CNMV
Comisión Nacional del Mercado de Valores

Attention to complaints and enquiries by investors
2024 Annual Report

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Contents

Index of figures

Index of tables

Abbreviations

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
CSDR	Central Securities Depositories Regulation
CSRD	Corporate Sustainability Reporting Directive
DLT	Distributed Ledger Technology
DORA	Digital Operational Resilience Act
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
EEA	European Economic Area
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
FSAP	Financial Sector Assessment Programme
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
ICAC	Institute of Accounting and Accounts Auditing
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
MiCA	Markets in crypto-assets
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 2024

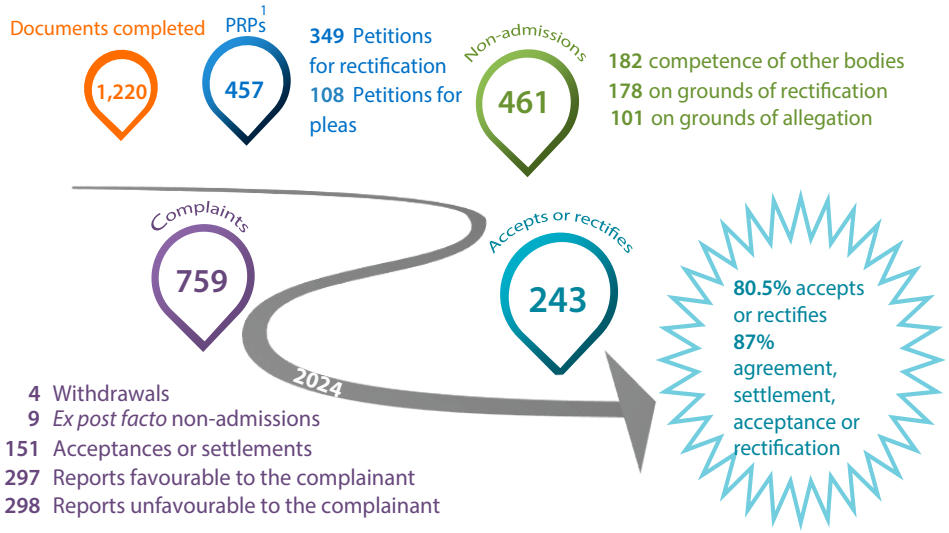
1 Introduction and summary of financial year 2024

The Annual Report on Complaints details the activities of the Investor Relations Department[1] in addressing investor complaints, claims, and enquiries in 2024. Through this Report, the Investor Relations 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, the Report includes visual elements. It consists of two chapters, in addition to this introduction. These chapters cover the activities of the complaints and enquiry areas, along with four annexes that expand and supplement the information for each area.

Chapter 2 offers statistical data on the complaints area, which received 1,034 submissions, mostly from individuals (96.3%) at the CNMV's offices (65.2%) and through electronic means (62.6%). The data on domestic complainants are presented as a percentage of the population registered in 2024 according to the National Statistics Institute (INE), making it easier to compare. This percentage varies from 0% to 0.0041% depending on the autonomous community.

In 2024, the Complaints Service concluded 1,220 cases, compared to 1,350 in 2023. The following diagram illustrates the main processing data in 2024.



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.

1 Whose duties are currently performed by the Investor Protection, Fraud Prevention and Financial Education Department of the CNMV.

Institutions satisfied 87% of complainants through agreements, settlements, or acceptance of criteria, or rectifications following decisions in favour of the complainant. Agreements and settlements accounted for almost 20% of complaints processed. Institutions reported accepting the criteria of the report or correcting the claimant's situation in around 80.5 % of complaints concluded with a favourable report for the claimant. As a result, only 58 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 (18 cases) and Cyprus (18 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 to account for the size of the institution.

Chapter 3 details the handling of investor enquiries and provides the main data on the enquiries received, broken down by communication channel (whether via the website, telephone, or post), as well as the number of enquiries by the most recurrent topics during 2024.

Annex 1 includes a table that 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. Legal persons using investment services follow the complaints procedure outlined in Order ECC/2502/2012, without modifications for European regulations.

Annex 2 covers international cooperation mechanisms. As part of FIN-NET, the network for resolving cross-border financial disputes in the European Economic Area, the Complaints Service participated in the two annual plenary meetings, as in previous years. The Complaints Service is also part of the Network of Financial Services Ombudsman Schemes, which held its 17th annual meeting on 1 October 2024.

Annex 3 contains the most relevant criteria applied in the resolution of complaints in 2024. Each section is divided into two parts. The general part covers the applicable regulations, ESMA guidelines, press releases, question and answer (Q&A) documents, technical guides issued by the CNMV, and the criteria for resolving complaints.

The specific part summarises the complaint related to the issue addressed in the general part.

Visual elements accompany the text to clarify whether the Complaints Service's resolution was favourable or unfavourable and to aid understanding.

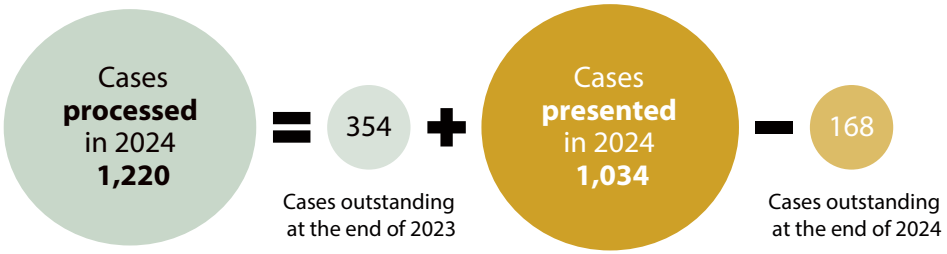
Annex 4 provides a description of the most frequently raised subjects in enquiries, along with a list and brief references to the enquiries considered most important during the 2024 financial year.

2 Complaints

2 Complaints

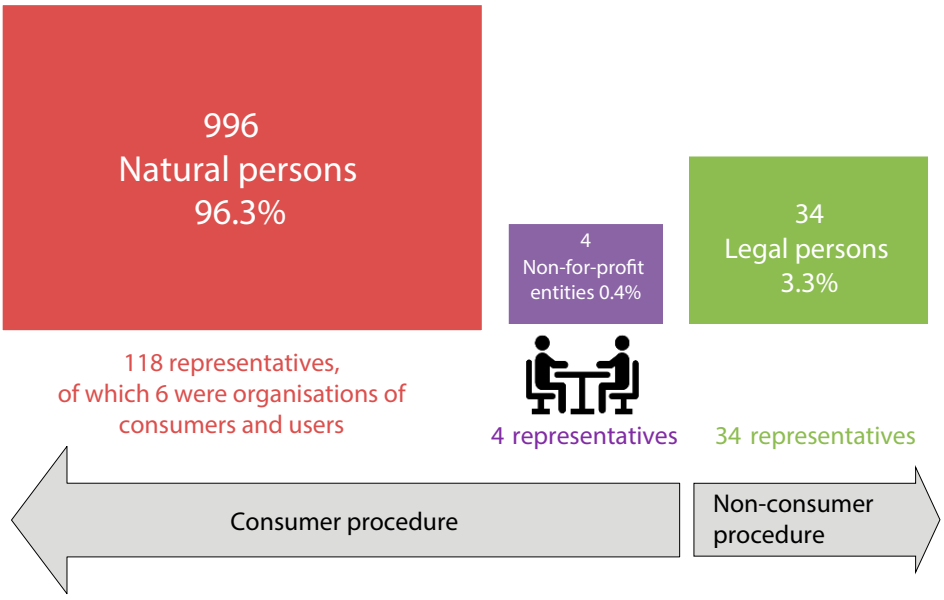
In 2024, the Complaints Service completed 1,220 proceedings. Notably, in 2024, the number of submissions from investors requesting the initiation of a complaint decreased to levels not seen in five years.

