information may not adequately reflect their general level of academic education, financial knowledge, or experience, regardless of whether such data are derived from the formalised appropriateness questionnaires.[9]

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4 Article 205 4 and 5 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

5 Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements, of 12 April 2022 (ESMA35-43-3006).

6 *Technical guide 2/2022 on appropriateness assessment*, of 19 April 2022.

7 Guideline 4, paragraphs 38 and 39, of Guidelines on certain aspects of the appropriateness and simple-execution requirements of the MiFID II Directive of 12 April 2022 (ESMA35-43-3006).

8 Guideline 4, paragraph 42, of Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements, of 12 April 2022 (ESMA35-43-3006).

9 Section 10, paragraph 31, of *Technical guide 2/2022 on appropriateness assessment*, of 19 April 2022.

These measures should include appropriate procedures to enable staff collecting customer information to detect situations that are a priori atypical at the time of collection.[10] Examples of such situations could include:

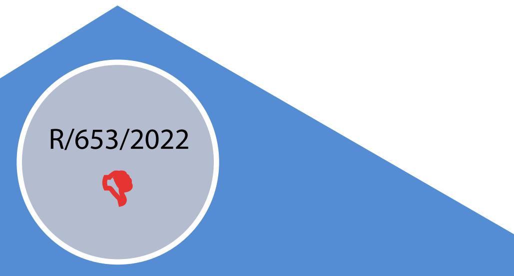
– Customers with a low level of academic education and little or no investment experience, yet who declare high financial knowledge.

– Customers who report having investment experience in complex products at other institutions, which does not align with the types of products typically acquired at the current institution.

– Customers who claim to hold or have held a professional position in the financial sector, yet have an academic background that does not match such professional experience, or who demonstrate limited knowledge of financial markets.

– Customers with low overall financial literacy, but who assert they understand the features and risks of highly complex products.[11]

Additionally, these measures should include a periodic ex-post assessment (e.g., annually) to evaluate the overall or aggregate reasonableness of the information used in assessing suitability.[12]



The institution provided, for the same customer, an appropriateness test dated 3 October 2019, conducted prior to the subscription of an investment fund, and a suitability test dated 4 November 2021, conducted before the engagement of a portfolio management service. In the responses to the common questions about knowledge and experience, the complainant indicated in the earlier appropriateness test that they had "Other higher education (bachelor's degrees, diplomas or similar)", while in the later suitability test they stated that their level of education was "A levels / NVQ Level 3".

The Complaints Service concluded that the institution did not effectively verify the information collected in the tests, at least in relation to the customer's education.

10 Section 10, paragraph 32, of *Technical guide 2/2022 on appropriateness assessment*, of 19 April 2022.

11 Example 9 of *Technical guide 2/2022 on appropriateness assessment*, of 19 April 2022.

12 Section 10, paragraph 33, of *Technical guide 2/2022 on appropriateness assessment*, of 19 April 2022.

➢ Consistent appropriateness assessment

To determine whether an intended investment service or product is appropriate for the client, firms should establish policies and procedures to ensure they consistently consider:

– All information obtained about the client's knowledge and experience necessary to evaluate the appropriateness of an investment product.

– All relevant characteristics and risks of the investment products considered in the appropriateness assessment.

Firms should also establish policies and procedures that enable them to issue a clear and non-misleading warning if they determine that the investment service or product is not suitable for the client or potential client.[13]

The institution failed to demonstrate that it had assessed the appropriateness of the transaction, as the subscription to the investment fund occurred before the appropriateness test was conducted.

The Complaints Service therefore considered it malpractice that the complainant signed the contract to open the fund at 10:09 a.m., and then signed the appropriateness test at 10:10 a.m., which determined that the investment fund was appropriate for the customer based on her previous investment experience.

13 Guideline 8, paragraph 60, of Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements, of 12 April 2022 (ESMA35-43-3006).

The complainant stated that an investment fund in the euro fixed income category, purchased through the respondent entity, was not appropriate for her knowledge and experience. The respondent entity only provided an appropriateness test that had been conducted a year before the investment fund in question was subscribed. This test, which covered the category of absolute return investment funds (non-complex funds), consisted of 10 questions, concluded an outcome of inappropriate, and was valid for five years.

The Complaints Service found that the institution had acted improperly, as it had not demonstrated that it determined the appropriateness of the fund in question, nor had it warned of its inappropriateness based on the data from the test conducted a year earlier.

A.3.2 Suitability of investment advice and portfolio management

When providing investment advice or portfolio management services, the firm must gather the necessary information regarding: i) the client's or potential client's knowledge and experience in the investment area relevant to the specific type of product or service; ii) their financial situation, including their ability to bear losses;and iii) their investment objectives, including their risk tolerance. This is to ensure that the firm can recommend investment services and financial instruments that are suitable for the client and, in particular, align with their risk tolerance and capacity to bear losses.[14]

In addition to the information on knowledge and experience mentioned in the appropriateness section,[15] the following will be considered:

i) Information regarding the financial situation of the client or potential client, which should include details on the source and amount of their regular income, as well as their assets, including liquid assets, investments, and real estate, along with their regular financial commitments.

14 Article 204.1 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

15 Article 55.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

ii) Information about the investment objectives of the client or potential client, including the desired investment time horizon, their risk-taking preferences, risk tolerance, the purpose of the investment, and additionally, their sustainability preferences.[16]

ESMA published a revision of its Guidelines on certain aspects of MiFID II suitability requirements on 23 September 2022, and on 3 April 2023, it released translations into the official languages of the European Union, which came into force six months after the latter publication.

The primary objective of revising the guidelines is to ensure a common, uniform, and consistent implementation of MiFID II suitability requirements in relation to sustainability considerations. It also aims to take into account the results of the joint supervisory action carried out by ESMA and the national competent authorities in 2020 on the implementation of MiFID II suitability obligations, to include adjustments for aligning these guidelines with the appropriateness guidelines, and to incorporate the provisions introduced in the MiFID II Directive concerning the switching of investments.

On 5 June 2023, the CNMV issued a communication stating that it had notified ESMA of its compliance with these guidelines and would take them into account, as previously indicated in a communication on 18 July 2022.

- **Updating the suitability test with sustainability preferences**

Since 2 August 2022, institutions must incorporate clients' sustainability preferences when analysing investment objectives as part of the suitability assessment process for providing investment advice or discretionary portfolio management services.[17]

Sustainability preferences are defined as "a client's or potential client's decision to include one or more of the following financial instruments in their investment, and, if applicable, to what extent:

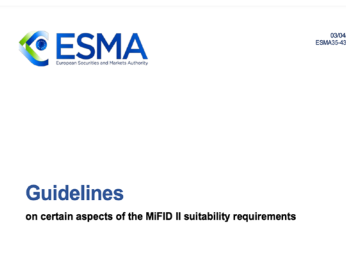
a) a financial instrument in which the client or potential client specifies that a minimum proportion must be invested in environmentally sustainable investments, as defined in Article 2, point 1, of Regulation (EU) 2020/852 of the European Parliament and of the Council (*1);

b) a financial instrument in which the client or potential client specifies that a minimum proportion must be invested in sustainable investments, as defined in Article 2, point 17, of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*2);

16 Article 54.4 and 5 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

17 Regulation (EU) 2021/1253 of 22 April 2021, amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms.

c) a financial instrument that considers principal adverse impacts on sustainability factors, with the client or potential client determining the qualitative or quantitative elements that demonstrate such consideration;"[18]



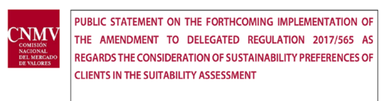
Sustainability preferences will only be addressed after assessing suitability based on the criteria of knowledge and experience, financial situation, and other investment objectives. Once this assessment identifies a range of suitable products, the second step involves selecting the product or, in the case of portfolio management or investment advice with a portfolio approach, an investment strategy that aligns with the client's sustainability preferences.[19]

An investment firm:

i) Shall abstain from recommending financial instruments or deciding to trade such instruments as meeting a client's or potential client's sustainability preferences when those financial instruments do not meet those preferences.

ii) Shall explain to the client or potential client the reasons for not doing so and keep records of those reasons.

Where no financial instrument meets the sustainability preferences of the client or potential client, and the client decides to adapt their sustainability preferences, the investment firm shall keep records of the decision of the client, including the reasons for that decision.[20]



As of 2 August 2022, institutions should have adapted their systems and processes to enable them to ask relevant questions to clients in order to identify their sustainability preferences when conducting a suitability test. This applies to new clients receiving advisory or portfolio management services and when the test needs to be updated.[21]

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18 Article 2.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

19 Paragraph 81 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, of 3 April 2023 (ESMA35-43-3172).

20 Article 54.10 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

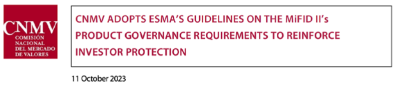
21 CNMV Public Statement, of 18 July 2022, on the forthcoming implementation of the amendment to Delegated Regulation 2017/565 concerning the consideration of clients' sustainability preferences in the suitability assessment.

03/04/2023
ESMA35-43-3172

Guidelines

on certain aspects of the MiFID II suitability requirements

The ESMA guidelines state that information on a client's sustainability preferences will be updated for ongoing relationships at the latest during the next regular update of client information after 2 August 2022. Clients will be given the opportunity to update their profile immediately if they wish to do so.[22]



CNMV ADOPTS ESMA'S GUIDELINES ON THE MIFID II's PRODUCT GOVERNANCE REQUIREMENTS TO REINFORCE INVESTOR PROTECTION

11 October 2023

The CNMV has indicated that ESMA expects this update to be completed within 12 months from the entry into force of the new obligations and that institutions should act proactively to encourage clients to update their profiles before that deadline. Clients should be able to update their profile at any time after the implementation of the new suitability requirements on 2 August 2022, if they so wish.[23]

The client lodged a complaint about having to complete a suitability test before executing a redemption order for units in an investment fund. According to the records, the client completed the suitability test on 18 August 2022, which coincided with the redemption of the investment fund via online banking.

The Complaints Service clarified that the entity took this opportunity to update the suitability test to include sustainability preferences, which had not been assessed previously. This update was necessary because new regulations had come into effect just a few days earlier.

The client also raised an issue with her online banking, which displayed warnings indicating that her positions did not align with the latest suitability assessment. It offered her the option to take a new test or contact her adviser or usual branch to adjust her investments to better fit her profile. The client provided a screenshot dated 10 September 2022, which indicated that regarding sustainability preferences, she preferred the institution to propose a sufficiently diversified sustainable investment.

The warnings appeared because the customer's positions (particularly an investment fund) were not consistent with the latest suitability test conducted on 18 August 2022, specifically concerning the new section on sustainability preferences. However, the positions were not outside the risk matrix according to the profile resulting from the test. In view of the above, the Complaints Service concluded that the institution had acted correctly.

22 Paragraph 57 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, of 3 April 2023 (ESMA35-43-3172).

23 CNMV Communication, of 5 June 2023, by which the CNMV adopts the ESMA Guidelines on MiFID II suitability requirements.

➢ Appropriateness of the product to the desired investment time horizon

The suitability assessment requires consideration of information regarding the desired time horizon for the investment, in line with the client's or potential client's investment objectives.[24]

ESMA

Guidelines
on certain aspects of the MiFID II suitability requirements

The desired holding period for the investment indicates the client's willingness to maintain an investment for a specific duration. To ensure a correct assessment, it is important to consider the client's age, as outlined in the ESMA guidelines.[25] The guidelines also specify that, for illiquid financial instruments, the "necessary information" to be collected should include the length of time the customer is willing to hold the investment.[26]

To ensure institutions correctly understand investment products, the guidelines clarify that it is particularly important not to offset the identified liquidity risk of the product with other risk indicators (such as those used for the assessment of credit/counterparty risk and market risk). This is because the liquidity features of products should be compared with information on the client's willingness to hold the investment for a certain length of time, i.e. the so called "holding period".[27]

The institution engaged in malpractice by recommending a fund that was not suitable for the client's desired time horizon:

- In case R/601/2022, the complainant indicated in the suitability test that their desired investment time horizon was four years. However, according to the key investor information document, the fund was not suitable for investors who planned to withdraw their money in less than five years.
- In case R/831/2022, the complainants' desired time horizon was two years, and they were recommended a fund that might not be suitable for those planning redemptions before four years.

24 Article 54.5 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

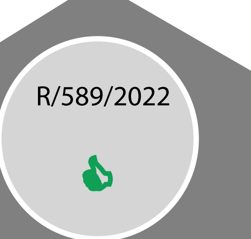
25 Paragraph 24 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, of 3 April 2023 (ESMA35-43-3172).

26 Paragraph 37 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, of 3 April 2023 (ESMA35-43-3172).

27 Footnote 24 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, of 3 April 2023 (ESMA35-43-3172).

The institution proposed an investment in a fund with a time horizon of between two and five years, and the complainants did not anticipate needing the investment within that period. While the investment's time horizon matched the two to five years indicated by the complainants in the suitability test, the suitability test also included a question regarding the possibility of needing the investment within a period shorter than 12 months. Specifically, when asked, "How much of the investment might you need in the next 12 months?", the complainants answered, "None".

The Complaints Service considered that the institution should have had procedures in place to detect and rectify this inconsistency.



The complainant achieved an active investor profile in the suitability test, the second-highest rating out of five categories. Regarding the time horizon, the test offered the following options: i) "Short (less than three years)", ii) "Medium (between three and ten years)", iii) "Long (more than ten years)" and iv) "All, diversifying investment". The complainant chose the last option.

The institution provided the complainant with a recurrent CIS advisory service and recommended subscribing to an investment fund with a time horizon of up to three years and a low level of risk (main fund), from which monthly transfers would be made over a given period to various other investment funds. In the first proposal for €150,000, the institution recommended that the complainant acquire 13 different CISs through monthly transfers over 48 months from the main fund. In a second proposal for €100,000, the institution recommended an additional contribution to the main fund and monthly transfers over 60 months to 18 CISs.

The institution explained that, considering the complainant's preference for diversifying his investments over different terms, the proposed funds included both short-term and long-term investments. It added that the recommendation took into account the complainant's total assets, both within the institution and with other entities. Consequently, once the investment was initiated, it would be diversified, according to his preferences, over different time horizons.

> The Complaints Service concluded that, given the responses in the suitability test and the proposals made, these were consistent with the complainant's profile.

➢ Potentially vulnerable and inexperienced clients

The ESMA guidelines on certain aspects of the MiFID II suitability requirements establish measures to ensure that institutions collect and understand all the information necessary to assess suitability, paying attention, among other aspects, to the potential vulnerability of the client, as happens with older people, and their inexperience. In this regard, they provide for the following:

– General Guideline No. 2: "Firms must establish, implement and maintain adequate policies and procedures (including appropriate tools) to enable them to understand the essential facts and characteristics about their clients. Firms should ensure that the assessment of information collected about their clients is done in a consistent way irrespective of the means used to collect such information".

  And on this, in accordance with paragraph 27 of the supporting guidelines, it is established that: "Information necessary to conduct a suitability assessment includes different elements that may affect, for example, the analysis of the client's financial situation (including his ability to bear losses) or investment objectives (including his risk tolerance). Examples of such elements are the client's:

  - Marital status (especially the client's legal capacity to commit assets that may belong also to his partner).
  - Family situation (changes in the family situation of a client may impact his financial situation e.g. a new child or a child of an age to start university).
  - Age (which is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the investor is willing to take, as well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time).
  - Employment situation (the degree of job security or that fact the client is close to retirement may impact his financial situation or his investment objectives).
  - Need for liquidity in certain relevant investments or need to fund a future financial commitment (e.g. property purchase, education fees)".

