

2nd EAF CGE Meeting

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I would like to start by thanking the General Council of Economists (CGE) for inviting me to give the opening speech of this “2nd Meeting of the Financial Advisory Firms (EAF)”. This is a relatively recent figure in our market, whose regulation has undergone important changes within a short period of time and in which others are expected in the short term, both at national and European level. Therefore, I consider this event to be particularly appropriate.

In my intervention I will comment on the situation of the sector and run through the main regulatory changes, both those in force and those still pending. In any case, since the event includes a presentation on regulatory developments, I will attempt to tackle the matters from the supervisory perspective and focusing on the aspects relating to investor protection.

But before going on to the indicated matters, I would like to highlight two important aspects of investment advice services, which underline their value and contribution towards the smooth functioning of the markets:

- First, from the investor protection point of view. Advice services are those with greatest added value for clients and, in line with this, also with the most regulatory demands. Thus, the suitability assessment requirements conform the most comprehensive regulatory model to date.
- Second, from the point of view of the contribution of the advice to the development of the capital markets. Indeed, advice is an ideal way (together with others such as collective investment) to accompany “savers” as they transform into “investors”. This would be very beneficial, both for investors (who could obtain higher returns in the long term, with duly advised higher-risk investments), and for the economy as a whole, as it would provide greater flows into the capital market (national and European) and with it the existence of alternative financing sources to banks.

1. Situation of the EAF/EAFN sector

The sector is currently formed by 138 firms: 90 EAF (IFs) and 48 entities under the new regime for EAFN (29 entities with legal personality and another 19 “old” EAF of natural persons). I will comment on both types of regime further on.

The total assets advised by the sector as a whole are close to €16 billion, owned by some 11 thousand clients, the great majority retail investors. These figures are very modest when compared with the total size of the advisory market in Spain (widely dominated by credit institutions with over 3.6 million advised clients and €370 billion assets under recurrent advice).

However, the fact that EAF/EAFN are entities dedicated exclusively to advice confers certain peculiarities to their business model, differentiating them from other service providers. In this way, their percentage of assets under independent advice amounts to 71% (this being the service with the least conflicts of interest), far above the relative importance of this service in credit institutions (where this does not reach 7% and is only available to large estates). I consider this situation to be a relative strength which the EAF could allege regarding their current and potential clients.

2. Regulatory amendments already approved

- At national level, the LMVSI published in 2023 and the Royal Decrees for its development included important amendments to the regime for EAF:

- o One type of entity (EAFN) not subject to European regulations (MiFID and the Directive on the solvency of investment firms) and, consequently, without the passport to operate in other European countries, was regulated for the first time at national level. For this, the optional exceptions foreseen in MiFID were used, allowing for the development of these figures subject to certain requirements.

Among the requirements demanded is a limit on the advice by such entities to certain financial instruments, excluding derivatives and money market instruments. Excluding EAFN from the possibility of advising on derivatives (complex and leveraged products) is in line with the lower level of prudential requirements of this figure. However, in respect to the limit on advice regarding MMIs, we believe no supervisory interest should be paid to the advice of these entities on money market instruments given their low risk.

- o The obligation for EAF and EAFN to join the Spanish Investment Guarantee Fund (Fogain), to feature that stated in the Directive in both cases, was also included. This demand was accompanied by a modification of the regime of contributions to Fogain setting an annual fee for EAF and EAFN of only €800. I do believe this obligation is positive for the sector, as belonging to Fogain could improve the trust of investors in them, thus increasing their market quota which is small when compared with other service providers.
- o Lastly, the LMVSI modified the regime of EAF agents equating it to that of IFs, which includes the possibility for agents to directly provide the advisory service. On the other hand, EAFN with legal personality may only designate agents for service promotion and marketing tasks (without their agents being able to directly provide the service to clients).

The commented approach, which would in principle allow EAF agents more operations than EAFN agents, would be in line with the greater prudential

requirements from the former. However, the Royal Decree on IFs also extended the limitation on EAF to provide the service via their agents. We have received queries regarding the application to EAF agents of the restriction added by the Royal Decree as opposed to that envisaged in the LMVSI. We are assessing this issue and expect to inform about the supervisory criteria soon.