By the end of 2024, the number of documents still pending was less than half the number at the end of 2023. Below is the data on the processing of these cases:



2.1 Complainants, place and manner of submission of documents in 2024

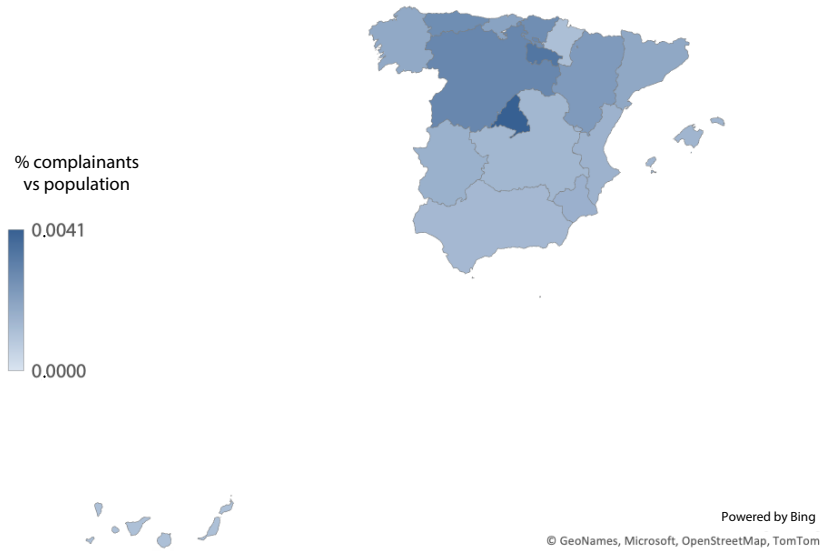
Investors who lodged complaints in 2024 were mainly natural persons, with 11.8% choosing to act through a representative in the procedure. Natural persons and non-profit entities follow a procedure specifically tailored to consumers, harmonised at the European level and detailed in Annex 1. The following figure shows the details of the types of complainants, the involvement of representatives, and the applicable procedure.



Considering the domicile of the 1,019 national complainants, Madrid, La Rioja, and Castilla y León are the Autonomous Communities with the highest number of complainants relative to the registered population. The first map shows the geographical distribution of complainants as a percentage of the registered population in 2024, according to the INE. The second map shows the geographical distribution of complaints in absolute terms.

Complainants / population by Autonomous Communities

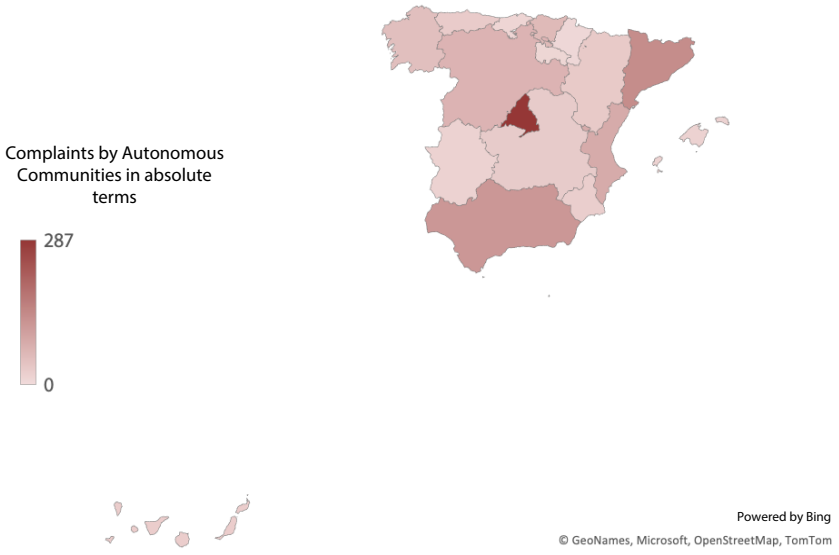
FIGURE 1



Source: CNMV.

Complainants by Autonomous Communities

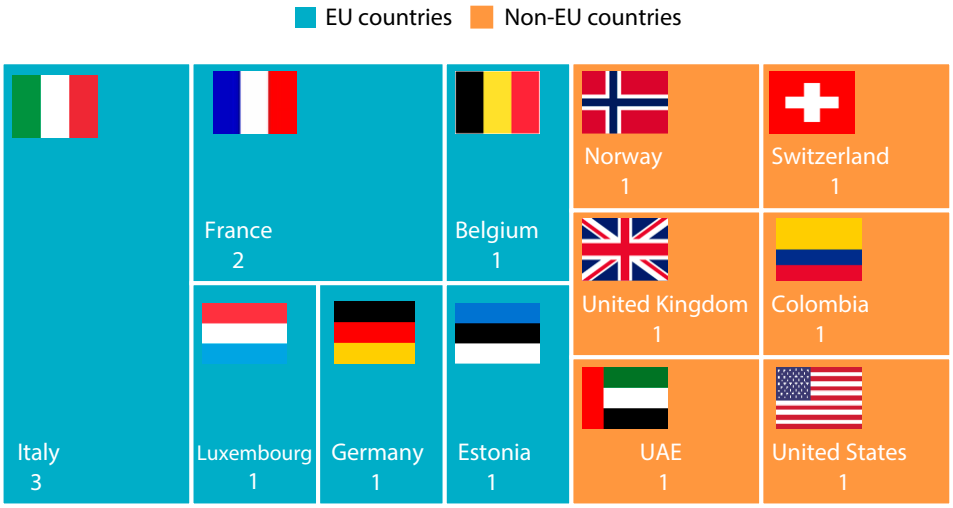
FIGURE 1 BIS



Source: CNMV.

Of the 15 complainants not residing in Spain, 60% were from European Union (EU) countries, while 40% 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



Source: CNMV.

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

- 65.2 % of complaints from the electronic and physical registers of the CNMV's offices.
- 34.6% from the Bank of Spain.
- 0.2% from the Insurance and Pension Funds Directorate-General (DGSFP).

These complaints were referred by:

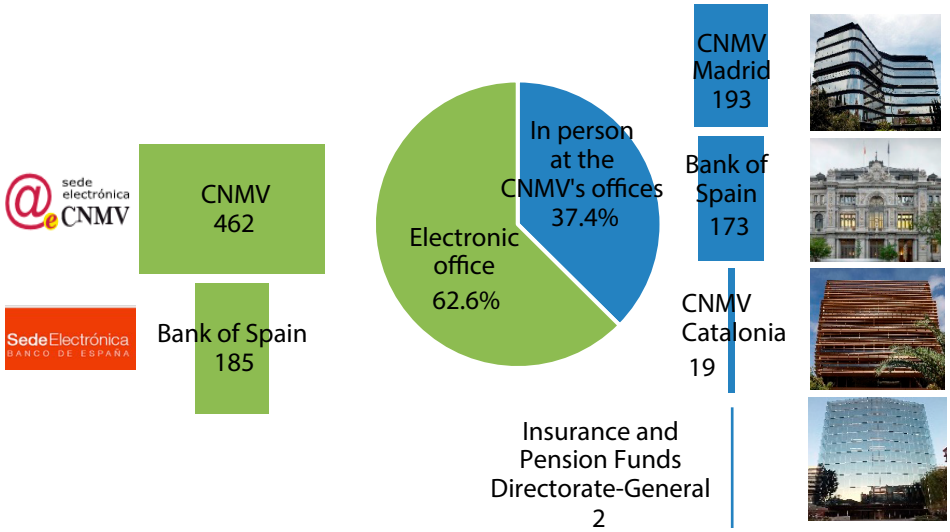
- 0.6% of cases, via a consumer association.
- 0.5% of cases, via a Municipal Consumer Information Office (OMIC) or the Directorate General for Consumer Affairs.
- 0.4% of cases, via another body.
- In the remaining 98.5% of cases, without the intervention of the aforementioned bodies or associations in the three points above.

Investors submitted 62.6 % of the complaints telematically:

- Using a digital certificate or the Cl@ve system at the Bank of Spain, and the CNMV's electronic registry (526 cases).
- By means of a username and password identification system at the CNMV's electronic registry (121 cases).

The remaining 37.4 % were submitted to the physical registers at the CNMV's Madrid and Barcelona offices and to the Bank of Spain, as shown in Figure 3 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 phases: verification, prior review, 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.