– General Guideline No. 3: "Before providing investment advice or portfolio management services, firms need to collect all 'necessary information' about the client's knowledge and experience, financial situation and investment objectives. The extent of 'necessary' information may vary and has to take into account the features of the investment advice or portfolio management services to be provided, the type and characteristics of the investment products to be considered and the characteristics of the clients.

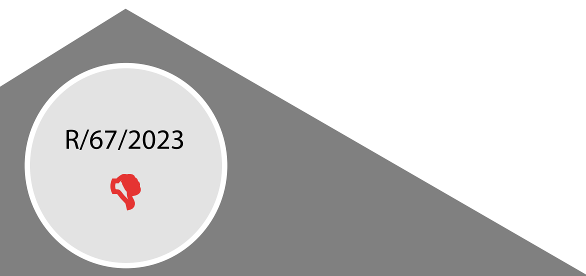
  In this regard, paragraph 40 of the supporting guidelines provides that: "Firms should also take into account the nature of the client when determining the information to be collected. For example, more in-depth information would usually need to be collected for potentially vulnerable clients (such as older clients could be) or inexperienced ones asking for investment advice or portfolio management services for the first time".

The Complaints Service has encountered several situations where, in the context of providing advice, certain entities have recommended investment funds or portfolio management services to elderly clients who sometimes lacked previous investment experience. In these cases of vulnerability and inexperience, institutions need to gather detailed information and consider how these circumstances affect the client's financial situation (including their capacity to bear losses) and investment objectives (including their risk tolerance).

Before signing a portfolio management contract, the institution conducted a suitability test for an elderly client, aged 84, with a declared disability of 69%, and assigned her a balanced investment profile.

The Complaints Service indicated that the client should have been considered a vulnerable person and that the institution did not demonstrate that it had taken this into account or applied special measures or protocols to determine her investment profile. Instead, the institution concluded that a balanced investment profile was appropriate, which could involve up to 60% in equities. This posed a significant risk for someone of her advanced age, who, despite having declared no liquidity needs and having a long investment horizon, could still encounter unforeseen circumstances due to her age. In addition, the balanced profile contradicted her response in the suitability test, where she indicated she was not willing to lose any amount within a three-year period.

However, in the subsequent portfolio management contract, the institution did not assign her the balanced portfolio – which would have invested 40% in fixed income and 40% in equities – that would have corresponded to the profile assigned based on the suitability test. Instead, she was given a conservative portfolio, which invested 50% in fixed income and 10% in equities.



Based on the answers given in the suitability assessment by the 70-year-old client, the institution determined the test result to be "Active", a profile that pursued a capital growth objective while assuming a possible loss of around 15% in one year. This profile was the second-highest out of five categories: "Cautious", "Conservative", "Balanced", "Active", and "Dynamic".

The Complaints Service highlighted that a person's retirement status should be considered by institutions, as it makes them potentially vulnerable. Retirement generally correlates with a certain age (in this case, 70 years old), and special measures or protocols should be applied when determining the customer's profile in such cases.

However, the institution not only failed to adopt any measures – at least none were on record – but also concluded that, based on the answers given in the suitability test, the complainant's investment profile was "Active", the fourth highest risk profile category out of five.

R/601/2022

In the provision of non-independent advisory services, the institution recommended an investment fund with a risk profile of 3 out of 7 to an 83-year-old client with no prior investment experience. The recommended amount was high in comparison to her wealth and income.

The institution considered a suitability test in which she was assigned a risk profile of 3 out of 7. This matched the volatility profile the client selected in the test question, which allowed her to choose between seven profiles, each with respective percentage estimates of profit or loss in pessimistic, most likely, and optimistic scenarios.

The Complaints Service considered that there were other factors that should have led the institution to assign a less risky investment profile. These included the fact that the advised portfolio represented more than 75% of her assets (excluding her primary residence); that her annual net income was less than €30,000, while regular expenses accounted for more than 75% of that

income; that she was very elderly (83 years old) with no expectation of any increase or change in income; that her education was basic (not university level); that she had never worked in positions requiring knowledge of financial markets and instruments; and, most importantly, that she had no prior investment experience whatsoever.

The Complaints Service concluded that the institution committed malpractice by failing to assess a number of factors contained in the information provided in the suitability test. Had these factors been analysed together, it would have been obvious that a risk profile of 3 out of 7 was too risky for the complainant's investment profile as a potentially vulnerable client.

The institution conducted a suitability test on a 92-year-old customer and came to the conclusion that a portfolio management contract with a "Moderate" risk profile was suitable for her. The available profiles were "Conservative", "Moderate", "Dynamic" and "Aggressive".

The Complaints Service highlighted that the institution should have taken particular account of the customer's potential vulnerability due to her age, especially in her answers regarding the investment term and risk level. Regarding the investment term, the client stated that her aim was to save for the future and she intended to hold her investment for 5–7 years. In terms of risk level, she was willing to accept some risk in her investments to increase returns but preferred to invest the majority of her assets safely. She chose a somewhat risky scenario with average, minimum, and maximum annual returns of 2.04%, -14.93%, and 24.60% respectively.

Therefore, although the "Moderate" investment profile assigned by the institution was formally compatible with the risk profile of the portfolio, the Complaints Service concluded that there were indications that the assigned profile was riskier than would have been suitable for the client as an investor.

The complainant, aged 83, was dissatisfied with structured bonds acquired in October 2021 as part of an ongoing advisory service. The institution provided a 2019 appropriateness test, a 2020 suitability test, and a 2021 suitability test, all signed by the complainant, with the 2021 test completed on the day the bonds were acquired.

The 2021 suitability test focused solely on the financial situation and investment objectives, omitting the section on knowledge and experience. However, the institution had information from the 2019 appropriateness test and the transactions in the complainant's securities account to conclude that the complainant had sufficient knowledge and experience to trade in products equivalent or similar to the disputed bonds. He had carried out approximately six transactions in structured bonds between 2013 and 2021, with his last bond on the same underlying index being redeemed in July 2021.

The 2021 suitability test assigned the complainant a "Dynamic" profile, the 11th highest level on a 15-level scale, with 3 tiers for each category: "Very Conservative", "Conservative", "Moderate", "Dynamic", and "Risky". Although the complainant had limited savings capacity – around €300 per month – his financial situation appeared stable, with no outstanding debts, property assets valued between €500,000 and €750,000, and liquid assets between €300,000 and €400,000. However, the institution lacked information on his family situation, commitments, and liquidity needs. Moreover, the complainant indicated he was a salaried employee, while in previous tests, he had indicated he was retired/a public sector worker, which was more consistent with his age, revealing an inconsistency that the institution seemingly did not detect.

In the section on investment objectives, the complainant indicated that he would like to have stable savings or accumulate wealth; that profitability and risk limitation were equally important (acknowledging that achieving a high return requires assuming higher risk); that he did not want to set a maximum time horizon for all products in his portfolio but preferred to decide this for each investment individually; and that he had chosen a portfolio with a loss tolerance of 26%.

Given the inconsistencies in the analysis of his financial situation, the ambiguity in his answers regarding investment objectives, and his vulnerability due to advanced age, the Complaints Service deemed the product unsuitable. The institution therefore committed malpractice by recommending a structured bond with a term of up to 10 years – which would mature when the complainant was about 93 years old –, with the possibility of a complete loss of capital (not just 26%) and with a fixed coupon whose payment was not guaranteed. This was contrary to the complainant's preferences in terms of savings/capital accumulation and the balance between return and risk of loss.

The 85-year-old complainant entered into a conservative discretionary portfolio management contract.

The Complaints Service found that the institution had acted correctly, as the contract aligned with the complainant's suitability test result, which was "Conservative" – the lowest level on a 4-level scale: "Conservative", "Moderate", "Dynamic", and "Bold". According to its definition, a conservative profile was one in which portfolio returns, on average and in annual terms, experienced fluctuations of up to +/- 5%.

The institution recommended that an elderly customer open an investment fund with a risk and remuneration profile of 4 out of 7. To this end, the institution took into account a suitability test, which assigned the customer a "Bold" profile, allowing him to trade in both complex and non-complex structured funds and deposits.

The Complaints Service noted that there were factors likely to affect the customer's financial situation or investment objectives that should have prompted the institution to assign him a less risky investment profile. These factors included his age (nearly 81 at the time of the investment fund subscription) and the fact that he was retired. Furthermore, in the suitability test, the customer indicated that he had not previously held positions in investment funds, managed portfolios, or structured deposits, and that his education level was high school, vocational training, or compulsory education.

The Complaints Service therefore concluded that the "Bold" risk profile assigned to the customer, which allowed him to invest in complex structured funds and deposits, was excessive given his circumstances.

The institution recommended that an 83-year-old customer with no previous investment experience invest in an investment fund with a risk profile of 3 out of 7. To this end, the institution used a suitability test, which resulted in a “Moderate” profile from five possible profiles (”Very Conservative”, “Conservative”, “Moderate”, “Dynamic”, and “Bold”), corresponding to a volatility limit of 10% This profile was defined as one where portfolio returns experience, on average and on an annual basis, fluctuations of up to +/-10%.

The Complaints Service considered the assignment of a “Moderate” profile with a 10% volatility limit to be consistent with several of the customer’s investment objectives (such as a risk profile aimed at achieving returns moderately above inflation, assuming medium risk, and accepting potential losses of up to 10% over time) and his financial situation (e.g., an investment loss rate between 0% and 10% that he could afford without materially affecting his standard of living).

However, the Complaints Service found that there were circumstances suggesting that the customer should have been assigned a less risky investment profile. These factors included the customer’s advanced age (83 years), his employment status (retired, pensioner, annuitant), and his relatively low annual income (between €18,000 and €30,000). Also, he had no specific training, knowledge, or experience in financial products (no education and no experience in the financial sector or in the categories of financial instruments he was questioned about).

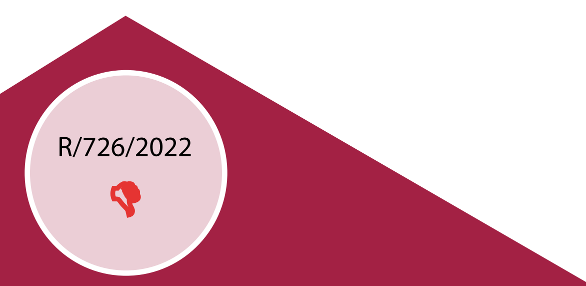
The 84-year-old client, who had reduced mobility and memory loss, visited the branch accompanied by her daughter, who acted as her legal representative. The institution conducted a suitability test and, based on the responses given, concluded that the client's risk profile was "Moderate". Subsequently, the institution recommended subscribing to an investment fund with a risk profile of 3 out of 7.

The Complaints Service highlighted that an elderly individual (84 years old), retired, living on a pension, with basic education, without previous investment experience in investment funds, who was being provided with an advisory service of this nature for the first time, with an annual income of less than 20,000 euros, and with noticeable mobility and cognitive issues at the time of subscription as evidenced by a prior medical report – even though a grade II dependency was declared a few months after the fund subscription should be considered a highly vulnerable person. This applies regardless of whether she was accompanied by her daughter at the branch, as it was the client herself who was making the investment. So, the institution should have taken these circumstances into account and applied special measures or protocols when determining the complainant's profile.

However, the institution not only failed to take any action – at least, none was recorded – but also concluded, based on the answers given in the suitability test, that the complainant's investment profile was "Moderate". This led to her being recommended an investment fund which, although it had a target return, had a maturity of six years.

The Complaints Service pointed out that it is inconsistent for a person of that age, with obvious health problems that necessitated not only a declaration of dependency but also assistance for basic daily activities, to respond in the suitability test that she had no liquidity needs, that her time horizon was between five and seven years, and that she was willing to assume investment risks. This inconsistency indicated that the institution did not apply the necessary protocols to prevent such contradictions in the answers obtained from the suitability tests, which were evidently present in this case.

The Complaints Service concluded that the institution had committed malpractice by failing to consider the client's special circumstances when evaluating her risk profile and, consequently, the appropriate investment for her.



The institution conducted a suitability test, which assigned an 83-year-old client a "Conservative" investor profile – the lowest among the existing categories of "Conservative", "Moderate", "Dynamic", and "Aggressive". The Complaints Service considered the classification made by the institution to be reasonable, based on the client's responses and recognising her as a potentially vulnerable person.

However, the institution provided the client with a non-independent advisory service by recommending a CIS with a risk level of 3 out of 7 – more appropriate for a "Moderate" profile – despite the client having limited financial capacity. Therefore, the Complaints Service highlighted that the institution had not acted correctly by recommending a fund with a higher level of risk than was suitable given the client's financial situation.

The complainant, an 80-year-old retiree, completed a suitability test, revealing the following details:

- He was retired, had a secondary school education, and lacked professional experience or specific training in securities and financial instruments markets.
- He had prior investment experience, having conducted two or more transactions in investment funds exceeding €5,000 in the past three years.
- His family's net monthly income ranged between €1,000 and €1,500, with monthly savings between €300 and €600. He expected his assets to remain stable. His net real estate assets tied to his primary residence were valued between €100,000 and €200,000, and his financial assets exceeded €200,000. He had no debts.
- His investment horizon was over six years. He was willing to accept a reduction in his portfolio's value of less than 5%, and in the event of a 10% drop in his investments, he would maintain his holdings.

After the assessment, the institution informed him that his profile for the advisory service was classified as "Balanced". This meant he was prepared to tolerate a temporary decrease in the portfolio's value of less than 5%, and would continue to hold his positions if his investments fell by 10%. Based on this investment profile, the institution recommended that he invest €75,000 in an investment fund with a risk level of 3 out of 7, and €30,007.23 in another with a risk level of 4 out of 7. The complainant accepted the investment proposal and subscribed to the recommended funds.

After a few months, the institution conducted a new suitability test. All the answers matched those given in the previous test, except for the one regarding his willingness to accept a temporary decrease in the value of his portfolio, which he now indicated as less than 10% instead of the previous 5%. With only this change, the institution raised his risk level from "Balanced" to "Moderate".

The Complaints Service found that the institution had overweighted some of the responses in the suitability test concerning investment objectives – specifically, his willingness to accept a temporary decrease in his portfolio's value of less than 10% and to maintain his investments despite a 10% drop in value – without performing a comprehensive and holistic analysis of all the responses. The Complaints Service noted that the institution had either not considered or had underweighted the complainant's vulnerability due to his age and retirement status, as well as the fact that he did not expect significant changes in his income. Therefore, it concluded that the risk profile assigned to the complainant was excessive, given a balanced assessment of all the responses provided in the suitability test.

➢ Incidents in the report of client meeting

The firm providing investment services must record all relevant information related to direct conversations with clients on a durable medium. The recorded information must include, at a minimum, the following:

i) The date and time of the meetings.

ii) The location of the meetings.

iii) The identities of the attendees.

iv) The organiser of the meetings.

v) Relevant information about the client's order, including the price, volume, type of order, and the time at which it will be transmitted or executed.[28]

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28 Article 76.9 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

The entity prepared an advisory report on 5 March 2020 at 12:10 p.m., stating that, based on the information gathered and the client's conservative profile, it proposed subscribing to an investment fund and making additional monthly subscriptions.