In any case, their practical impact is limited since the figure of agents is quite unusual among EAF (only 12 of them have agents) and, furthermore, it should be recalled that the actions of agents are always under the responsibility of the entity represented, which must establish the appropriate controls without the agent being able to provide the advisory service outside the procedures and controls of the entity.

As a conclusion regarding the new EAFN regime, it could be highlighted that EAF with legal personality registered before the LMVSI could choose to continue in the EAF (IF) register or to become EAFN, always considering the advantages and disadvantages of one or the other figure, specifically if the access to the passport and greater operational flexibility for EAF compensates for the greater prudential requirements.

The result was that 90 entities decided to remain as EAF, while only 29 became EAFN. This would seem to indicate that some entities consider the limitation imposed by the Directive, of not advising entities adopting the optional exceptions (EAFN) on derivatives, to be an important restriction. However, according to our information, the truth is that only 6 EAF advise on derivative products and only 23 EAF have requested the European passport, which seems to indicate that other considerations took preference in the decisions, such as the tendency of entities with sufficient solvency to remain as EAF.

- In the European scope, the upcoming application next January of the DORA Regulation (on digital operational resilience of the financial sector), aiming to improve the resilience to risks associated with the digitalisation of the European financial system, stands out. The CNMV recently sent them a detailed questionnaire to assess the sector's readiness for this Regulation and with the objective of providing guidelines enabling their adaptation.

This is a Regulation that is applicable to all financial entity types and sizes (from micro-enterprises to medium and large enterprises), for which reason it is essential that its application is duly proportional.

Having said that, I would like to point out that, regarding advisory entities, the Regulation does not affect EAFN as they are not within its scope of application. Of the 90 entities upon which it is enforceable, all but one are small and non-interconnected IFs, for which reason they may benefit from the simplified regime for risk management. Also, since 92% are micro-enterprises, they need not comply with part of the remaining requirements. In all, even with such proportionality, compliance with DORA will be an important challenge for the EAF given their small size, for which reason I refer to my earlier comments on the criteria of entities when rationally choosing the type of figure (EAF/EAFN).

3. Regulatory amendments being processed

I will briefly comment two projects of standards not yet approved (one European and the other national), that will affect the activity of EAF/EAFN in the medium term:

- The initiative of the European Commission regarding the “Retail Investment Strategy”. Its final content is yet to be specified in the trilogue negotiations between the European Commission, Council and Parliament which are to resume after the recent elections to the European Parliament. In reference to the main changes relating to the advisory service, the requirement to consider an appropriate range of products should be highlighted, this being a restriction to one-off advice on a specific product which could force an entity to change its business model. Furthermore, the obligation to recommend the most cost-efficient products is envisaged.
- Regarding the national scope, the CNMV has submitted for public consultation a Circular project, modifying several pre-existing Circulars, until next 30 June. The project includes changes to the obligations for EAF/EAFN when reporting to the CNMV, for which reason I encourage you take part in the public consultation via your associations. Very briefly, the main changes will be as follows:
 - Regarding accounting, the main development for EAF and EAFN with legal personality is that they will have to provide the CNMV every year a balance sheet and a profit and loss account, together with a description of their supplementary activities and information on the prevention of money laundering (information necessary to comply with the commitments taken on by the CNMV in its agreement with SEPBLAC).
 - In respect of confidential information statements containing information for supervision of compliance with the rules of conduct, the annual submission of certain additional confidential information statements to those reported so far are included for EAF/EAFN. The objective is to improve supervision in this area and to increase its efficiency.

4. Final considerations

As a conclusion, I would like to stress the important role those providing the investment advisory service can play in the development of capital markets, guiding their clients for these to go from being savers to becoming investors, while enabling them to take more solidly based and duly informed decisions. For this, the challenges faced by EAF/EAFN are not only an adequate compliance with the regulation, but also other great challenges such as those deriving from technological development and, in particular, the integration their artificial intelligence tool processes. With regard to artificial intelligence, there is a presentation and a round table at this event which you will surely find interesting. This area is one of growing supervisory interest in order to get to know the applications and risks well. Today I will simply point out that their use can aid advisors in increasing their efficiency in many areas (process automation and interaction with clients), although it is necessary for the risks to be adequately

controlled. The CNMV offers its collaboration to overcome these and other challenges with the aim of increasing investor protection and market development.