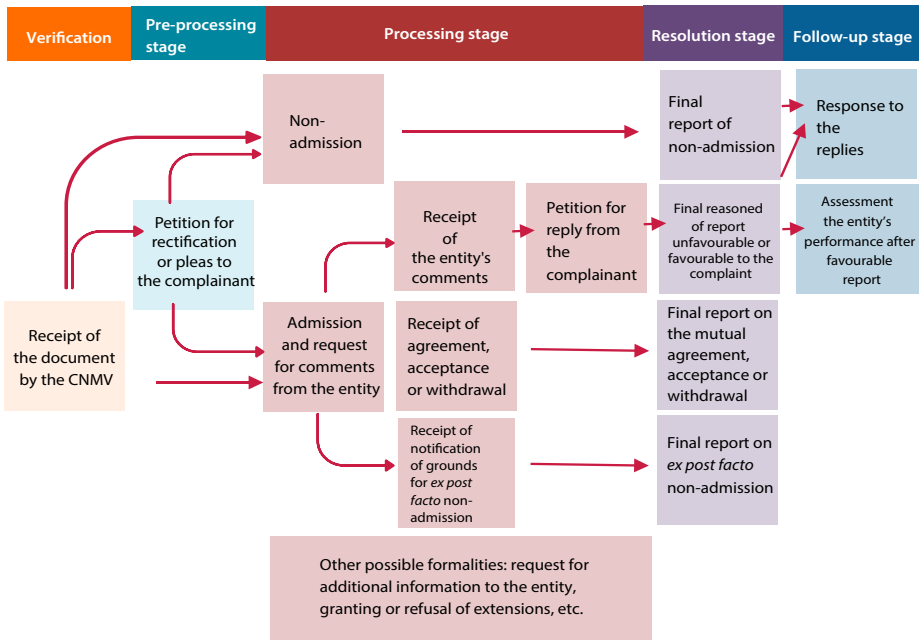
The documents are accepted if the requirements are met from the outset, or if the complainants correctly respond to petitions for rectification or pleas. In these cases, the Complaints Service forwards the complaint to the institution, which must provide its comments within 21 calendar days or 15 business 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 that may be 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.

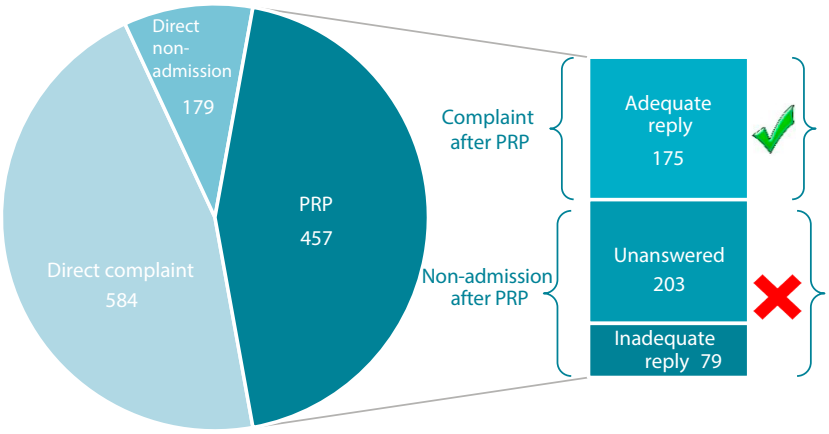
The following diagram summarises the aforementioned procedures.



2.3 Petitions for rectification and pleas

In 2024, it was necessary to ask the complainant to address a ground for non-admission or rectify the complaint in 457 of the complaints that were completed. Of these petitions for rectification or pleas, 38.3% were answered appropriately, and consequently, the complaint was upheld. In contrast, complainants either did not reply or replied insufficiently to 44.4% and 17.3% of these petitions, respectively, which resulted in the complaints being rejected as inadmissible..

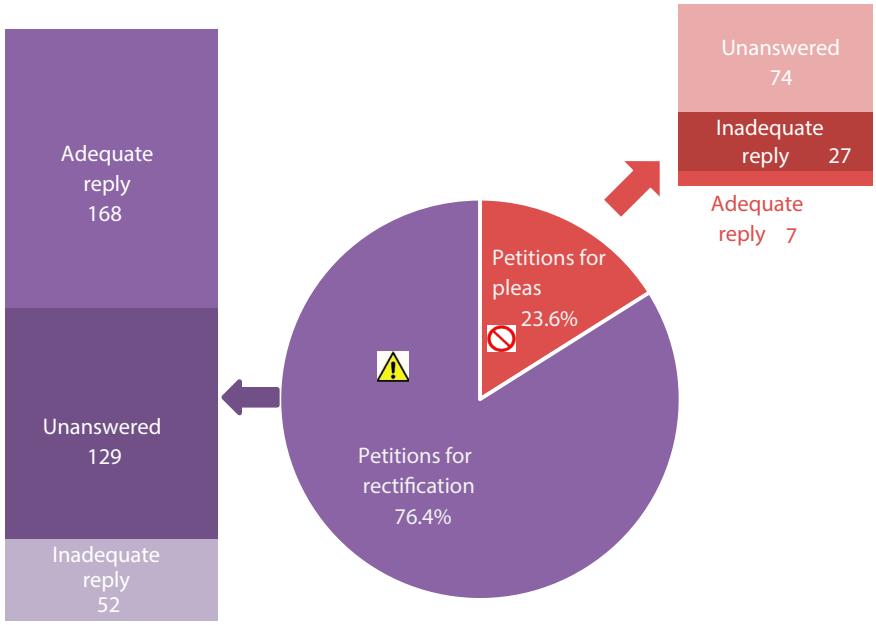
PRPs in complaints concluded in 2024 FIGURE 4



Source: CNMV.

In terms of the type of petition, 76.4% were for rectification, and about half of these were adequately replied to. The remaining 23.6% were petitions for pleas, more than two thirds of which were not answered, and a quarter 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 (127 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 (57 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 (17 cases).

iv) Provision of a response from the institution's CSD, 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 559 grounds for rectification exceed the 349 petitions for rectification submitted. However, in the case of petitions for pleas, multiple

grounds for non-admission are rarely involved. Thus, there were 117 grounds for non-admission reported in the 108 petitions for pleas. For further information on these grounds for rectification and pleas, refer to Annex 1. 1.

Reasons for PRPs TABLE 1

Petitions for rectification	
Deficiencies in CSD accreditation	209
Failure to indicate non-existence of litigation or other procedures	149
Lack of documentation	109
No evidence for representation	45
Undetermined or undated events	27
No complainant identification	14
Omission of the respondent entity	4
Unsigned	2
Total	**559**

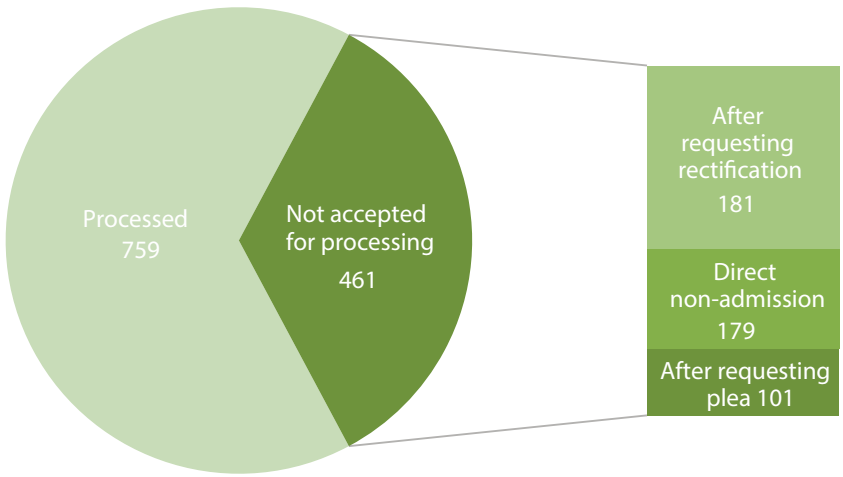
Petitions for pleas	
Deadline has passed	58
Jurisdiction of courts, arbitration or other bodies	32
Need for expert assessment	6
Financial quantification of damages	6
Facts requiring proof in legal proceedings	6
Reiteration	5
Non-retail client	2
No rights affected	1
Lack of standing	1
Total	**117**

Source: CNMV.