The entity provided a suitability test and an appropriateness test signed by the client, in which the following malpractices were identified:

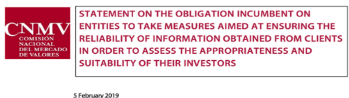
– The suitability test lacked the date it was conducted, the client's name, and any identifying logo to confirm it was carried out by the respondent entity.

– The appropriateness test for subscribing to the fund was completed on 5 March 2020 at 13:00, which was after the recommendation had been made at 12:10.

Furthermore, the advisory report contained a defect, as it was prepared before the appropriateness test was conducted, and in a location where the complainant claimed not to have been on that day or at the time stated in the report. This location did not coincide with the place where the rest of the documentation (pre-contractual MiFID information and the standard custody and administration contract for securities) was signed.

➢ Consistency of the information obtained in the suitability test

Institutions are entitled to rely on information provided by their clients, except where they know, or ought to know, that such information is manifestly out of date, inaccurate, or incomplete.[29] Firms providing investment services must take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. Among other measures, they should ensure the consistency of this information, for example, by checking for obvious inaccuracies in the information provided by clients.[30]



On 5 February 2019, the CNMV issued a statement regarding the obligation of entities to take measures to ensure the reliability of the information obtained from clients when assessing the suitability and appropriateness of their investments. To this end, the communication highlights certain potentially atypical situations and

29 Article 55.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

30 Article 54.7 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

establishes the duty to have procedures in place to detect these during both the trading process and through periodic reviews of the information, as well as procedures to rectify them.

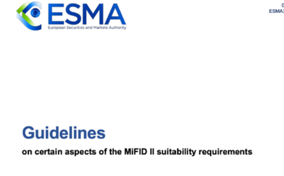
In this regard, it is important to note that entities can consider the following when analysing whether atypical situations exist:

– Whether the overall data on the academic qualifications of retail clients are reasonable, given their sociological characteristics.

– Whether the overall data corresponding to customers with a high degree of financial knowledge is reasonable, particularly in cases where groups of customers lack prior professional or investment experience, or a level of academic training consistent with such knowledge.

– Whether the overall data on retail customers with prior investment experience in complex instruments, which are infrequently distributed to the retail public, is reasonable, especially when the customers' experience does not align with their activities within the institution.

If inconsistencies, discrepancies or a large number of atypical situations are identified (which may arise for various reasons, including the possibility that the information was not collected correctly from the customer), appropriate measures must be taken to verify and validate the data. This should include alternative methods that go beyond simply checking that the information matches the information in the formalised questionnaires.


ESMA

Guidelines
on certain aspects of the MiFID II suitability requirements

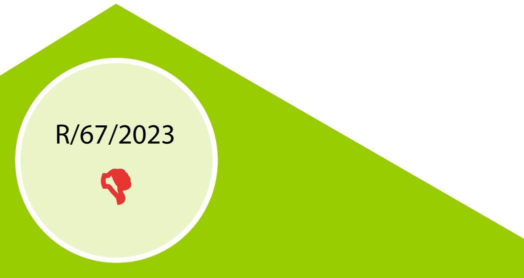
The ESMA guidelines on certain aspects of the MiFID II suitability requirements provide, in its general guideline 4, that: "Firms should take reasonable steps and have appropriate tools to ensure that the information collected about their clients is reliable and consistent, without unduly relying on clients' self-assessment".

In this regard, paragraph 51 of the supporting guidelines provides that: "In order to ensure the consistency of client information, firms should view the information collected as a whole. Firms should be alert to any relevant contradictions between different pieces of information collected, and contact the client in order to resolve any material potential inconsistencies or inaccuracies. Examples of such contradictions are clients who have little knowledge or experience and an aggressive attitude to risk, or who have a prudent risk profile and ambitious investment objectives".

There was an inconsistency in the suitability test, as the complainant had only non-compulsory education – Vocational Training, BUP and COU (BUP is *Bachillerato Unificado Polivalente* and COU is *Curso de Orientación Universitaria*: these were part of the Spanish secondary education system

equivalent to UK A-levels.) – no university education in business or economics, no professional experience requiring knowledge of financial markets and instruments, and no prior experience with any type of financial product (not even non-complex products). Yet, she apparently knew the characteristics and functioning of all types of financial instruments, including complex ones.

The Complaints Service concluded that the institution had engaged in malpractice because the suitability test contained inconsistencies in some of the answers provided, specifically in the sections on investment experience and knowledge. These inconsistencies should have been detected and addressed by the institution.



Some inconsistencies were noted in the suitability assessment, as the client indicated that her source of income was earned income (€1,700), leaving the retirement/pension income section blank. However, in the second part of the form, which requested information in accordance with the Prevention of Money Laundering Act, she stated that she was a pensioner with an income level of up to €30,000 and receiving allowances. It was also surprising that the client did not report any financial needs and that her net monthly savings were equal to her monthly income (€1,700 per month).

The Complaints Service concluded that the institution had engaged in malpractice because, in light of the responses given in the suitability assessment, the institution had failed to apply the necessary protocols to ensure the information collected was consistent.

- **Suitability reporting in investment advice**

When providing investment advice, the firm must give the client, prior to the execution of the transaction, a suitability statement in a durable medium. This statement should specify the advice provided and how it aligns with the retail client's preferences, objectives and other characteristics.[31] Specifically, the firm must provide the retail client with a report that includes a summary of the advice given and explains why the recommendation is suitable for that client. This should include how the recommendation meets the client's investment objectives and personal circumstances, with reference to the required investment horizon, the

31 Article 204.6 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

client's knowledge and experience, attitude to risk, capacity to bear losses, and sustainability preferences.[32]

The institution acknowledged that it had provided a recurrent investment advisory service in the contracting of structured bonds. The Complaints Service considered it improper conduct on the part of the institution that it had not prepared or provided the complainant with the respective investment proposal, i.e., the formal document describing how the structured bonds matched the investor's characteristics and objectives.

The institution provided the complainant with non-independent advisory services, recommended transferring to an investment fund, and conducted a suitability test before the fund subscription. The transfer order specified that: i) it was based on an investment recommendation under the non-independent one-off advisory service provided by the institution; ii) the recommendation was suitable, as it aligned with the risk profile determined by the suitability test the institution had administered to the client; and iii) in determining this profile, the client's investment objectives, knowledge and experience, and financial situation, as indicated when completing the suitability test, were all considered.

However, the Complaints Service ruled that this warning could not be regarded as an investment proposal or recommendation in accordance with current regulations and, therefore, the institution had engaged in malpractice.

➢ **Periodic assessment of suitability after takeover of the recommended fund**

Some investment firms offer a periodic assessment of the suitability of the recommendations made, in which case they must report all of the following information:

32 Article 54.12 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

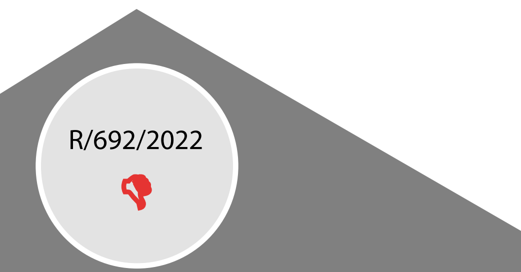
i) The frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment.

ii) The extent to which the information previously collected will be subject to reassessment.

iii) The way in which an updated recommendation will be communicated to the client.[33]

Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.[34]

When an investment firm provides portfolio management services or has informed the client that it will conduct periodic suitability assessments, the periodic report must include an updated statement on how the investment aligns with the retail client's preferences, objectives, and other characteristics.[35] Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.[36]



In the context of an advisory service, the complainants, who had a "Conservative" profile, transferred their positions on 5 June 2018 to an investment fund recommended by the institution. This fund had an expected volatility level of less than 2% and a risk profile of 2 out of 7. On 26 February 2020, the complainants received a new investment proposal from the institution, recommending that they increase their investment in the fund. Prior to making this proposal, the institution conducted a new suitability test, which confirmed that their profile remained "Conservative". Following the recommendation, the complainants subscribed to the additional amount suggested for the investment fund.

33 Article 52.5 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

34 Article 54.13 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

35 Article 204.8 of the Law 6/2023, of 17 March, on Securities Markets and Investment Services.

36 Article 54.12 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

On 14 October 2021, the institution sent a letter informing them of the agreement to merge their existing fund (absorbed fund) with another fund (absorbing fund) that had a risk profile of 6 out of 7. This prior notification requirement was duly fulfilled by the fund management company. Since the complainants did not exercise their right to redeem or transfer their units within the allocated time frame, they became unitholders of the absorbing fund. The complainants were dissatisfied with the absorbing fund, as its risk level was significantly higher than their "Conservative" profile, based on the suitability tests conducted.

According to the documents provided, the institution committed to an annual review of the suitability of all products held. The institution did assess the complainants' positions in 2019 and 2020, but there was no evidence in the records of such a review being conducted in 2021.

Had a suitability assessment been carried out as of 31 December 2021, the institution would have detected that the absorbing investment fund did not align with the complainants' profile and could have informed them, enabling them to make appropriate investment decisions. Consequently, the Complaints Service deemed that the institution had committed malpractice, as there was no proof that it had provided the complainants with the annual suitability assessment in 2021.

A.3.3 Prior information

➢ **Sufficient advance notice**

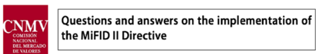
Clients, including potential clients, should be provided with appropriate and timely information regarding the investment firm, the financial instruments and proposed investment strategies, the order execution venues, and all associated costs and expenses.[37]

This means that information about financial instruments must be given in good time. The regulations specify that a general description of the nature and risks of the financial instruments should be provided sufficiently in advance of delivering investment or ancillary services to clients.[38]

37 Article 200.3 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

38 Article 48.1 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Recital 83 of MiFID II[39] states that: "In determining what constitutes the provision of information in good time before a time specified in this Directive, an investment firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand it before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering a simpler or more familiar product or service, or where the client has relevant prior experience".



The CNMV has clarified that: "As set out in Recital 83 of MiFID II, the information should be provided it so that the client has sufficient time to read and understand it before making an investment decision. A fixed minimum period of time is not established, so that entities can establish the delivery times that they consider appropriate in each case, taking into account, as established in the aforementioned recital, whether it is a complex product or not, or if the client is familiar with it or has no experience of it. It should also be noted that an eventual urgency of contracting in the case of volatile markets or instruments with a contracting period nearing its end should not prevent clients from having sufficient time to analyse the information, understand the product and make a well-founded investment decision".[40]

The person advising on or selling a PRIIP shall provide the key information document sufficiently early so as to allow retail investors enough time to consider the document before being bound by any contract or offer relating to that PRIIP, regardless of whether or not the retail investor is provided with a cooling off period.[41]

As regards sufficient advance notice, the person advising on or selling a PRIIP should assess the amount of time each retail investor needs to review the KIID, taking into account the following aspects:

i) The knowledge and experience of the retail investor with the PRIIP or with PRIIPs of a similar nature or with risks similar to those arising from the PRIIP.

ii) The complexity of the PRIIP.

iii) Where the advice or sale is at the initiative of the retail investor, the urgency explicitly expressed by the retail investor of concluding the proposed contract or offer.[42]

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39 Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

40 Question 6.1 of the CNMV document *Questions and answers on the implementation of the MiFID II Directive*.

41 Article 17.1 of Commission Delegated Regulation (EU) 2017/653, of 8 March 2017, supplementing Regulation (EU) No. 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

42 Article 17.2 of Commission Delegated Regulation (EU) 2017/653, of 8 March 2017, supplementing Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down

For CISs, the prospectus and the latest annual and half-yearly reports shall be made available free of charge and, upon request, well in advance of the subscription of units or shares. The KIID must be provided in accordance with PRIIPs regulations.[43]

The complainants subscribed to units of an investment fund, with the institution providing them with execution or order receipt and transmission services.

One of the complainants signed the opening of the fund account at 10:09, and the other at 10:10. The key information document and the latest half-yearly report of the fund were signed by the complainants on the same day at 10:10 a.m. Therefore, the product documentation was delivered after the fund account was opened for one of the complainants and with a difference of only one minute for the other. As a result, the Complaints Service determined that the institution had committed malpractice by not delivering the documentation sufficiently in advance of the subscription.

The complainant, who is 80 years old, was dissatisfied with the advice provided by the institution regarding an investment fund.

According to the documents in the proceedings, the institution conducted a suitability test to determine the customer's profile on 2 June 2021 at 11:21:59 and provided him with an investment proposal for the fund based on that profile at 11:23:20, just 1 minute and 21 seconds later.

regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

43 Article 18.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

The fund subscription order included a client declaration stating that the mandatory fund information documents had been delivered to him before he placed the order. Although the regulations use the somewhat vague legal concept of "in good time before the subscription" to specify when prior information about investment funds must be provided, and despite the fact that the time when the documents were delivered was not recorded, the subscription order was signed at 11:25:44, which is 2 minutes and 24 seconds after the investment proposal was made.

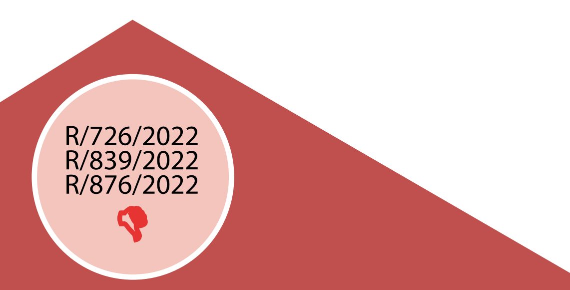
The provision of the personalised advisory service by the institution – including conducting the suitability test, preparing a personalised investment proposal based on the profile derived from the customer's responses to the test, delivering the documentation for the recommended fund, and allowing the customer to review all the documentation before signing the subscription order – was completed in less than four minutes.

The Complaints Service considered that, in such a short period, which is comparable to the time taken for a mere execution service, it was not feasible to provide a personalised advisory service to any investor, particularly to a client who, due to his advanced age, should be classified as "Vulnerable", requiring even more personalised and tailored treatment. Furthermore, he was given only 2 minutes and 24 seconds to understand and analyse the fund's characteristics and risks based on the information provided by the institution with the proposal – assuming that the fund documentation was indeed provided with the investment proposal, which was not evidenced in the proceedings – and to make an investment decision in his best interests.

The Complaints Service concluded that the institution had committed malpractice by failing to provide the client with information about the proposed investment in sufficient time to enable him to make an informed investment decision.

In the context of subscribing to an investment fund without advice, the respondent entity provided a copy of the key information document and the associated aggregate cost information for acquiring an investment fund that had no prior half-yearly report, as it was newly created. These documents were signed/validated two minutes before the actual subscription of the CIS.

The Complaints Service considered that the institution had acted incorrectly by failing to provide the complainant with the information sufficiently in advance of the transactions, so that he had enough time to read and understand it before making an informed investment decision.



In the provision of a non-independent advisory service, the institution made investment proposals recommending the subscription to an investment fund and provided clients with the mandatory fund information documents.

The Complaints Service concluded that the institution had acted incorrectly by failing to provide the mandatory information documents sufficiently in advance of the purchase of the recommended CISs because:

– In proceedings R/726/2022 and R/839/2022, although the documents included a statement that the pre-contractual information on the products had been received sufficiently in advance, the investment proposal, as well as the key information document and other pre-contractual information, were generated only three minutes and four minutes, respectively, before the subscription order was signed.

  Given that the entire information package consisted of about 12 pages, the Complaints Service concluded that the time taken (three and four minutes) did not meet the requirement of providing the documentation sufficiently in advance. This was necessary to allow the advised client adequate time to read and understand it before making an informed investment decision. Moreover, in R/726/2022, the client was an 83-year-old person, potentially vulnerable due to her advanced age.