2.4 Non-admissions

The documents not admitted for processing totalled 461, marking a decrease of 0.6% 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 2024 FIGURE 6



Source: CNMV.

A total of 44% 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 16.5% 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 39.5% 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 (179 cases) of the document submitted. Occasionally, however, this is only discovered after a petition for rectification or pleas has been made (3 cases).

In line with the above, 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 of Insurance and Pension Funds – DGSFP). 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 the securities markets. 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 free foreign entities providing investment services against which 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 jurisdiction of other bodies, rectification 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 66 reasons for rectification exceed the 46 complainants who replied. Additionally, six complainants requested that their document be closed before the complaint was accepted, as they had reached an agreement on the merits with the entity.

Reasons for non-admission

TABLE 2

Non-admissions due to competence of other bodies

Bank of Spain	101
DGSFP	34
Foreign body	32
Withdrawal	3
Other	12
Total	**182**

Non-admission for reasons of rectification

Unanswered	129
Deficiencies in CSD accreditation Lack	41
Falta de documentación	8
Failure to indicate non-existence of litigation or other procedures	6
Undetermined or undated events No	5
evidence for representation	4
Withdrawal	3
No identification of the complainant	1
Omission of the respondent entity	1
Total	**198**

Non-admissions on grounds of plea

Unanswered	74
Deadline has passed	17
Jurisdiction of courts, arbitration or other bodies	5
Facts requiring proof in legal proceedings	2
Non-retail client	2
Financial quantification of damages	1
Total	**101**

Source: CNMV.

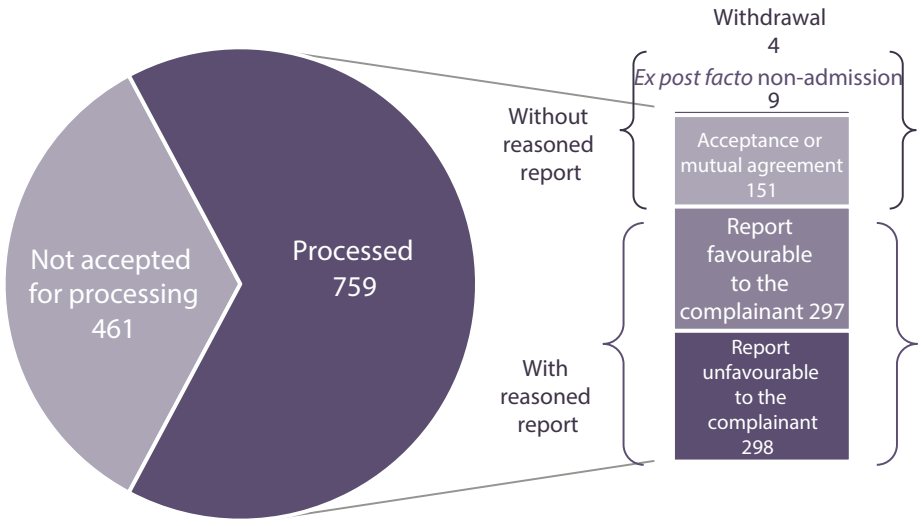
2.5 Complaints

The Complaints Service resolved 759 complaints in 2024 and, as for the reasoned reports, the number of reports favourable and unfavourable to the complainant was practically equal. The figure below shows the types of resolution issued.

Resolution type of complaints concluded in 2024

FIGURE 7

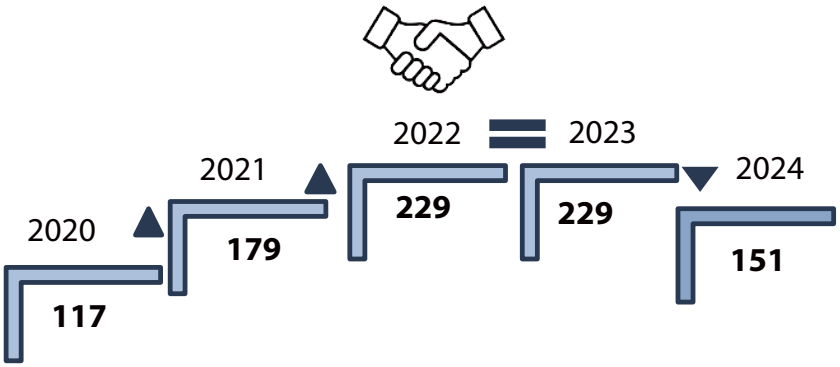
Number of claims and complaints



Source: CNMV.

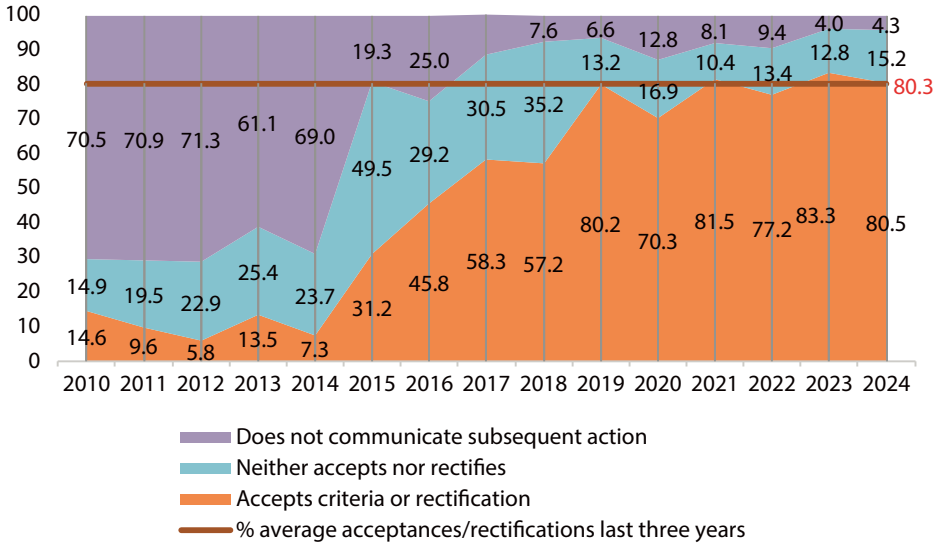
In 151 cases, nearly 20% of the complaints processed, the entities either settled or reached an agreement with the complainant. In these instances, the institutions meet the claimant's demands during the processing of the case, which therefore concludes without a reasoned report on the merits of the case. The figure below illustrates the number of acceptances and mutual agreements reached in recent years.

Number of acceptances or mutual agreements:



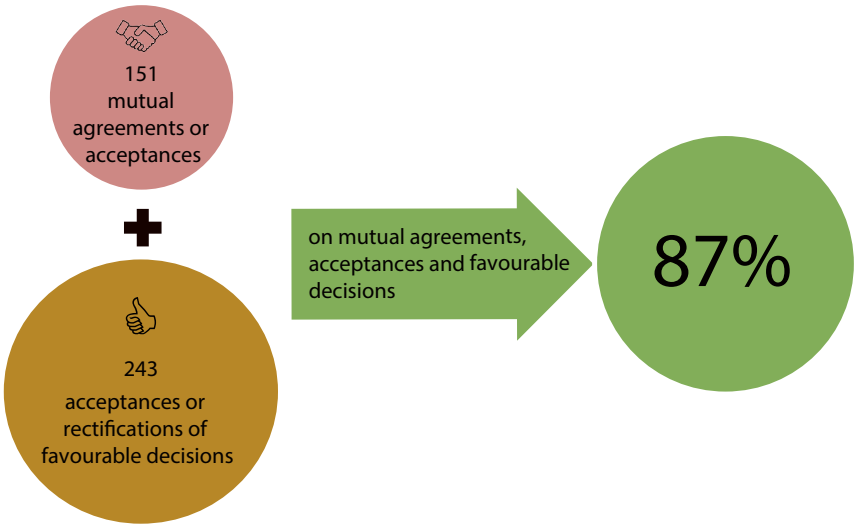
Complainants received a favourable report on their claims in 39.1% of the complaints handled in 2024. It is common for institutions to accept the conclusions of these reports or to rectify the situation. Institutions reported accepting the criteria of the report or correcting the claimant's situation in around 80.5 % of complaints concluded with a report favourable to the complainant. As a result, only 58 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 87% of the complainants through agreements, settlements, acceptance of criteria, or rectifications following favourable decisions for the complainant.



In 39.3 % of the complaints processed, the report was unfavourable to the complainant, as the facts complained of were in accordance with the regulations on transparency and customer protection or good financial practices and standards.

In terms of the causes of complaints, the most common were those related to post-purchase information provided by institutions (20%), fees charged by institutions (19.4%), prior information provided by institutions (15.3%), and incidents in purchase and sale orders (14.2%). Complaints concerning shares or units of collective investment schemes (CIS) made up 59.4% of the total, while those concerning other types of securities accounted for the remaining 40.6%. Table 3 provides a breakdown of the causes of the 759 complaints resolved in 2024. It can be observed that the causes are varied and show a different distribution depending on whether they relate to CIS or other securities. The number of causes is higher than the number of claims resolved, as a single file may have multiple causes of complaint.

Reasons for complaints processed in 2024

TABLE 3

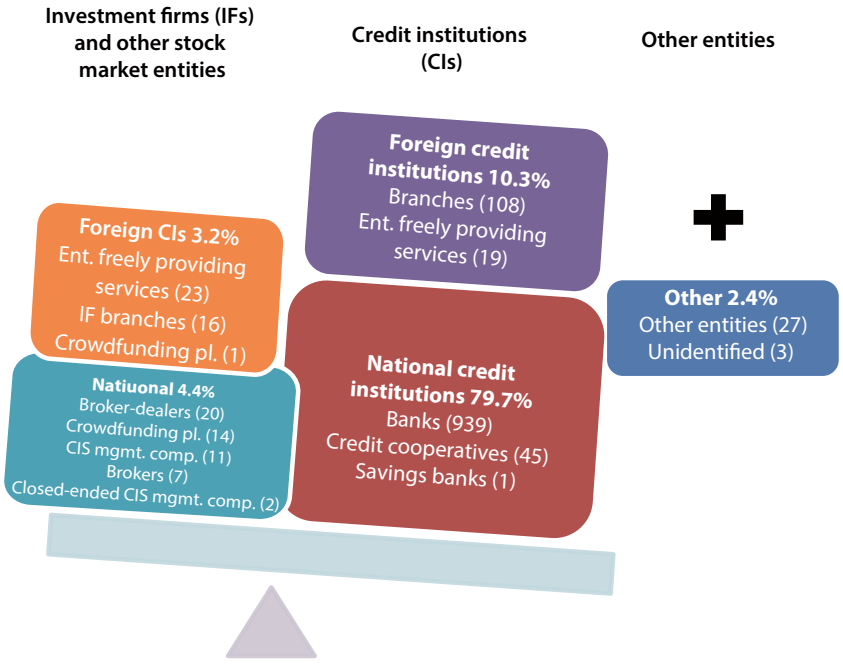
	Securities	CISs	Total
Subsequent information	82	136	218
Fees	114	98	212
Prior information	35	132	167
Purchase/sale orders	91	64	155
Transfers	55	85	140
Appropriateness/suitability	30	96	126
Ownership	23	28	51
CSD operations	13	9	22
Total	**443**	**648**	**1,091**

Source: CNMV. There is very often more than one reason stated in the same claim or complaint file.

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 1,220 complaints resolved in 2024, totalling 1,236 entities, as some complaints were directed at more than one entity.

Types of respondent entities

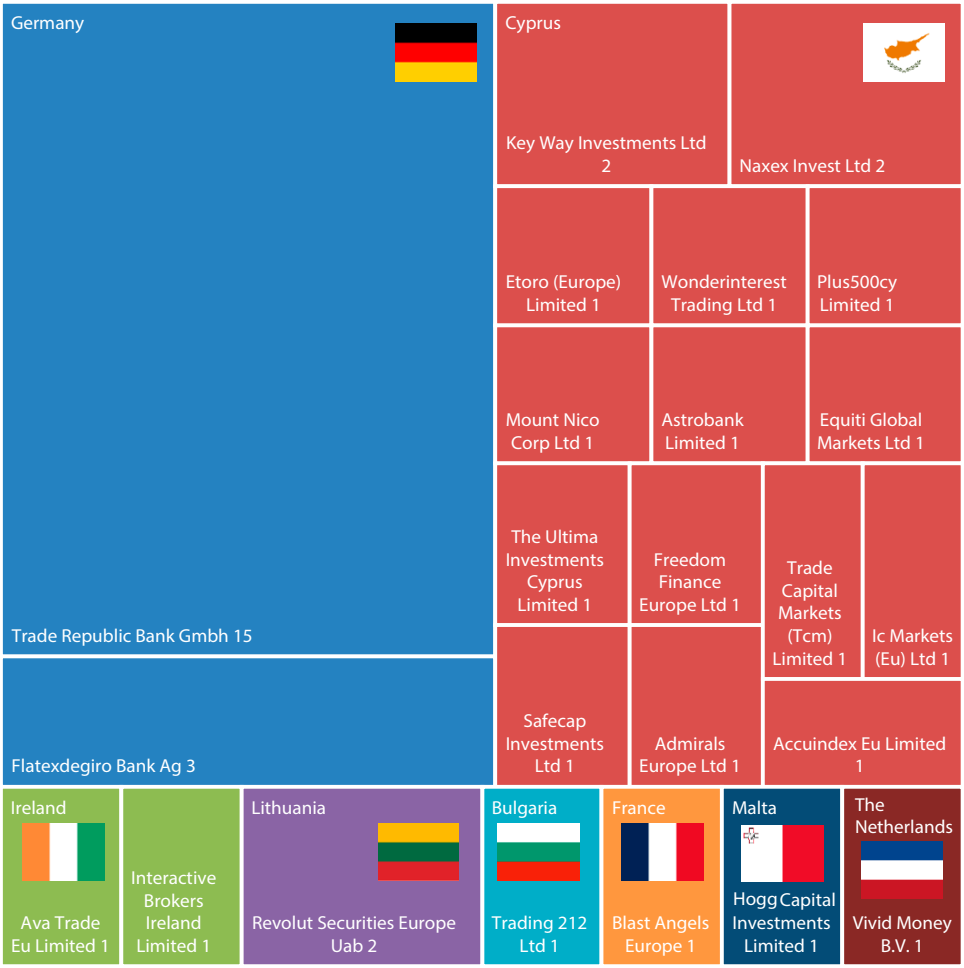


Source: CNMV.

Foreign entities freely providing services originated from Germany (18), Cyprus (17), Ireland (2), Lithuania (2), Bulgaria (1), France (1), Malta (1) and the Netherlands (1). When these entities provide investment or crowdfunding services, cases are dismissed because they fall under the jurisdiction of the international body responsible for resolving financial disputes. Complainants receive information about this body and the option to transfer their complaint to it, provided it is a FIN-NET member. If the foreign entities have offered banking or insurance services, the cases are referred to the Bank of Spain or the DGSFP, respectively.