– In R/876/2022, the mandatory investment fund information was delivered simultaneously with the client placing the subscription order.

Before subscribing to structured bonds, the complainant was provided with a 19-page pack of documents including: the key investor information document; a summary of terms, conditions, and main features of the product; a risk annex detailing the product's characteristics and risks; a summary of costs, charges, and fees applicable to the transaction; information on the appropriateness assessment of the transaction; and additional information covering the legal documentation, risks, and fair value of the product.

Given the content of the documents provided, the Complaints Service concluded that the institution had supplied the customer with extensive information on the structured bonds. This information detailed their characteristics, operation, terms, scenarios, costs, and inherent risks, and included numerous warnings about potential losses.

However, the receipt for the document pack itself showed that it was signed by the customer just one minute before signing the order to subscribe to the structured bonds. Consequently, the Complaints Service determined that the institution had acted incorrectly, as it had not provided the information within the time required by regulations. Specifically, the customer was not given sufficient time to read and understand the information before making an informed investment decision.

A.3.4 Subsequent information

Firms providing investment services must act honestly, fairly, and professionally, always in the best interests of their clients, and must adhere, in particular, to the principles outlined in the applicable conduct of business rules.[44] These firms are obliged to keep their clients adequately informed at all times, ensuring that any information directed at them is fair, clear, and not misleading.[45]

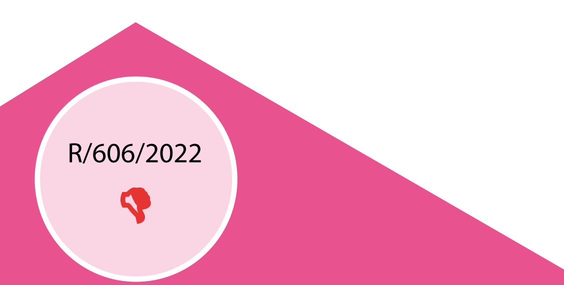
➢ Price mismatch information

When an entity intends to provide services through electronic means, it must have adequate measures in place to ensure the security, confidentiality, reliability, and capacity of the service.[46] It should be noted that if any operational limitations arise with the services offered by the institution, it must clearly inform clients of these issues and provide information about alternative channels available for continuing operations.

44 Article 197 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

45 Articles 200.1 and 200.2 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

46 Article 20.1.h) of Royal Decree 813/2023, of 8 November, on the legal framework for investment firms and other entities providing investment services.



The complainant subscribed to an information service that provided real-time updates on the performance of market securities using streaming and automatic updates. This service was not part of the core investment services but was an additional, optional feature designed to give customers more precise and timely information on listed securities to aid in decision-making.

The complainant stated that the real-time stock price information service stopped working shortly after it was initiated, resulting in a delay of approximately 15 minutes in the information provided, an issue that persisted for more than two months.

The entity acknowledged that there had been an issue with the service provision from 26 July to 8 September 2022, a period of 44 days. The Complaints Service determined that the entity had acted improperly by failing to resolve the issue in a timely manner. Although it was an optional additional service, the complainant had specifically subscribed to it for accurate and immediate information, which was crucial for making informed investment decisions.

➢ Information on events affecting the securities

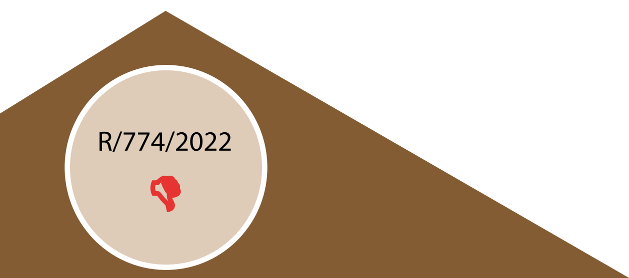
Institutions providing securities administration or depository services must contractually outline the main actions included in the administration of the financial instruments under their custody, as well as the method for obtaining instructions from their customers when necessary. In particular, they must specify the procedure to be followed in the absence of instructions from customers regarding any subscription rights generated by the securities held in custody. This procedure must always be in the best interests of the customer.[47]

Institutions must also, with due diligence and promptness, provide customers with information on the procedure to follow for issuing instructions in the context of corporate actions carried out by the companies issuing the securities held by their customers. This includes informing them of the consequences of not receiving such instructions in due time and form by the institution providing the investment service. Institutions must always act in accordance with their agreements with customers and in the best interests of those customers.

However, the Complaints Service believes that prior notification from the depository to the client is necessary not only for corporate transactions requiring specific client instructions but also for any corporate transaction that may affect the rights and interests of investors.

47 Rule Eight of CNMV Circular 7/2011, of 12 December, on fee prospectuses and the content of standard contracts.

Therefore, the CNMV Complaints Service considers it essential not only for the depository to provide information to its clients on corporate transactions requiring its instructions but also on all corporate transactions agreed upon by the companies issuing the securities, regardless of whether or not these transactions involve a right of choice for the investor.



The complainant complained about the institution's actions regarding a swap offer for bonds issued and traded outside Spain. The offer was launched on 24 April 2020 and concluded in September 2021.

The institution explained that the swap was intended only for qualified investors and supported this with the issuer's offer document and a document from the sub-custodian. Since the complainant was classified as a retail investor under MiFID, he was not eligible to participate in the swap.

Between May 2020 and April 2021, the complainant repeatedly informed the institution through various emails that a family member, who also held these bonds, had received emails from another institution inviting participation in the swap. The complainant requested that the institution reconsider its position, pointing out that his relative had received the offer without any restrictions.

Even if it was not established that the complainant was a qualified investor eligible for the swap, the Complaints Service found the following:

i) The complainant had purchased the bonds from another entity and transferred them to the respondent entity in 2015. Although the offer excluded retail investors, the institution's classification of the client as retail when he transferred the bonds did not necessarily mean that he acquired them under the same classification. It could not be ruled out that he had acquired them as a professional client, which would have allowed him to participate in the swap.

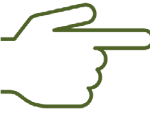
ii) The inability to participate in the swap meant that, after the deadline passed without submitting instructions, the customer would end up with an illiquid security that was excluded from trading. Therefore, the institution's refusal to process his instructions did not align with the commitment specified in the securities custody and administration contract to act in the best interests of the customer and safeguard his economic rights.

The Complaints Service concluded that the institution had not fulfilled its duties as a depository for the bonds. Diligent action under the custody agreement would have involved providing detailed information about the corporate event affecting these securities and seeking the complainant's instructions to forward to the issuer – regardless of whether the swap was ultimately accepted. The institution should have considered the fact that the security was to be excluded from trading, as well as the complainant's emails highlighting that another entity was informing bondholders of the swap offer.

➢ Information on the value of CIS positions

Some firms providing portfolio management services offer their clients an online system where they can access updated valuations of their portfolio.[48] For a portfolio that invests in investment funds, the valuations reflect the latest published net asset value (NAV) of the component funds, not the NAV that would apply if the fund shares were to be redeemed. To prevent inappropriate practices such as arbitrage or speculation against an investment fund, the NAV applicable to subscriptions and redemptions must be that of the same business day or the next business day. The subscription and redemption process must ensure that the applicable NAV is unknown to the investor and cannot be reliably estimated in advance.[49]

Moreover, regulations require that any information provided to clients must be fair, clear, and not misleading.[50]

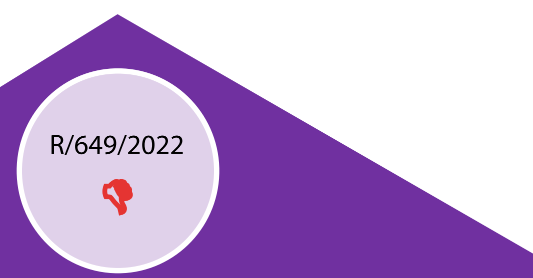


Regarding the valuations provided to customers for managed portfolios invested in CISs, the Complaints Service advises that, along with the valuation information for the invested portfolio or the funds themselves, it should either specify the exact date to which the valuation corresponds or indicate that it is an estimate or approximation. This is to prevent customers from mistakenly believing that the valuation reflects the amount they would receive if they decided to sell their portfolio or funds.

48 Article 60.3.a) of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

49 Article 78.2 of Royal Decree 1082/2012, of 13 July, approving the implementing Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

50 Article 200.2 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.



The complainant was dissatisfied with the amount refunded upon cancelling a portfolio management contract invested in a CIS. The complainant noted that when viewing the institution's app, the portfolio valuation showed a higher amount than the amount received upon cancellation made the day after viewing.

The complainant provided a screenshot of the institution's app, highlighting the portfolio value at the time of viewing and offering options for investing in retirement plans or savings insurance. However, there was no warning that the valuation was approximate or estimated, nor any indication of the specific date to which it referred.

The Complaints Service considered that such a valuation could mislead the customer about the net asset value applicable to redemption transactions in their portfolio and, therefore, the amount they could expect to receive if they placed a redemption order.

In providing a service for the reception and transmission of redemption orders for multiple investment funds, the complainants alleged that after placing an order to sell the funds, they initially received confirmations of the redemption of their positions. Subsequently, they received other confirmations with a lower valuation, which was the amount eventually credited to their account. As a result, they believed there had been malpractice, as the institution had processed the redemption transactions on different dates and with different net asset values, to their detriment.

The institution responded that the complainants placed redemption orders for several funds and, on the same day, the institution confirmed that the redemption orders had been sent. The following day, the institution sent the complainants provisional redemption slips – or pre-confirmations – for all the funds, which reflected the latest available price in the institution's systems. The institution added that these provisional slips did not indicate the date of posting or confirmation.

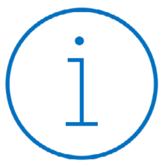
In the days that followed, the institution sent the complainants the final confirmation slips, which included the transaction dates and the amounts credited to their account. These final slips did specify the actual posting or confirmation date.

The institution explained that the discrepancies in valuations seen in the provisional or preconfirmation slips were due to the net asset values indicated there not corresponding to the final prices at which the transactions were executed.

The Complaints Service noted that investment firms must inform clients that the net asset value shown in these provisional communications is approximate. Since the net asset value at which the redemption transaction will be settled is unknown at the time, CIS securities are valued at the latest available net asset value, which will not necessarily match the net asset value applied when the redemption order is executed – it may be higher or lower than the estimated value.

The Complaints Service concluded that the provisional slips sent by the institution lacked crucial information. They did not inform the complainants that the net asset values shown were approximate, as they were based on the latest available net asset value. This value would not necessarily match the net asset value applied when settling the redemption orders, since the final value was unknown at the time the orders were submitted and processed.

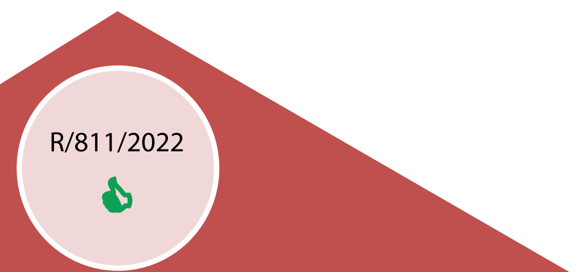
- **Withholding tax on redemption of a dollar-denominated investment fund**



The Complaints Service is not authorised to evaluate the accuracy of the tax treatment applied by institutions to various transactions or outcomes related to investment products. This responsibility lies with the Spanish Tax Agency (Agencia Estatal de Administración Tributaria).

In cases involving tax-related complaints, the Complaints Service is therefore limited to examining the institution's actions in terms of compliance with its obligations, particularly the rules of conduct required of it as a provider of investment services. This includes the duty to keep its customers adequately informed at all times.[51]

51 Article 200.1 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.



The complainant raised an issue regarding the withholding tax applied to the redemption of a US dollar (USD) denominated money market fund.

The Complaints Service informed the complainant that it was not authorised to assess tax matters. However, it did provide the complainant with the explanations given by the institution in its submissions and referenced the relevant legal provisions that supported those explanations.

Given this context, the Complaints Service reviewed whether the information presented in the statement from the institution accurately reflected the fund sale transaction ordered by the complainant. The review confirmed that the transaction had been executed on the dollar account specified in the order and that the sale resulted in a gross amount, from which a withholding tax was deducted on the capital gain, leaving a net amount. Regarding the calculation of the capital gain, the statement included a section on tax information that detailed the basis of the calculation and the percentage applied. In terms of the euro equivalent of the sale transaction and the withholdings, the statement clearly specified the amounts in USD and euros, the withholdings made, and the exchange rate applied to the transaction.

Therefore, the Complaints Service concluded that the institution had acted correctly, as the information provided in the statement was sufficient for the customer to understand the items considered in the settlement.

- **Request for information refused on data protection grounds**

Firms providing investment services and activities are required to keep a record of all the services, activities, and transactions they carry out. This record must be detailed enough to enable the CNMV to perform its supervisory functions and apply appropriate enforcement measures. Specifically, it should allow the CNMV to determine whether the investment firm has fulfilled all its obligations, including those related to clients or potential clients and to market integrity. These records must include recordings of telephone conversations and electronic communications related to the firm's business activities.

Clients have the right to request access to these records. However, if the requests for information are manifestly disproportionate or unjustified, or if there are special circumstances that warrant it, the Complaints Service would permit the firm to refuse to provide the information.

It is important to note that requests for information should be directed to the office or branch of the institution that provided the investment service, as this is where the documentation should be kept. However, if the office or branch does not adequately address these requests, the customer should contact the institution's CSD and lodge a complaint about the failure to respond to the information request.

Additionally, requests for information can be deemed irrelevant if they are submitted too late. Records must be retained for a period of five years and, if requested by the CNMV, for up to seven years. The investment services provider is not obliged to keep documents related to transactions beyond these minimum mandatory retention periods.

Therefore, the Complaints Service considers that if a client or former client requests documents generated during their contractual relationship with the institution, the institution must provide them, provided that the legal retention period has not expired. If the legal retention period has been exceeded, the institution should inform the client or former client accordingly.

The complainant was dissatisfied with the refusal to provide information on the date, price, and costs associated with the purchase of shares. The Data Protection Officer and the institution's CSD had informed her that, due to personal data protection regulations, they could not fulfil her request because she was no longer a client.

The institution argued that personal data must be deleted when they are no longer needed for the purpose they were collected for, such as when the contractual relationship ends. From that point on, the data remain available only to judicial and administrative authorities and not to former clients. Therefore, the institution stated that the documents were available to the Complaints Service upon request, but not to the former client who had asked for them.

The Complaints Service requested the information sought by the former client from the institution. The institution replied that it could not fulfil the request because either the complainant had never been a client or she had been a client at some point, but her data had been deleted following the ten-year retention period mandated by anti-money laundering regulations.

The Complaints Service clarified that, under data protection regulations, institutions must retain their customers' personal data for the duration of the contractual relationship and, once it ends, for the applicable legal retention periods. Although institutions must block data once an account is cancelled, making it accessible only to authorised personnel, the data subject

retains the right of access for as long as the institutions are required to keep the data. Even if blocked, the data belong to the customer, as established by data protection regulations and the decisions of the Spanish Data Protection Agency (Agencia Española de Protección de Datos.