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

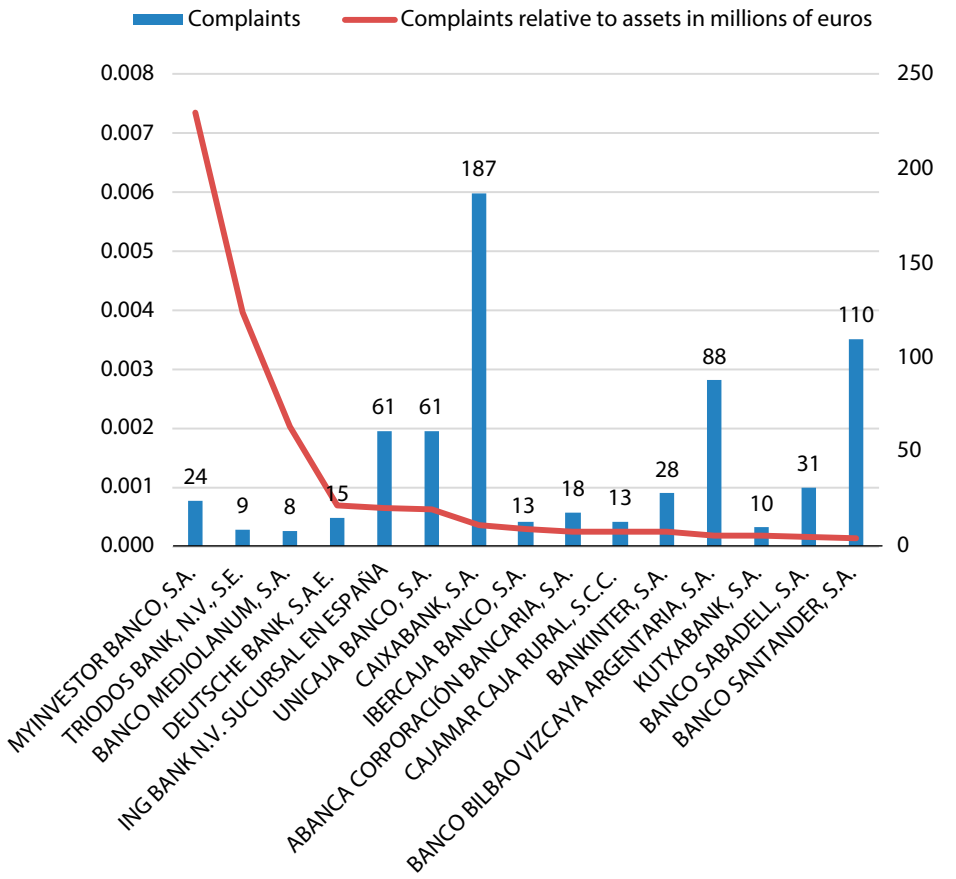


Source: CNMV.

While a higher number of complaints were admitted against larger institutions, this figure becomes more relative when considering the total assets of each institution. The figure below shows the 15 institutions that received eight or more complaints, which were admitted and resolved without subsequent *ex post facto* non-admission. These institutions account for 89.3% of the decisions issued in 2024. They are listed in the figure based on the ratio of complaints to assets in millions of euros as at 31 December 2024 for each institution.

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

FIGURE 10



Source: CNMV and Bank of Spain.

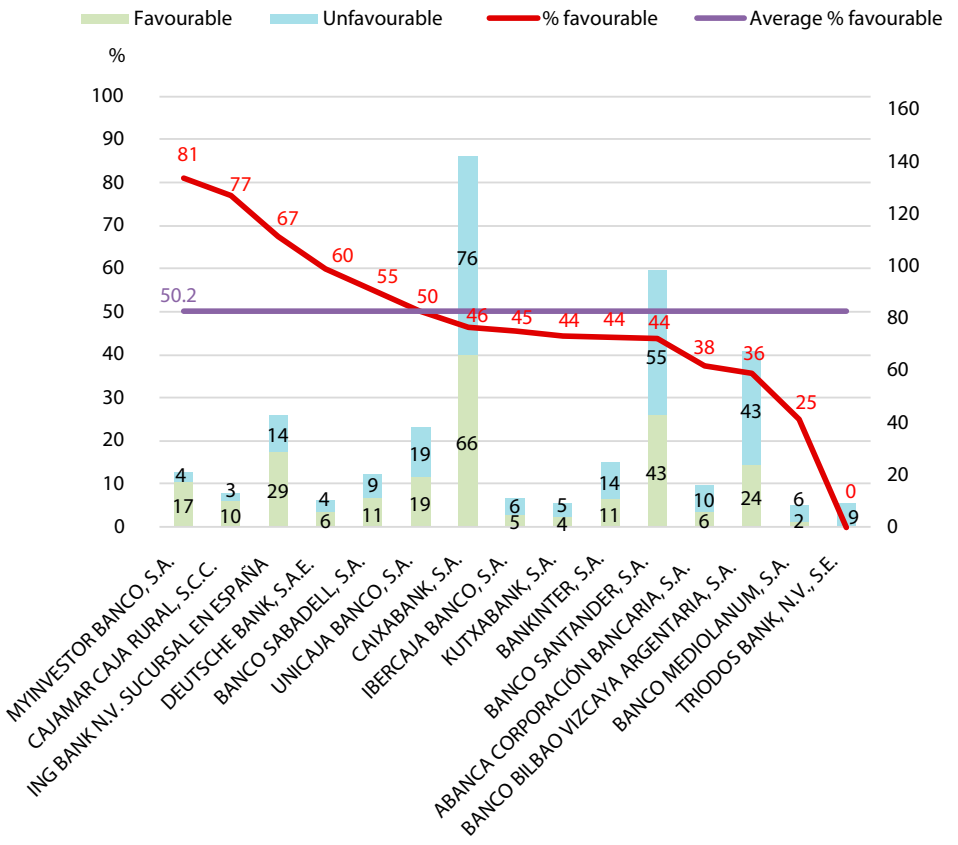
If the complaints in which the entity responsible for the incidents was an absorbed entity were not accounted for, 60 complaints would have been processed against Unicaja Banco, S.A. and it would maintain the same position in the ranking.

In addition to the information shown in the figure, the Complaints Service issued 81 decisions regarding 31 institutions with fewer than eight complaints. Some complaints were directed against more than one institution, which is why the number of decisions (757) exceeds the number of proceedings concluded with a reasoned final report or by acceptance, mutual agreement or withdrawal (750).

In the cases where the Complaints Service issued a reasoned report, 50.2% of the decisions were in favour of the complainant. Five 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 decisions based on favourable and unfavourable reports issued by the Complaints Service.

Ranking of entities by percentage of decisions favourable to the complainant

FIGURE 11



Source: CNMV.

If the complaints in which the entity responsible for the incidents was an absorbed entity were not accounted for, 37 reasoned reports would have been issued against Unicaja Banco, S.A. (18 favourable to the complainant and 19 unfavourable to them) and it would maintain the same position in the ranking.

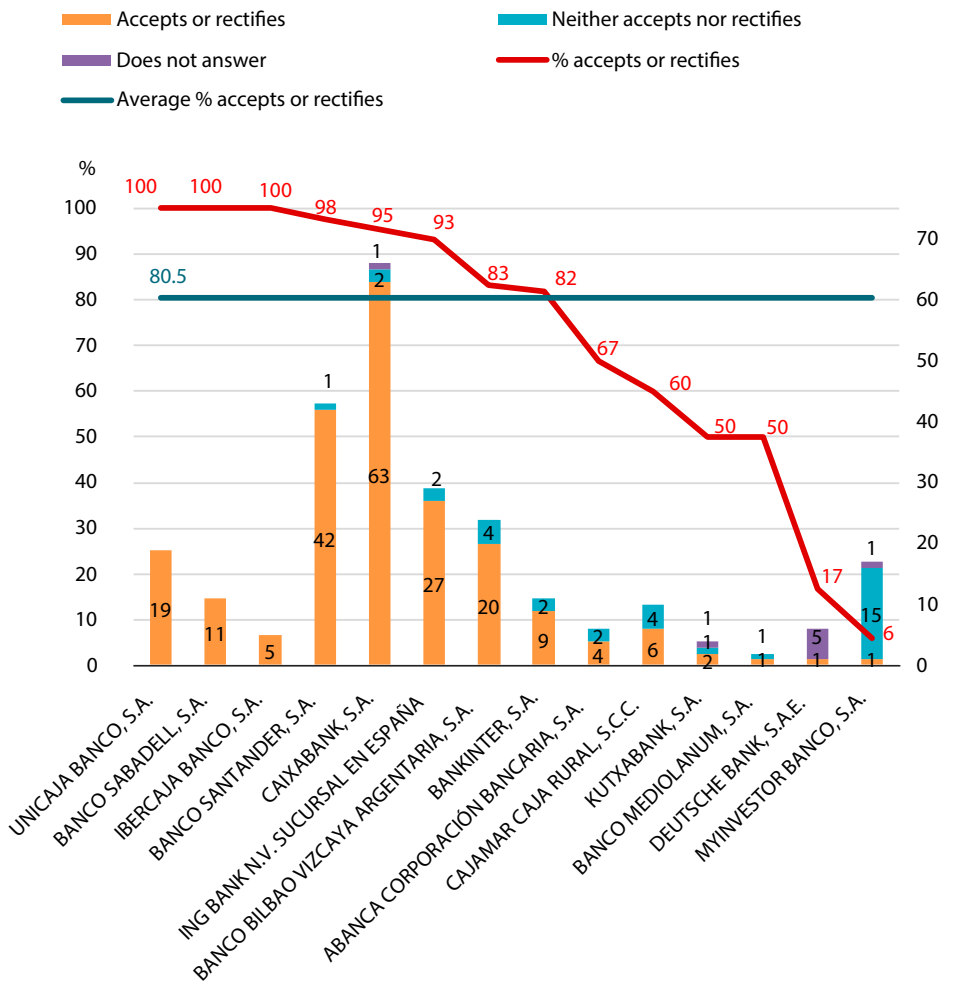
In addition to the information shown in the figure, the Complaints Service issued 49 decisions in favour of the complainant and 23 against. These favourable and unfavourable decisions pertained to 30 of the 31 institutions with fewer than eight complaints.