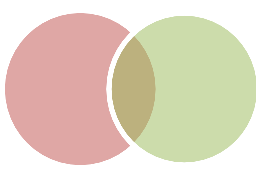
The institution not only failed to inform the client that the documentation had been deleted due to the ten-year retention period having elapsed since the end of the commercial relationship, but it also encouraged her to file a complaint with the Complaints Service, so that, in its capacity as a public administration, it would request the information from the entity and thus provide it indirectly. This led the client to falsely believe that she could obtain the information through the Service. However, the outcome from the Complaints Service was the same as that from the institution: the information no longer existed.

The Complaints Service determined that the entity had engaged in malpractice for two reasons: i) it denied the complainant access to information she was entitled to under data protection regulations, failing to inform her that the requested documents were no longer retained due to the expiration of the ten-year retention period, and ii) it misled the complainant by giving her the false impression that the information was still available when, in reality, the retention period had already expired.

➢ Mergers of sub-funds of foreign CISs

Foreign CISs are not under the supervision of the CNMV but are overseen by the competent authority in their country of origin. However, the CNMV supervises the actions of distributors in Spain in accordance with national regulations concerning foreign CIS authorised for distribution in the country.

In this regard, the regulations governing information obligations for foreign CIS unitholders or shareholders stipulate that distributors in Spain of foreign CISs registered with the CNMV must provide, free of charge, all the information required by the legislation of the State in which they are based to unitholders or shareholders who have acquired their units or shares in Spain. This must be done under the same terms and within the same deadlines as stipulated by the legislation of the country of origin.[52]



Regarding the taxation related to the merger of sub-funds of foreign CISs, while unitholders or shareholders are responsible for seeking advice on the tax treatment of operations related to their investments, the Complaints Service holds that institutions have an obligation to inform investors of all aspects that may be of particular relevance to them. Specifically, concerning the tax consequences arising from this type of transaction – such as the redemption of units from the merged fund, which carries tax implications, and the subscription of units in the acquiring fund –the institution must notify the

52 Rule 2, section 2, of CNMV Circular 2/2011, of 9 June, on information on foreign collective investment institutions registered in the Registers of the National Securities Market Commission.

customer before the merger transaction, as this is a very important issue. This notification should include how the merger will be classified for tax purposes and whether the corresponding tax withholding will be applied.

Finally, it should be emphasised that for financial institutions to act properly, they must provide customers with full and detailed information about the merger and its tax implications well in advance of the transaction. This allows customers to make informed investment decisions and, if they wish, to avoid the tax consequences of the merger.

The complainant was dissatisfied with the lack of communication about the merger of the foreign investment fund held in a securities account at the institution. He explained that fund shares were redeemed and subscribed without any order from him and without prior notice from the institution, resulting in an unforeseen loss in his tax planning.

The institution, in its response, acknowledged that an internal incident had caused the failure to inform the complainant about the fund merger. The institution provided supporting documents showing that it had contacted him to compensate for the tax loss caused by the error.

The Complaints Service concluded that the institution had made a one-off error by failing to fulfil its duty as a depository and distributor of foreign CIS to inform the fund holder of the forthcoming merger. Had it complied with its duty as the fund's depository, the complainant would have had the opportunity to make an informed investment decision in light of the merger. However, the Complaints Service also acknowledged the institution's offer to compensate the complainant for the damage caused.

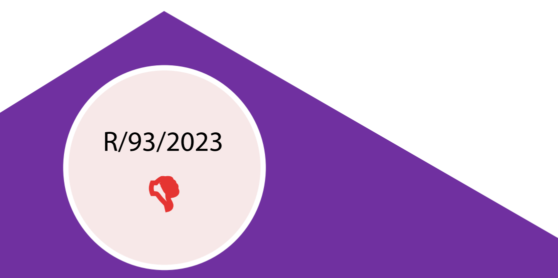
- **Waiver of periodic reporting of investment funds**

The management company – for each of the investment funds it manages – and the investment firms must publish for distribution to shareholders, unitholders, and the general public: a prospectus, a document containing key investor information, an annual report, and a half-yearly report. This ensures that all circumstances which may affect the assessment of the value of the assets and the prospects of the institution, particularly the inherent risks involved and compliance with applicable regulations, are publicly disclosed in a timely manner.[53]

53 Article 17.1 of Law 35/2003, of 4 November, on Collective Investment Schemes.

The annual and half-yearly reports shall be made available to the public at the locations indicated in the prospectus and, where appropriate, in the document containing key investor information. This will always include the address of the website. Unless the unitholder or shareholder explicitly opts out, the annual and half-yearly reports shall be sent to them by electronic means. If they do not provide the necessary data for this or express in writing their preference to receive the reports in physical form, paper versions shall be sent to them, always free of charge. If a quarterly report is voluntarily prepared, it must also be sent to unitholders or shareholders upon request, following the same rules.[54]

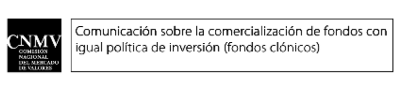
A member or unitholder can waive the receipt of the annual and half-yearly reports by providing a separate, duly signed written document after receiving the first periodic information. This waiver is revocable. Waiving the half-yearly and annual reports will also mean waiving the quarterly reports, if applicable.



The institution provided a document signed by the complainant, in which they waived the receipt of each of the periodic reports (quarterly, half-yearly, and annual).

The Complaints Service found that the institution had engaged in malpractice because the waiver of periodic reports was obtained before the subscription to the investment funds in question, whereas, according to the regulations, the waiver should have been obtained after the complainant received the first periodic report.

➢ Transfer to more favourable classes of the same CIS


CNMV

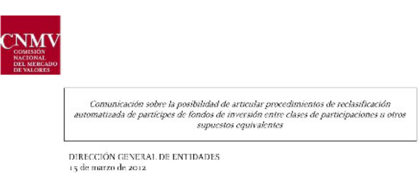
Comunicación sobre la comercialización de fondos con igual política de inversión (fondos clónicos)

On 5 June 2009, the CNMV issued a communication on clone funds or share classes that differ only in their management fees (or custody fees). The communication stated:

> "When an investment is made in the context of portfolio management or investment advice, the institution must select the fund or class that is most advantageous for its client, provided that its objective conditions are suitable for the investor. This requirement arises from the nature of the service provided, as any investment decision or personalised recommendation must be made in the best interests of the investor.
>
> [...]

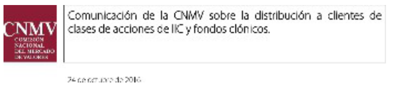
54 Article 18.2 of Law 35/2003, of 4 November, on Collective Investment Schemes.

Outside of portfolio management or investment advice, and even in the absence of a personalised recommendation, the placement of the most advantageous cloned fund for the investor is nevertheless required, provided that: i) the sale is initiated by the institution; or ii) the investor's initiative is of a general nature and it is the institution that offers the sale of the specific fund. It can only be assumed that the initiative comes from the customer when they request the acquisition of the specific fund without prior personal contact with the institution regarding that fund".



On 15 March 2012, the CNMV published a further communication on the possibility of establishing procedures for the automatic reclassification of unitholders of investment funds between different unit classes or in other equivalent scenarios.

In this communication, the CNMV recommended that fund managers implement control procedures to periodically identify investors who qualify for access to unit classes with lower fees than those to which they currently subscribe. If necessary, the fund managers should reclassify these units.



Finally, on 24 October 2016, the CNMV published a new communication on the distribution of share classes of CISs and cloned funds to clients. This communication highlighted *mala praxis* uncovered in the course of supervisory activities, in particular with regard to the distribution of share classes of CISs with the same investment policy but different economic conditions, and of cloned CISs where the receipt of incentives led to actions that were not in the best interests of the client and thus violated the rules of conduct. The abusive practices highlighted in the communication included the following:

– "Firms purchasing shares on behalf of clients with managed portfolios or recommending different share classes without taking into account the specific characteristics of the investment or the client's pre-existing positions in the same CIS. They also failed to ensure that clients were given access to the share class that was most favourable to them according to the terms set out in the CIS prospectuses".

  The obligation to act in the best interests of clients requires institutions to recommend or purchase on behalf of their clients the class that is most advantageous to them, even if the institution does not charge an explicit commission for providing the service, and in compliance with the objective conditions set out in the CIS prospectus.

– "Firms engaged in investment advice or discretionary portfolio management that, for operational reasons, pre-select a single share class for all their clients. This practice does not ensure that clients who fulfil the conditions set out in the CIS prospectuses can gain access to other available classes with better conditions than the preselected class".

  In this regard, it should be noted that there are often share classes with high minimum access thresholds, the distribution of which is not exclusively

restricted to institutional investors according to the CIS prospectuses. As soon as the required minimum amount is reached, these classes can therefore also be offered to retail investors.

It should also be borne in mind that access to certain classes may require separate fee arrangements with the client, as indicated in some prospectuses.[55] In general, access to these classes may be granted if the distributor charges its clients a fee for the provision of an investment service in relation to the relevant CIS, such as a portfolio management fee or an advisory fee. If in doubt, you should confirm this with the management company or the distributor with whom agreements exist.

– "Firms failing to put in place regular procedures to identify when, due to the subsequent performance of positions managed or advised by clients, their investments in CISs are placed in sub-optimal classes".

When providing investment advice, this issue should be considered at least in the following scenarios: where regular recommendations are made that take into account the customer's overall holdings within the institution, where the recommendations involve the sale of specific positions from among those held by the customer within the institution, or where the institution undertakes to monitor the recommended positions on a regular basis.

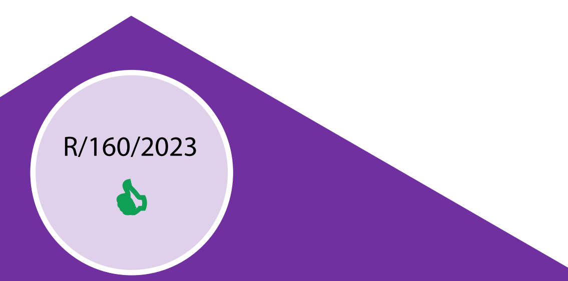
It is not acceptable for a customer who regularly receives recommendations to continue to hold a less beneficial class simply because he has acquired it on his own initiative in the past. The institution's recommendations should include transferring the position to the most cost-effective series.

– "Firms that do not maintain regular procedures to review the share classes available in the various CISs they distribute. If necessary, they should request access to all classes available for distribution in Spain from the CIS management companies or the distributors with whom they have agreements".

The institution providing the investment service to the end client cannot abdicate its responsibility to act in the best interests of the client simply because certain classes are missing from a distributor's offering. They may not use this as a justification for not recommending or purchasing a particular class that is generally available to investors. If the entity providing the investment service to the end client is unable to convince the distributor with which it collaborates to include in its offer a particular class of shares that can be distributed in Spain, it must seek another channel to facilitate this possibility.

The Complaints Service takes into account the aforementioned communications when resolving complaints and considers that the unitholder should be informed in advance of how the fund manager will proceed in the event of a reclassification of the investment.

55 In English, it is often stated that a certain class is restricted to "distributors and their clients who have a separate fee arrangement/agreement between them".



The complainant was dissatisfied with the transfer of her units from one sub-fund of a foreign CIS to another sub-fund of the same CIS that was created later.

The Complaints Service found that the transfer took place because the institution, in compliance with the CNMV best practice guidelines, determined that the complainant held units in a less favourable class with higher fees than the one she was eligible for. Consequently, the institution transferred her units to the more advantageous class with lower fees.

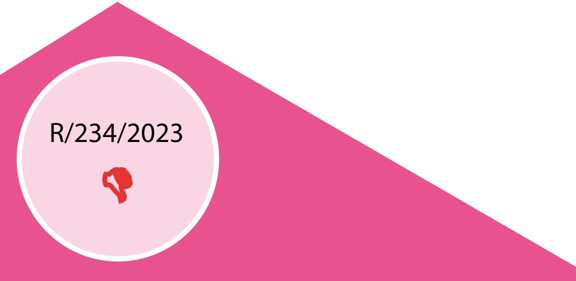
The Complaints Service also noted that the fund unitholder should be informed about how the institution will act in such situations and requested documentary evidence from the institution to support this. As the institution was able to demonstrate that it had informed the complainant of the transaction and that she ultimately benefited from the reduction in commission costs, the Complaints Service concluded that the institution had acted appropriately in making the transfer.

The complainant made contributions into the standard class of an investment fund on 12 June 2013, 12 February 2014, and 31 January 2017. On 2 February 2017, the institution transferred her positions to the more advantageous plus class of the same fund and the complainant was dissatisfied with this transfer.

The Complaints Service found that the institution had acted correctly in carrying out this transaction, as the complainant had been duly informed in the last subscription order. The subscription order dated 31 January 2017 stated that, once the transaction was settled and if the investment in the fund allowed, the entire investment would be transferred to the most beneficial class of the fund available to the complainant.

➢ Notification of the merger of a CIS to the online mailbox of the deceased holder

When a fund unitholder dies and the institution becomes aware of this fact, it should immediately and automatically put in place alternative mechanisms to ensure that the deceased's heirs have access to the relevant information about the fund. This will enable them to make the necessary investment decisions.



The complainant claimed not to have known about the merger of an investment fund that took place while his father's will was being processed. The institution countered that the notification of the merger had been deposited in the deceased's online mailbox, as agreed with him.

After the Complaints Service asked for clarification, the institution explained that it learned of the death on 7 March 2022 and that this was when the certificate of positions was issued on the date of death. The deceased's multi-channel banking contract was then terminated on 18 May 2022. The institution confirmed that there was no evidence of access to the deceased's online banking from the time it became aware of the death until the multi-channel contract was cancelled. As communications from investment funds are sent only to the unitholders, the information was placed in the deceased's online mailbox on 29 April 2022. At that time, the complainant was not listed as a unitholder, as the change of ownership occurred on 20 October 2022.

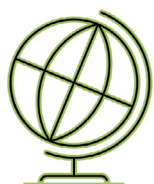
The Complaints Service confirmed that the institution had provided the deceased with a detailed notification of the merger of the investment fund via the online mailbox on 29 April 2022. However, since the institution had reliable knowledge from 7 March 2022 that the unitholder was deceased, the provision of the communication on 29 April 2022 was ineffective as it prevented the heirs from accessing the information.

Although the multi-channel agreement was in force until 18 May 2022, this communication channel was rendered useless by the unitholder's death, as the access credentials are personal and non-transferable. In fact, the institution acknowledged that there had been no access to the mailbox since 7 March 2022, the date on which the heirs requested a statement of the deceased's holdings.

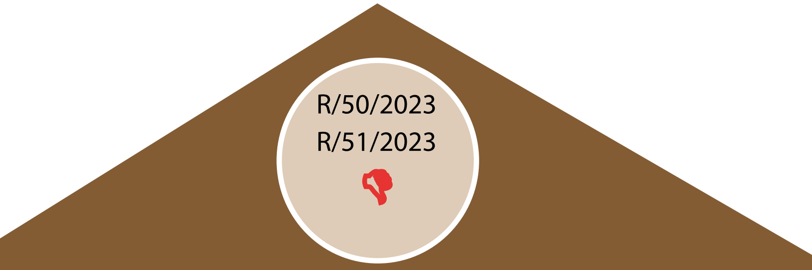
The Complaints Service found that the institution should have switched to an alternative communication channel after the notification of death by the heirs to ensure that the heirs could access important communications from the fund.

A.3.5 Orders

➤ **Delay in the execution of a sell order following a reverse split of foreign shares**



The regulations stipulate that investment firms must inform their clients about the safekeeping of their financial instruments or funds. Where financial instruments of the client or potential client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.[56]



The complainants complained about a delay in the execution of an order to sell foreign shares that had undergone a reverse split on 27 December 2022. On the same day, trading in the new shares commenced on the Nasdaq Global Market.