Some complaints were directed against more than one institution, so the number of decisions favourable or unfavourable to the complainant (302 and 300, respectively) is higher than the number of proceedings concluded with a final reasoned report favourable or unfavourable to the complainant (297 and 298, 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 80.5%. As shown in Figure 12, eight institutions exceeded this average, and seven of them had at least 11 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 the complaints in which the entity responsible for the incidents was an absorbed entity were not accounted for, 18 decisions favourable to the complainant would have been issued against Unicaja Banco, S.A. in which it accepted the criteria or corrected the complainant's status in all of them, and it would maintain the same position in the ranking.

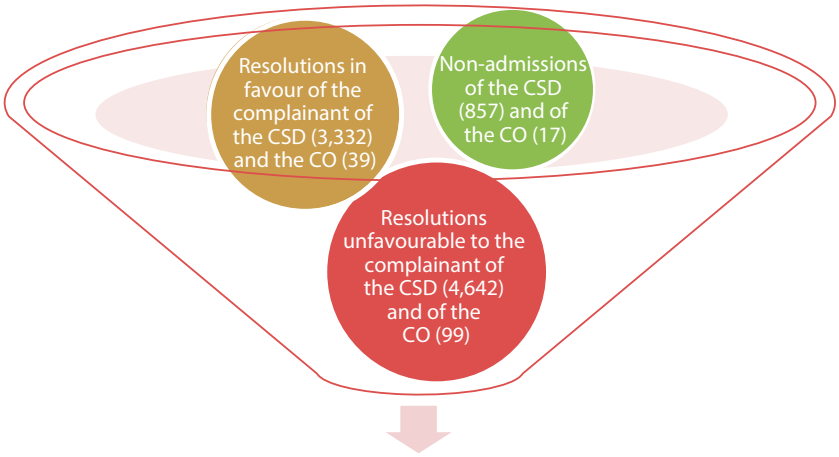
Triodos Bank, N.V., S.E. is omitted because it had no decisions in favour of the complainant.

In addition to the information shown in the figure, the Complaints Service issued 49 decisions favourable to the complainant (32 accepted or rectified, 12 neither accepted nor rectified, and five did not reply). These favourable decisions were issued for 26 of the 31 entities with fewer than eight complaints.

Some complaints were directed against more than one institution, so the number of decisions favourable to the complainant (302) is higher than the number of proceedings concluded with a final reasoned report favourable to the complainant (297).

Taking into account the data provided by the banks on the work of their Customer Service Department (CSD) and Customer Ombudsman(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 8,986 complaints in 2024, while the Complaints Service handled 458 complaints against these entities, representing only 5.1% of the complaints concluded by the respective institutions in 2024.

Data of prior complaints to the entities' CSD and CO



Complaints processed before the Complaints Service with prior resolution:

- Favourable of the CSD (70) or the CO (2)
- Unfavourable of the CSD (372) or the CO (14)

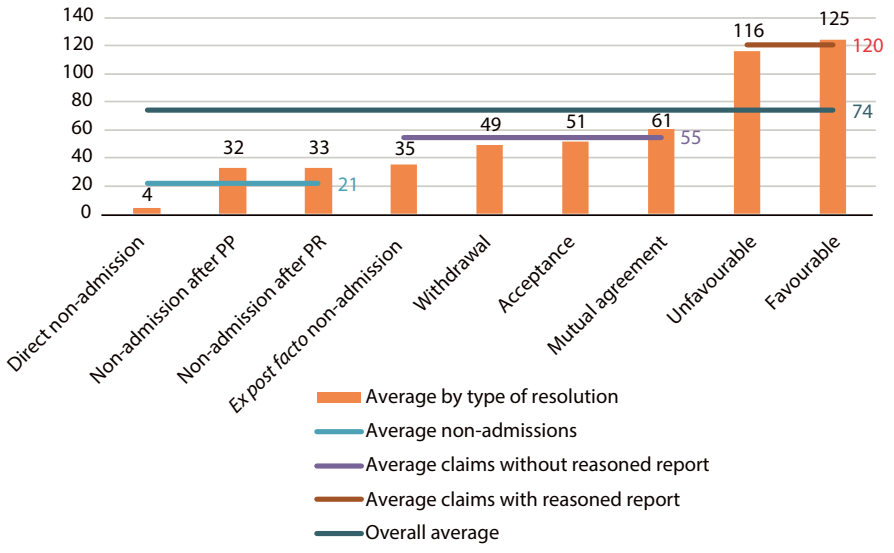
Source: Information provided by the 15 institutions against which the Complaints Service handled more than six complaints in 2023. While these data provide a general and approximate overview of the actions taken by the institutions' CSDs and COs, the data and results should be interpreted with caution, since 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 74 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

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.

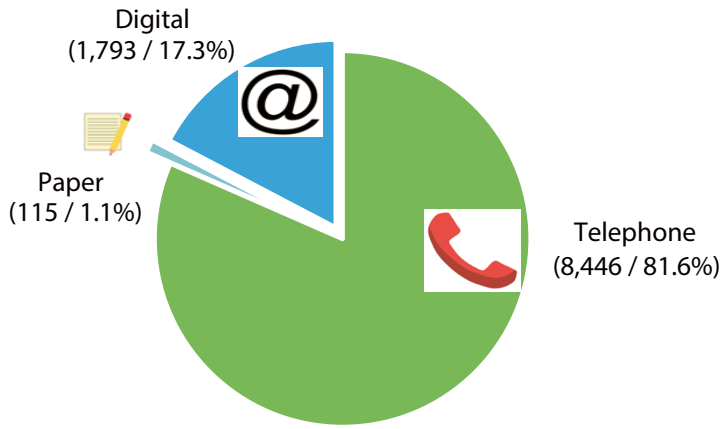
It also deals with **all types of letters**, including **opinions, grievances or any other proposal** from investors on matters concerning the CNMV.

3.1 Enquiry channels and volume

The available enquiry channels include telephone, email, and paper correspondence.

During 2024, **the total number of enquiries received (10,354 enquiries) increased by 3.2% compared to 2023.** The average response time was 26 calendar days, excluding telephone enquiries, which are addressed on the same day.