The institution acknowledged that it had received the orders to sell the newly issued shares resulting from the reverse split, but stated that it was unable to process them because the custodian lacked the necessary information to trade the new shares. However, on the following day, 29 December 2022, the institution received the file from the international custodian containing the necessary information and position to trade the new securities. The institution then contacted the complainants to execute the sell order.

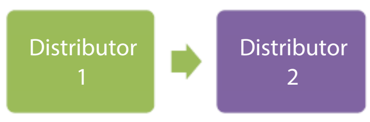
The institution referred to the specific terms of the service agreement, which allowed the registration of securities in global or omnibus accounts when operating in foreign markets and this practice was common for clients of the same institution. The institution attributed the delay to the international sub-custodian not having the ISIN for the new shares after the reverse stock split, which prevented the processing and execution of the sell orders and thus delayed their execution.

The Complaints Service noted that the provision of the order reception and transmission service suffered from a deficiency attributable to the institution in question, as the complainants had contracted the service with them. This did not preclude the institution from holding the sub-custodian responsible

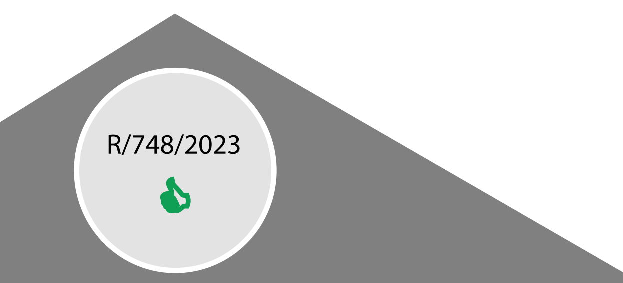
56 Article 49.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

for any deficiencies in the service they provided. Otherwise, making the sub-custodian solely responsible would leave the institution's clients unprotected, as they are clients of the institution, not the sub-custodian. Therefore, it was concluded that the institution engaged in malpractice by failing to fulfil its duty as an investment service provider to handle the sale orders for the shares until 29 December.

➢ Delay in the change of distributor of a CIS



Unlike the transfer of CIS units or shares, for which there are regulated deadlines,[57] there is no specific maximum period for changing the distributor of a CIS. However, the institutions involved must act diligently in the best interests of their clients. This means that they must not delay the process and must keep the client informed of any problems, incidents, deficiencies, delays, etc. They must act even more diligently if the client has requested information about the process.



The complainant reported a delay in a distributor switching operation, which he attributed to the source distributor. On 1 September 2022, he applied to the target distributor to change the distributor of his shares in a Luxembourg SICAV (open-ended collective investment company). Between 27 September and 2 November 2022, he sent at least three emails to his manager at the source distributor, enquiring about the status of the transaction. On 5 October 2022, he lodged a complaint with the source distributor's CSD. The change of distributor eventually took place on 21 November 2022.

The source distributor explained that it had been in contact with the destination distributor and was waiting for confirmation from the international manager. The target distributor indicated that the international manager claimed not to have received the initial request and had reiterated it.

57 Article 28 of Law 35/2003, of 4 November, on Collective Investment Schemes.

Although the source distributor attributed the problem to the international manager not receiving the first request from the target distributor, the Complaints Service pointed out that the source distributor failed to prove that it had informed the complainant of this through the CSD or the personal manager, nor had it taken the appropriate steps. The only evidence provided was a communication to the target distributor, sent almost a month and a half after the customer had complained to the CSD. The source distributor had engaged in malpractice by not promptly contacting the target distributor to process the customer's request and by excessively delaying the resolution of the request to change distributors without providing the customer with information about the situation.

➢ Subscription to an investment fund without signing the order

The process of subscribing to, redeeming, or transferring CIS shares/units must be documented with an order that verifies the unitholder's intention to carry out the desired action.

The institution processed an order to subscribe to shares in an investment fund, although it acknowledged that the complainant did not sign the order because she did not want to use the pen on the digitisation tablet in the office due to the COVID-19 pandemic and refused to sign using the electronic signature system via the remote banking service (app/online banking) where it was available to her. This was despite the fact that she had already used this signature system when subscribing to another investment fund. In view of the relationship of trust with the complainant, the branch staff carried out the subscription on the basis of her verbal agreement that she would sign the required documents later. However, despite repeated requests from the institution, she did not sign them.

The Complaints Service found that the institution had acted incorrectly and that the subscription to the CIS had not been properly carried out, as the signing of the order is required before its execution – a requirement that was not met in this case. Although the institution considered this a mere formality, the operation included warnings and declarations listed in the order, as well as the mandate contained in the order itself, so the prior signature was essential.

➢ Blocking of securities following a limit order preventing the triggering of a previous stop loss order

The Spanish regulated equity market operates on the electronic trading platform Sistema de Interconexión Bursátil Español (SIBE), which guarantees the interconnection of the four Spanish stock exchanges, which operate as a single market.

SIBE allows three types of share orders:

– **Limit**: a maximum price is established for the purchase and a minimum for the sale. If it is for purchase, it would only be executed at a price equal to or lower than that set and if it is for sale, at a price equal to or higher.

  A limit order is filled, in whole or in part, immediately if a match is found at that price or better. If there is no counterparty or the one that exists does not provide sufficient volume, the order – or the remaining part of it – remains on the order book, awaiting counterparty.

– **Market**: with market orders, no price limit is specified, so they are traded at the best price offered by the counterparty at the time the order is entered.

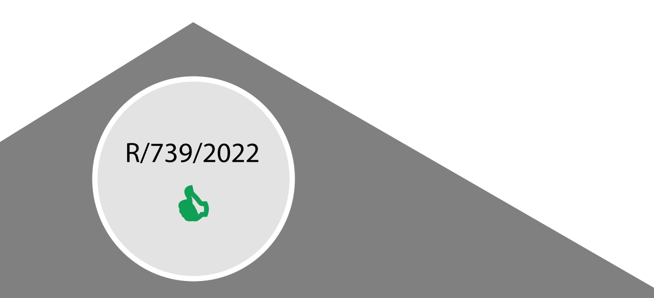
  If the order cannot be fully executed against the counterparty order, the remaining tranche will still be executed at the next purchase or sale prices offered, as many times as necessary until the order has been fully completed.

– **At-best**: at-best orders are orders that are entered without a price. The trade is made at the best counterparty price at the time they are entered.

  If the at-best price does not provide sufficient volume to cover the entire order, the portion that is not covered will be limited to that price (it cannot be crossed to another, more unfavourable, price).

These are other types of order, such as contingent orders, which cannot be entered directly into the market, since they are not provided for in the SIBE platform. Their acceptance by the entities will depend on the commercial policy of each entity. A contingent order is an order to buy or sell shares which is delivered to the market only if the established price condition is met. They are orders that do not involve entering an order into the market immediately. The quoted price of the security must reach the condition established for the order to be triggered (trigger price) and be executed on the market according to the type of order that the client has selected (market, limit or at-best).

In particular, the stop loss order is a type of conditional order that launches a sell order to the market of a certain asset if its price falls below the set limit in order to reduce any losses that may occur.



The complainant reported the non-execution of a stop-loss sell order. On 28 June 2022 at 19:14, he placed a stop-loss sell order for 30,000 shares with a minimum sell price of €2.743 and an execution deadline of 5 July. Later on the same day at 19:21, he placed a limit sell order for 30,000 shares at a minimum price of €2.86, valid until 8 July.

The first order was a stop-loss order, i.e. as soon as the trigger condition (€2.743) was met, the sell order would be entered into the trading system.

The second order was a limit order with an execution price of €2.86, which served as the minimum price for the sale. As an ordinary order under the SIBE, this order was automatically entered into the market, resulting in the 30,000 shares to which it related being withheld.

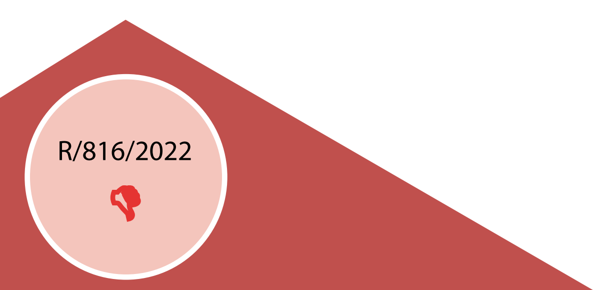
As the shares were blocked by the second limit order, the available balance in the complainant's securities account was less than 30,000 shares. Consequently, the first order could not be executed when the price condition was met as the second order had already been placed.

The Complaints Service found that the institution had acted correctly by blocking the shares covered by the second sell order since, unlike the stop-loss order, the second order was actually released at the time it was placed on the market, resulting in the immediate blocking of the shares covered by it.

➢ Blocking of the securities account before the deadline for providing documents

In general, institutions must have internal procedures in place to ensure that the documents they hold on the identity, tax residence, employment or business activities of their clients, etc. are up to date and comply with the applicable regulations.

If it is necessary to update or review the documents kept in their records, institutions must inform their customers in a personalised manner which documents are required and warn them of the consequences of not providing the requested documentation. However, the regulations do not require that such notices be sent by registered mail or return receipt requested. Therefore, it is sufficient to send the notice by regular mail or any other method agreed upon by the parties to fulfil the legal requirements.



The complainant reported that when he attempted to process a share purchase order on the institution's platform, he received a message stating that the transaction was not authorised and that the account was blocked. He provided a screenshot of the computer screen showing this message dated 27 July 2021. After this warning, he tried to place the order by phone. After completing all the necessary steps, the representative informed him that the account and the transaction were blocked. On 29 July 2021, he contacted his branch manager and within 48 hours his account was unblocked. By this time, however, the share price had already risen.

The institution claimed that the account had been blocked because it was under review under anti-money laundering regulations. The institution stated that the customer had been informed of the need to provide certain updated information and documents and there was no record of any problems in submitting this request.

The institution provided a letter dated 27 July 2021, addressed to the customer and sent to his home, which was consistent with the information provided in the complaint. The letter requested: i) a document proving his identity (identity card, passport and also NIE if he had one); ii) proof of employment (e.g. social security certificate, proof of payment of social security contributions or professional association membership card); and iii) proof of income (e.g. VAT return, income tax deduction for the last quarter or income tax return for the previous year).

The documents had to be sent to an email address or handed in at the branch as soon as possible, but in any case by 26 August 2021. Should the customer fail to complete the process, the institution would restrict operations from 5 October 2021 in accordance with money laundering regulations. However, once the documents were updated, the account would resume normal operations.

The Complaints Service concluded that the institution had engaged in malpractice by restricting the operation of the securities account in violation of the communication sent to the customer. The communication did not authorise the institution to block the securities account in July 2021, as the deadline for the customer to submit the documents ended on 26 August 2021 and the date for the restriction of account operations was 5 October 2021.

➢ Incidents in the processing of transfers of securities

Iberclear's procedures for the execution of securities transfers provide that participating institutions (both the source and target institutions) may execute securities transfers between their respective accounts with Iberclear. The processing of the transfer requires an explicit notification of the transaction by the participating institution(s). In other words, these procedures allow the transfer of securities between Spanish institutions to be initiated at either of the two participating institutions.

In the opinion of the Complaints Service, the same procedure should also be applied to the international transfer of shares from a Spanish institution to a foreign institution or vice versa, regardless of whether the foreign institution is an Iberclear participant. This means that the investor can place the transfer order either with the institution from which the transaction originates or with the institution to which the transaction is addressed.

The complainant stated that he had asked the target institution to transfer his securities and that the latter had delayed the processing of the order.

The target institution provided a report on the customer's positions, issued by the source institution, detailing the portfolio to be transferred – this document served as the request for transfer. The report contained the customer's entire portfolio, consisting of five securities, and was signed by both co-owners (with signature attestation) on 22 August 2018. In addition, the target institution sent an email to the source institution on 25 October 2018 at 12:52 p.m. in which the transfer request was processed.

As a result, the Complaints Service found that the target institution had engaged in malpractice by processing the request with a delay of approximately two months, causing an unjustified delay in the transfer.

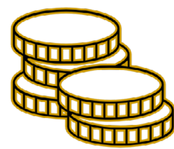
A.3.6 Fees

Institutions providing investment services must comply with certain obligations regarding information on costs and related charges.[58] In order to ensure clients' awareness of all costs and charges to be incurred as well as evaluation of such information and comparison with different financial instruments and investment

58 Article 145 of Royal Decree 813/2023, of 8 November, on the legal framework for investment firms and other entities providing investment services.

services, investment firms should provide clients with clear and comprehensible information on all costs and charges in good time before the provision of services.[59]

➢ **Information in telematic orders on the exchange rate applicable to foreign currencies and their costs**



Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.[60] This information shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.[61]

Even if the institution has provided this information prior to the commencement of the contractual relationship or the amendment of the originally agreed terms, it must still provide comprehensive information on costs and expenses prior to any subsequent purchases or sales of securities denominated in foreign currency.

The complainant did not agree with the execution of the redemption of an investment fund denominated in US dollars (USD), which she had ordered on 26 May 2022. She claimed that the amount received was credited to her current account in euros instead of her current account in USD, at a time when the exchange rate between the two currencies was not favourable to her.

The euro account was listed as a debit/credit account on the redemption order she signed, which contradicted her statement that she wanted to deposit the money into the USD account.

59 Recital 78 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

60 Article 50.3 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

61 Article 46.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

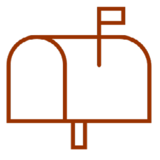
In addition, the institution provided the customer with a communication that was sent via the Internet approximately 16 days prior to her order through online banking, as provided for in her remote banking agreement. The communication informed her that, due to a technological and operational integration process, investment fund and securities contracts could only have one associated current account and that the euro current account would remain linked to her contract. As a result, all transactions that the customer would carry out from 20 May 2022, whether in euros or in foreign currencies, would be posted to the associated euro account. However, after the date of the technological and operational integration, the complainant could replace this account with another account, either in euros or in foreign currency, by contacting her branch.

The Complaints Service concluded that the redemption of the CIS had been carried out correctly and in accordance with the parameters indicated in the order itself and that the complainant had been informed in advance of the operational limitation of the dollar account.

However, the Complaints Service also found that the institution should indicate or estimate the specific costs of the transaction prior to its execution. The respondent institution pointed out that the applicable exchange rate was set by CECA at the time of settlement and was therefore not known at the time of the order, as investment fund orders are not settled until the following day.

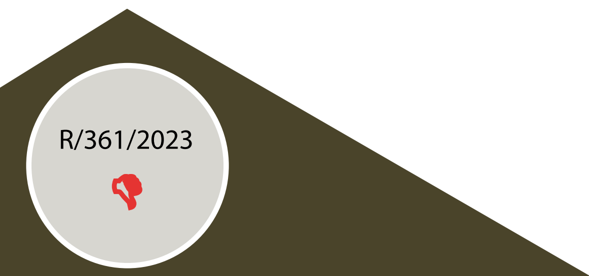
The Complaints Service considered that the institution should have provided an estimate of the costs and expenses of the transaction, including a provisional exchange rate (e.g. on the same day), before executing the redemption transaction. This would have clarified the cash credit account and its final currency to the complainant.

➢ **Postage costs for communications sent by the institution**



Investment firms providing investment services must provide their clients or potential clients with all information required by securities market legislation and its implementing regulations in electronic form, i.e. in a durable medium other than paper. However, if a client or potential client is a retail client who has requested to receive the information on paper, such information shall be provided on paper free of charge.[62]

62 Article 200.4 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.



The complainant was dissatisfied with the postage costs plus VAT that the institution charged him in 2022 and 2023 for sending communications by post, as he did not have access to the internet or email and had chosen to communicate by post.

The institution claimed that it had decided to change the fees from 1 January 2021. As the complainant did not have email, it sent him a letter on 2 December 2020 informing him of the costs that would be incurred for using the postal service. On 4 November 2021, the company sent another letter stating that it had decided not to charge these costs in 2021 and asked the customer to register on the digital platform. Otherwise, these costs would be passed on to the customer from 1 January 2022.

The Complaints Service stated that institutions must provide their customers with information either in paper form or electronically. Passing on the costs of sending information by post to customers who have not opted for an electronic communication channel (email, website, app, etc.) represents an additional cost that should be borne by the institution, as it has to fulfil the information obligation. If we were to accept the institution's approach, this would lead to an undesirable situation in which the customer would have to choose between paying to receive information or remaining uninformed.

The Complaints Service concluded that the institution had engaged in malpractice by charging the customer for postage costs from 1 January 2022. This was because the customer had no alternative means of communication and had voluntarily opted for postage.

- **Application of stock exchange fees to a single order with multiple executions**

For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following: i) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and ii) all costs and associated charges associated with the manufacturing and managing of the financial instruments.[63]

63 Article 50.2 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Persons or institutions providing investment services and activities, whether they execute client orders independently or in conjunction with another service, must take all reasonable steps to obtain the best possible result for their clients' transactions. This includes taking into account factors such as price, cost, speed and likelihood of execution and settlement, size, type of transaction and other relevant elements.[64]

Therefore, the institution must not only demonstrate that it has correctly informed the customer of all related costs and expenses, but also justify that it has taken the necessary measures to ensure compliance with the principle of best execution in order to minimise costs. This justification must be provided at the request of the Complaints Service.

The complainant placed an order to buy one million shares at a limited price with an estimated commission and costs of approximately €14.33 (€8 institutional commission, €6.22 stock exchange fee and €0.11 Iberclear fee).

This single buy order was executed in 13,241 transactions, resulting in costs of €8 for the institution's commission and €1,507.90 in fees. The complainant argued that he had incurred additional cost of €1,501.57 compared to the costs stated on the website. He later found out that the purchase had been split into more than 13,000 transactions, with exchange fees being charged for each individual transaction.

The institution was required to take reasonable steps to obtain the best possible result for the customer, taking into account factors such as price, cost, speed and likelihood of execution and settlement, volume, the nature of the transaction and other relevant elements. In addition, the institution published its best execution policy on its website, setting out the factors that determine the optimal result when executing orders.

The Complaints Service specifically requested information from the institution to determine whether it had taken the necessary steps to obtain a less costly outcome under the best execution principle. However, the institution simply replied that the contract had been executed at the best available price on BME at that time.

64 Article 218.1.a) of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

This response did not justify compliance with the best or optimal execution principle, regardless of market characteristics at that point in time, as the institution was obliged to execute the client's order in the most favourable way (e.g. by merging executions to drastically reduce settlement fees) or to warn the client that market conditions at the time could lead to higher costs than those initially communicated to the client (€14.33).

It was also unacceptable for the institution to refer the customer to BME to claim the execution costs himself, as he did not have the legal standing to do so. This responsibility lay with the institution in its capacity as a member of the stock exchange.

The Complaints Service concluded that there was malpractice, as it was not proven that the institution had executed the customer's purchase transaction in accordance with the optimal or best execution obligation.

➢ Modification of initially agreed fees

Entities must inform clients of any change to the rates of fees and expenses applicable to the established contractual relationship. In particular, specific rules apply to changes in fees for services which require the use of a standard contract, within the general scope of said contracts, as set out below.

In the event that fees are adjusted upwards, the entity must inform its clients and grant them a minimum period of one month in which to modify or cancel their contractual relationship. The new fees will not be applied during this period. In relation to the latter, it should be clarified that the former rates will continue to be charged, unless the entity indicates otherwise.

In the event of a downward change, the client will also be informed, without prejudice to its immediate application.[65] Although entities are not obliged to send their clients the corresponding information by certified post with acknowledgement of receipt – in other words, they are not obliged to provide proof of delivery – the Complaints Service does consider that they have an obligation to prove that the information has been dispatched, which can be done with a copy of the personal and separate communication sent to the client at a valid notification address.

65 Rule Seven, section 1 e), of CNMV Circular 7/2011, of 12 December, on fee schedules and the content of standard contracts.

The complainant had a securities account and the contractual documents for this account provided for fees for the management, safekeeping and administration of securities. The complainant had deposited bonds in this account. Although the institution initially charged him the agreed fee, it later refunded the amount. The complainant stated that he was charged the full fee from 31 December 2021. After discussing this with his branch, he was informed that he would no longer receive a fee refund.

The institution argued that the charges were correct in accordance with the contract signed by both parties and attributed the rebates to commercial policy decisions, stating that granting them was the prerogative of the branches. It added that the refunds were applied intermittently, sometimes months after the charges, so they could not be considered a binding commitment by the institution.

The Complaints Service concluded that there had been some kind of agreement between the customer and the institution to apply special conditions, charging a custody fee of 20% of the contractually stipulated fee. This was evident from the amounts refunded and the account statements, which specified that the fee was 20% of the contractually stipulated custody fee.

The Complaints Service indicated that this was not merely a simple rebate or exemption from the fee as a matter of commercial policy, but rather a documented exemption agreement, as the fee applied to the customer was clearly reflected in the custody fee statements sent to him.

For the institution to revert to charging the fee set out in its tariffs without applying any rebate, it should have informed the customer that the agreed special conditions would cease to be effective as of a certain date. The institution should have given the customer a minimum period of 30 days to negotiate these fees or, if necessary, to terminate the contractual relationship with the institution. However, there was no evidence that the institution had informed the customer that from a certain date it would no longer charge the reduced fee but the fee stipulated in the contract.

Therefore, the institution had engaged in malpractice by applying the custody fees listed in its tariffs without informing the customer in advance that the special conditions, which had presumably been agreed by both parties, would no longer apply. This conclusion was supported in particular by the information contained in the declarations submitted in the proceedings.

A.3.7 Wills

➢ Notification of death, blocking of securities accounts: effects on accounts in co-ownership

In general, after the death of a person, the opening of the succession process takes place, consisting of a series of stages and through which the deceased's assets pass to the heirs. If the holder of a securities account dies, the heirs or legitimate interested parties must first notify the financial institution, as soon as possible, of his death. The reliable way to do this is by presenting his or her death certificate in the institution.

From that moment on, the securities accounts will be blocked, and not only the accounts in which the deceased appears as the sole owner, but also those that he maintains in co-ownership with another or others. This implies that, from the moment the institution becomes aware of the death, the co-owner of the deceased's account or the person authorised therein may not make acts of disposition of the securities.

However, if the heirs or interested parties do not report the death, the institutions will not be responsible for the dispositions made by the authorised person(s) or co-owners of the securities accounts with a joint or several disposition system. So, to prevent unwanted access to the financial instruments owned by a deceased person, it is important that the institution providing investment services be promptly informed of the event.

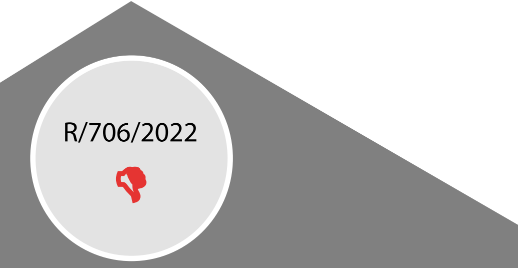
The complainant held shares in an investment fund that she owned jointly with her deceased father, whose heir she was. She complained that she did not have access to the investment fund because the institution blocked access after being notified of his death.

The Complaints Service found that the institution had acted in accordance with good practice by blocking the investment fund units that she owned jointly with her father after notifying the institution of his death and not allowing the complainant access to them. This measure was taken because the complainant had not yet submitted the document on the distribution of the deceased's estate. This document would have specified which investment fund units would become part of the deceased's estate and, conversely, which units would belong to the complainant in her personal capacity.

➢ Time limit for change of ownership

Current regulations on the rules of conduct of the securities markets do not specify any time limit for institutions providing investment services to execute the change of ownership due to acquisition *mortis causa*.

The Complaints Service considers that institutions must swiftly carry out the change of ownership of securities involved in the succession process. The speed of executing testamentary procedures depends on diligent collaboration between the involved parties – the heir or heirs, other legitimate interested parties (such as usufructuaries and legatees), and the institution. The heirs and other interested parties must provide all relevant documentation, and the institution is then required to promptly take all necessary steps to conclude the process once it has received these documents.



The complainant expressed his dissatisfaction with the delay in changing the ownership of units in an investment fund that he had inherited from his parents in their wills.

The institution provided emails showing the steps it had taken to get the fund manager to change the ownership.

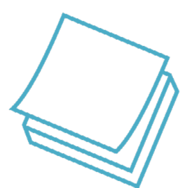
According to the documents provided, the complainant submitted several complaints about the delays in processing to the institution's CSD on 22 December 2021 and 11 May 2022. The CSD replied on 27 January and 9 June 2022, respectively, stating that they were taking the necessary steps to allocate the investment fund to him.

However, the first email showing that the institution had made arrangements for the allocation of the investment fund was dated 26 May 2022, five months after the first complaint.

In addition, the emails showed that the institution had not followed the steps to change the ownership of the fund with due diligence. The fund's distribution platform had to repeatedly request documents from the institution that it already possessed and that were necessary to process the inheritance.

The Complaints Service concluded that the institution was to blame for the delay in implementing the change of ownership of the fund's units.

➢ Opening of accounts to effect change of ownership by inheritance



Once the heirs have submitted the necessary documents to gain access to the securities in the deceased's accounts, the investment service providers take some time to check whether the documents are valid and sufficient. If this is not the case, the institution must promptly and clearly inform the heirs of the documents or issues that need to be completed or corrected. Ideally, this should be done by providing a detailed list of these requirements so that the probate process can be finalised and ownership of the securities or investment fund units can be transferred.

If the documents presented are correct, the institutions will proceed with the final step necessary for the heirs to exercise all the rights associated with the ownership of the inherited securities, in accordance with the provisions of the deed of partition, i.e. the change of ownership.

However, in order to complete the change of ownership of the inherited securities, the beneficiaries must open a securities account as well as an associated cash account, either with the same financial institution where the deceased's securities are held or with another institution. The only requirement for this account is that the account holder must be the same person to whom the securities were allocated. Account ownership should be shared if the inheritance is held in undivided co-ownership, or individual (in the name of each heir) if the financial instruments are distributed. If the ownership of the target account does not correspond to the person to whom the securities were allocated, it would be correct for the institution to refuse the transfer.

Nevertheless, if the inherited assets are investment fund units, the heirs are not required to open a securities account with the institution, as this type of financial instrument is generally not eligible for deposit. Furthermore, there is no obligation to open a current account associated with the fund.

However, a securities account – and an associated cash account – would be required if the inherited assets are not investment fund units but units in an investment company (another type of CIS). Although it is not compulsory, as indicated above, to open a securities account to dispose of units in an investment fund, most institutions, as part of their banking operations, use standard form contracts or investment fund contracts to manage these assets. They also use associated cash accounts to debit or credit cash movements linked to the investment fund, a practice considered correct. In these cases, the institution is responsible for providing the heir with clear and precise information on the procedures to follow to achieve the intended purpose, which in this case is the change of ownership of the units due to inheritance.

In any case, if institutions require the heirs to open a current account, securities account, or any other type of account associated with the investment fund, provided these accounts are exclusively linked to the operation of said fund, the criterion of the Complaints Service is that the institution should not charge any maintenance fees for these accounts.

Investment fund units acquired *mortis causa* are usually held in the same institution because, unlike other types of securities, these units can only be transferred to another institution that distributes the same fund, which is not always possible. In this case, it would involve a change of distributor, which requires that both the source institution (where the deceased's account is held) and the target institution (where the heir wishes to receive the units) distribute the fund in question.

If the inherited assets are units in an investment fund, a simultaneous change of ownership and transfer would therefore not be possible if the investment fund is not distributed by the target institution. In this case, the heir would necessarily have to open a cash and fund account with the source institution in order to formalise the change of ownership and subsequent redemption, if this is the heir's wish.

The same applies if the intention is to transfer the units of the inherited investment fund to another fund. However, if the heir only wishes to redeem the inherited units or transfer them to a fund of another institution, he or she can immediately cancel the newly opened accounts as soon as the change of ownership and the desired transaction have been finalised.

The complainant objected to the delay in the distribution of assets and funds from an inheritance. On 15 September 2022, he sent the inheritance deed and the self-assessments for inheritance and gift tax to the institution. On 21 September 2022, the institution sent him a document to sign in order to initiate the inheritance procedure, which he signed and returned the same day. On 27 September 2022, in response to a request for information, the institution informed the complainant that the processing department was preparing the relevant report.

On 30 September 2022, the complainant submitted a draft of the private distribution document to the institution for review and, after approval, for signature by the parties. The Complaints Service noted that there had been no delay up to this point, as the signed private distribution document was still outstanding.

On 11 October 2022, the institution informed the complainant that the relevant report would be issued within 3–4 days. However, on 17 October 2022, the institution requested a document confirming the signature of the guardian of two legatees, which the complainant submitted on the same day.

After not receiving any information about the will for a month, the complainant filed a complaint with the CSD on 17 November 2022. On 7 December 2022, the institution confirmed the validity of the draft private distribution document and requested the signatures of all interested parties, more than two months after the initial submission.

After sending it on 11 December 2022, the institution requested copies of the signatories' ID cards on 16 December 2022, which the complainant submitted the following day.

On 19 December 2022, the CSD informed the complainant of the contracts that had to be finalised in order to complete the allocation of assets. On the same day, the complainant forwarded the response to his office and filed another complaint with the CSD on 11 January 2023.

The Complaints Service found that there had been a delay and lack of diligence on the part of the institution in processing the will. From 30 September 2022, when the complainant submitted the draft private distribution document to the institution, until the date the inheritance was awarded, there were a number of requests for information and unjustified delays by the institution. It was also found that the institution had not informed the complainant in a timely and adequate manner about the need to open the relevant accounts.

The complainant complained about delays in the processing of an inheritance and submitted a court judgement approving the deed of partition drawn up by the partitioner and allocating him shares from different issuers. Both parties submitted four emails sent by the institution on 12, 15, 18 and 25 November 2021 informing the complainant that he needed to open a securities account in the heir's name at any of the institution's branches or provide a certificate of an account opened at another institution in the heir's name. This requirement was reiterated in the CSD's response of 12 August 2022.

The Complaints Service concluded that the institution had acted correctly as there was no evidence that the complainant had complied with this necessary and repeatedly communicated requirement.

The complainants objected to the fact that the institution required the opening of an account in order to receive the units of an investment fund.

The Complaints Service found that the institutions had acted correctly in requiring the opening of a fund account or contract because the complainants did not have a fund account with another bank or, even if they did, that bank did not offer the inherited fund.

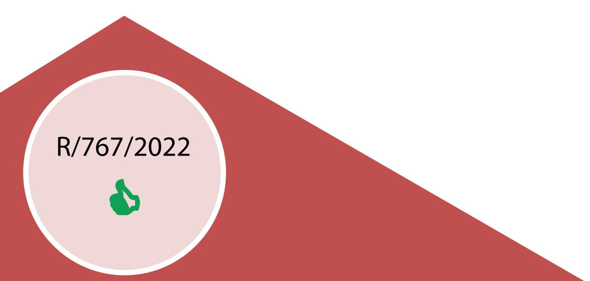
➢ Dissolution of community property *mortis causa*

Community property is the matrimonial regime in which the profits obtained during the marriage are common to the spouses. Therefore, once the marriage has been dissolved as a result of death, the community property will be liquidated in accordance with Article 1396 of the Civil Code: "Once the community property has been dissolved it will be liquidated, starting with an inventory of the corresponding assets and liabilities".

However, between the dissolution and the liquidation of the community property, the assets and liabilities assigned to the community property regime become part of the post-community property estate, which is administered by the surviving spouse and heirs in accordance with Articles 392 et seq. of the Civil Code.

For the liquidation of the post-community property estate, the surviving spouse and the heirs must agree on and distribute the assets and liabilities of the community property. Once liquidated, half of the value of the community property will become the exclusive property of the surviving spouse, and the other half will become part of the deceased's estate. Importantly, the liquidation of the post-community property involves designating which assets and securities will go to the surviving spouse and which will form part of the deceased spouse's estate. It is not necessary for each asset or security within the post-community property to be divided equally; rather, it is sufficient for the value of the assets assigned to each party to be equivalent to 50% of the total value of the estate.

The liquidation of the community property *mortis causa* must be granted by mutual agreement by the surviving spouse and the rest of the heirs and can be formalised in either a public or a private document. As a step prior to changing the ownership of the financial instruments acquired in fee simple due to the liquidation of community property, it is necessary for the surviving spouse to have an individually owned securities account open, either in the same entity or in another, for the adjudicated securities to be deposited in it. It is not possible for the surviving spouse to reuse the same account shared with the deceased spouse.



The complainant opposed the institution's refusal to allow her to dispose of 50% of the securities portfolio that she owned jointly with her deceased husband.

Her husband had died intestate on 22 September 2002. His widowed mother passed away around ten years later, on 18 April 2012, and she (the mother) inherited from the complainant's husband, as he had predeceased his mother.

The complainant and her deceased husband were co-owners of two securities accounts in which they held shares. The complainant wished to dispose of half of these shares, arguing that they had been acquired under the community property regime. However, the institution did not allow her to do so and requested the liquidation of the community property.

The Complaints Service noted that, although there is a presumption that 50% of the securities in the accounts belong to each account holder, this presumption can be rebutted. Therefore, the securities should remain blocked by the institution until the liquidation of the community property is resolved.

The complainant needed to prove to the institution that she was married under the community property regime and that the liquidation of the community property had been carried out, either in a public or private deed. Consequently, the institution was correct in requesting documentation to substantiate this.

Annex 4 Most recurrent and relevant enquiries of 2023

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Annex 4 Most recurrent and relevant enquiries of 2023

A.4.1 Most recurrent subjects of enquiry in 2023

One of the topics that recurs every year and stands out due to its volume relates to the irregular practices of so-called “boiler rooms”, which accounted for 31% of all written enquiries in 2023. Of these enquiries, 37% (210 enquiries) concerned companies that the CNMV had already warned about.

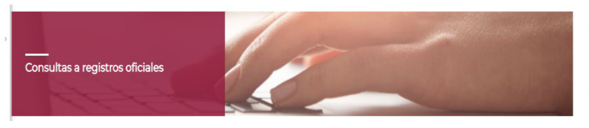
Investors often want to confirm the legitimacy of a company that has made them an unsolicited online investment offer or seek help to recover their invested funds, sometimes presenting the complaint they have filed with the Guardia Civil.

The processing of these enquiries uncovers irregular practices that usually continue for a while before evolving into other forms of fraud. During 2023, the *modus operandi* mainly involved asking the victim for money in advance to pay taxes to foreign organisations or for other reasons, in order to recover their investment and the supposedly gained profits, which would remain blocked until the payment was made to the alleged fraudster. Afterwards, it was impossible for the investor to contact the boiler room again, as it disappeared.

A second category by volume of enquiries related to the **provision of investment services**, accounting for 23% of the total. These enquiries are addressed by providing information on the criteria used to resolve complaints, as most of them involve issues in customer relations with the institutions offering investment services. The enquiry service encourages the individual to file a formal complaint in order to obtain a decision from the CNMV regarding the institution’s conduct in their specific case.

One issue of concern for shareholders of delisted companies is the collection of **custody fees for delisted securities** such as: La Seda de Barcelona, S.A. (in liquidation); warrants and shares of Abengoa, S.A. (in liquidation); shares of Sniace, S.A. (in liquidation), Nissan Motor Ibérica, S.A., or Corporación Empresarial de Materiales de Construcción, S.A. (COEMAC) (in liquidation), among other securities. Investors are seeking solutions to avoid paying custody fees for delisted securities that apparently have no market value.

Other recurring enquiries in this category stem from the process of **acquiring securities *mortis causa***. Heirs often question the requirement imposed by depositories to open a securities account with the same institution as the deceased in order to transfer ownership. They also complain about the fees associated with probate or the change of ownership of inherited securities, seek information on how to determine the deceased’s holdings, and question the inability of the surviving co-owner to manage the securities account.



A third category of enquiries (15% of the total) is resolved using the data available in the **CNMV's official registers.** Investors specifically request information on the register of foreign entities operating in Spain under the freedom to provide services, as well as general data regarding investment firms or credit institutions providing these services and their agents. This category also includes enquiries related to the register of prospectuses, relevant events, significant shareholdings, or insider information on issuers.

It is important to clarify to investors that the information available in the CNMV's official records does not include details about the portfolios of securities owned by customers, such as the number, type, and valuation of assets. Therefore, it is not possible to provide any information on the status of these investments. The responsibility for providing customers with sufficient information about their assets lies with the institutions.

In these cases, it is important to stress that the responsibility for keeping transaction details (and the associated documentation) lies with the institution that processed the order. This does not extend to other institutions that were not involved in the purchase and later received the securities as part of a transfer. Institutions must retain certain information, such as details of transactions carried out, periodic statements, and customers' financial instruments. They are required to keep records of transactions and store the file of order receipts for a minimum of five years from when the orders were received. If the customer no longer has this information, they can request it again from the institution through which they conducted the transaction, or, if applicable, from the entity resulting from any mergers or transformations involving the original institution.

If requests for information from the institution are manifestly excessive, unjustified, or generic, or if special circumstances make it advisable, it will be understood that the institution may refuse to provide such information.

A fourth category, representing 14% of written enquiries, concerns the **information services provided by the CNMV**. These enquiries were addressed using the resources available on the CNMV website, including sections like: "CNMV Communications", "Statistics and Publications", and "Press Releases", among other publicly accessible content.

Within this category, particular attention should be given to enquiries related to the information disseminated in the CNMV's investor alerts. In particular, several warnings were published in 2023 based on information provided by investors in their enquiries about various types of financial fraud:

i) A warning about a financial fraud spread on social media using the image of celebrities and the media.

ii) A warning about fraudulent companies that use the name of the CNMV and registered financial institutions and offer false job offers.

The fifth group of enquiries, which accounts for 12% of written enquiries, concerns **issuers and listed companies.** As in the previous year, there are repeated enquiries and complaints about loans that have been assigned to securitisation funds, corporate transactions or takeover bids. These enquiries often cover aspects such as the procedure for accepting offers, the timeline, the authorised price, or the possibility of a squeeze-out.

This category also includes any documents, suggestion, or complaints that refer to incidents that the investor believes may involve irregularities in connection with the listing of securities, the exercise of voting rights, or the provision of information to shareholders. These documents are brought to the attention of the relevant directorate general, which will take any appropriate action.

The final group of enquiries, which accounts for 5% of the total number of documents received, concerns **management companies, depositories, and collective investment schemes.** These enquiries often focus on the characteristics and conditions of national collective investment schemes, in particular the guaranteed status of certain investment funds.

In recent years, enquiries about foreign collective investment schemes have increased, which seems to indicate more active investment in this type of scheme. These enquiries relate in particular to the liquidation processes of sub-funds, deadlines, the implications of changing distribution channels and the requirements for tax-free transferability.

A.4.2 Most relevant subjects of enquiry in 2023

In addition to these common topics, investors also made enquiries about issues related to market conditions or specific events which took place in 2023. These included:

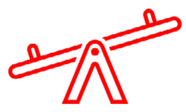
➢ Enquiries about sustainable finance

During 2023, three submissions were received in relation to sustainable finance issues. One, from a professional, on the transparency of the promotion of environmental or social characteristics in pre-contractual information. Specifically, the question of whether it is mandatory to include a minimum percentage of investments promoting environmental or social characteristics in funds considered under Article 8 of Regulation (EU) 2019/2088 of the European Parliament and of the Council, of 27 November 2019, on sustainability-related disclosures in the financial services sector.

The other two enquiries were aimed at understanding how to access information and lists of socially responsible CIS via the CNMV website, in accordance with Articles 8 and 9 of Regulation (EU) 2019/2088, of 27 November 2019, on sustainability-related disclosures in the financial services sector. They also asked how to access prospectuses of management companies and

investment funds that contain pre-contractual terms and conditions and in which financial products are disclosed in accordance with Article 8 or Article 9 of Regulation 2019/2088. In addition, these enquiries related to the requirements of Commission Delegated Regulation (EU) 2022/1288, of 6 April 2022, supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council. This Regulation contains the regulatory technical standards that specify the content and presentation of information related to the "do no significant harm" principle and specify the content, methods and presentation of information on sustainability indicators and negative sustainability impacts. It also specifies the content and presentation of information on the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.

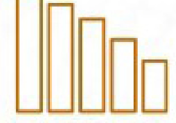
- **CNMV Resolution, of 11 July 2023, on product intervention measures concerning contracts for differences (CFDs) and other leveraged products**



The enquiries received regarding the aforementioned Resolution primarily focused on potential restrictions on CFD trading, whether new CFD accounts could be opened, and how these restrictions might affect the institutions' reporting obligations to their clients, particularly in terms of responding to information requests.

Regarding intervention measures taken on other leveraged financial instruments, enquiries were received about the scope of these measures and the implementation of position closure protection.

- **Investment in Spanish government bonds**



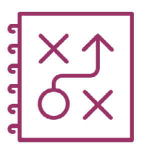
Enquiries were received regarding the fees charged by investment service providers for the subscription, purchase or custody of Spanish government debt securities.

- **Criteria required for an investor to be classified as a professional**

Enquiries were also received regarding the conditions under which retail investors can be treated as professional clients. These enquiries related to the procedure and criteria for assessing compliance with regulatory requirements and the question of what happens if a client subsequently no longer fulfils the requirements for treatment as a professional client.

- **Fraudulent companies that use the name of the CNMV and registered financial institutions and false job offers**

The CNMV detected, through various investor enquiries, the existence of companies fraudulently using the identity and corporate image of the CNMV and other duly registered financial institutions to make false offers to investors.



Specifically, the identity of the institution Eurex Repo GMBH was fraudulently used. Under the name of this German institution, training courses were offered, supposedly endorsed by the CNMV, which, once completed, would guarantee a job at the institution. They charged €190 as course fees for this activity. Other institutions, such as American Century Investment (EU) GMBH, have also been affected by these fraudulent practices.

In response to these activities, the CNMV issued a warning to investors on 8 May 2023.

https://www.cnmv.es/webservices/verdocumento/ver?t=%7b8b9841f4-64cd-419e-921b-444da409db99%7d

➢ Financial fraud spread on social media using the image of celebrities and the media

Enquiries were also made about certain fake adverts promising large profits from stock market investments or cryptocurrencies, using confusing language and misleading promises. These adverts used images of celebrities, actors, singers and even public officials, attributing statements to them that they never made.

The formats also included fake videos simulating the voice of a celebrity or public official to recommend these fraudulent investments, commonly known as "deepfakes". The design and appearance of online media are also manipulated to give false credibility to misinformation about these individuals.

These fake advertisements and web pages eventually link to sites of institutions that are not authorised to provide investment services, where they attempt to capture investors' data and funds.

As a result of these enquiries, an alert about this type of financial fraud disseminated on social media was posted on the CNMV website on 12 December 2023. This alert is available in the "Investors and Financial Education" section of the CNMV website:

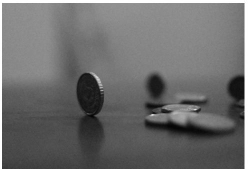
https://www.cnmv.es/webservices/verdocumento/ver?t=%7b09d41cac-c0df-4a7d-ac7f-330b0884908f%7d

➢ Registration of crowdfunding platforms/crowdfunding service providers

Enquiries were received regarding the new regulation in Spain introduced by Law 18/2022, of 28 September, on the creation and growth of companies. This Law adapts national legislation to Regulation (EU) 2020/1503 of the European Parliament and of the Council, of 7 October 2020, on European crowdfunding service providers for business.

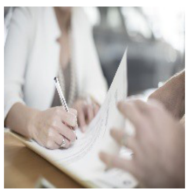
Investors requested confirmation of the CNMV registration of certain crowdfunding platforms.

➢ **Enquiries about cryptocurrency exchanges or trading platforms**



Enquiries were received on issues related to cryptocurrency exchanges or trading platforms, such as those related to cryptocurrency spot trades.

➢ **Enquiries about the takeover bid submitted by Siemens Energy Global GmbH & Co. KG on Siemens Gamesa and on the delisting takeover bid of Cemex LatAm Holdings, S.A.**



Enquiries were received regarding the alleged lack of information provided to investors about the voluntary public takeover bid for Siemens Gamesa by Siemens Energy Global GmbH & Co. KG. The bidder indicated its intention to delist the company's shares from the Barcelona, Bilbao, Madrid, and Valencia stock exchanges following the bid. Enquiries were also received concerning the delisting takeover bid for Cemex LatAm Holdings, S.A.

➢ **Cross-border merger by absorption of Mediaset España Comunicación, S.A. by MFE MediaForEurope N.V.**

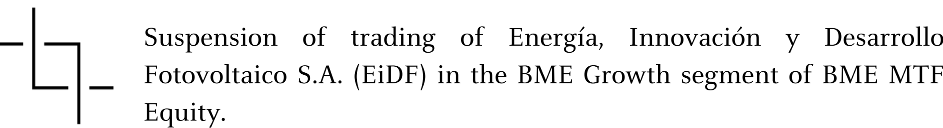
Enquiries and complaints were handled regarding the cross-border merger by absorption of Mediaset España Comunicación, S.A. (the absorbed company) by MFE MediaForEurope N.V. (the absorbing company).

➢ **Change of registered office for a company whose shares are traded on an authorised trading venue in Spain**

Change of registered office for a company whose shares are traded on an authorised trading venue in Spain

Doubts were also addressed regarding the consequences of an issuing company changing its registered office abroad, while its shares are currently admitted to trading on an authorised trading venue in Spain.

➢ **Suspension of trading of Energía, Innovación y Desarrollo Fotovoltaico, S.A. (EiDF) in the BME Growth segment of BME MTF Equity and suspension of trading of Innovative Solutions Ecosystem, S.A. (ISE) from the Stock Exchange Interconnection System**


Suspension of trading of Energía, Innovación y Desarrollo Fotovoltaico S.A. (EiDF) in the BME Growth segment of BME MTF Equity.

Doubts were also received about the suspension of trading of **Innovative Solutions Ecosystem, S.A. (ISE) from the Stock Exchange Interconnection System**