Enquiries by channel of receipt FIGURE 14

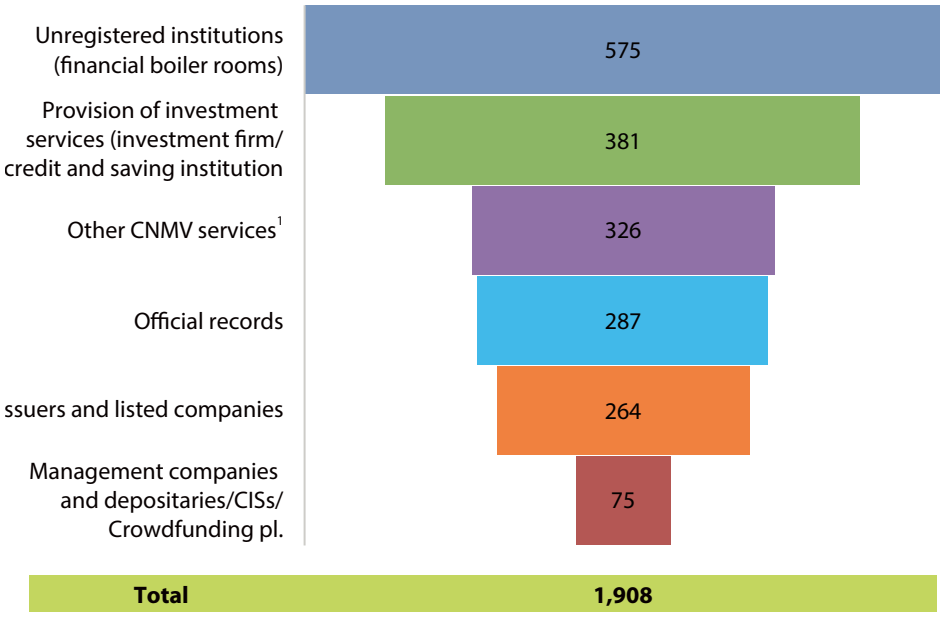


Source: CNMV.

3.2 Most recurrent subjects of enquiry

The enquiries received electronically and on paper concerned the matters shown in Figure 15. The percentage distribution is shown in Figure 16.

Most recurrent subjects of enquiry FIGURE 15

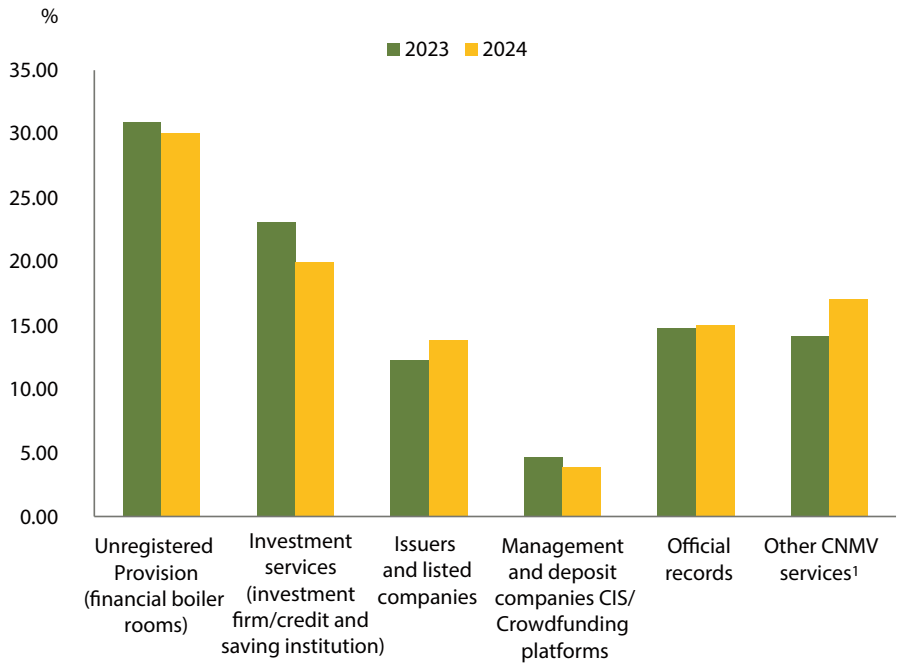


Source: CNMV.

1 It includes enquiries on the following topics: i) how to file a complaint; ii) information about ongoing cases (whether enquiries or complaints); iii) content in CNMV press releases and communications, including investor alerts; iv) and various website materials. These materials include financial education resources such as fact sheets, guides, and other training materials, v) enquiries about individual investments, and vi) referrals to other organisations like the Bank of Spain or the DGSFP.

Percentage distribution of subjects of enquiry

FIGURE 16



Source: CNMV.

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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	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

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).[5] 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.

Additionally, there are FIN-NET partners which are dispute resolution bodies from European countries or territories outside the EEA where the ADR Directive[6] (Alternative Dispute Resolution Directive) does not apply.

FIN-NET members commit to a Memorandum of Understanding[7] (MOU), which outlines 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[8] 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 took part in the two plenary meetings held in 2024. The first was a hybrid meeting on 14 May, with some members attending in person in Brussels and others joining via videoconference. The second took place entirely by videoconference on 12 November.

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

6 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

7 Memorandum of Understanding (MOU).

8 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.

Key topics discussed during the meetings included:

- Updates from the Commission on the state of play of negotiations of ADR Directive and ODR Regulation. A representative from the European Commission discussed the amendment negotiations for the ADR Directive.

- PSR and PSD3 negotiations and fraud prevention. Another representative highlighted negotiations surrounding the new payment services regulation, alongside challenges in fraud prevention.

- Combating cyber fraud in payment services. In relation to combating cyber fraud in payment services, an ADR member from the banking sector presented on various types of fraud complaints, leading to a discussion on the rising number of fraud claims in payment services.

- FIN-NET survey: digitalisation of complaints handling among members. Before the second plenary meeting, a survey on digitalisation of complaints handling was distributed to all FIN-NET members. The survey aimed to evaluate the level of digital integration in complaint procedures. It found that most complaints are submitted to ADRs electronically, via website or email. However, most ADRs also allow complainants to submit their complaint documents in paper format.

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 17th INFO Network Annual Meeting was held on 1 October 2024 in Toronto. 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 2024 complaints

Annex 3 Most relevant criteria applied in the resolution of 2024 complaints

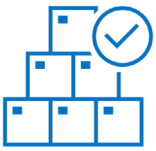
This annex provides a general overview of the most relevant criteria applied in resolving complaints in 2024.

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 duties assigned to the CNMV and are applied to the specific cases reviewed in each of the complaints processed in 2024.

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.

1 https://www.cnmv.es/portal/Publicaciones/PublicacionesGN.aspx?id=23

2 Article 205.1 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

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.

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.

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 suitable 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 suitable.[4]

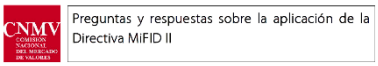
Investment firms must keep records of appropriateness assessments, which should include the following elements:[5]

i) The information or documents used for the appropriateness assessment.

ii) The results of the appropriateness assessment.

iii) Any warnings given to the client if the investment service or product purchase was deemed inappropriate, or if insufficient information was provided for the assessment.

iv) Whether the client requested to proceed with the transaction despite warnings about inappropriateness or insufficient information, and, where applicable, whether the firm has agreed to the client's request to execute the transaction.



The CNMV has clarified that, generally, if a client places an order and the firm processes it, the records for these aspects are considered to be adequately maintained.[6]

v) Assessed clients and unsuitable products. It specifies that, for each client, it should be recorded which products have been deemed inappropriate in previous assessments.

4 Article 205.4 and 205.5 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

5 Article 56.2 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.
CNMV Resolution, of 7 October 2009, on the minimum records that investment firms must maintain.
Rule 5 of CNMV Circular 3/2013, of 12 June, on the obligations for providing information to clients receiving investment services, specifically regarding the appropriateness and suitability assessments of financial instruments.

6 Question 16.2 of the CNMV document *Questions and answers on the implementation of the MiFID II Directive*.

On 19 April 2022, the CNMV announced the adoption of ESMA guidelines on certain aspects of MiFID II's appropriateness and simple execution requirements,[7] along with the approval of a technical guide for appropriateness assessment.[8]

➢ Warnings regarding the inappropriateness, absence or insufficiency of data to carry out the evaluation

Entities must warn clients if: i) a transaction is inappropriate because, based on the client's knowledge and experience, the investment product or service is not appropriate;[9] or ii) it is not possible to determine appropriateness because the client fails to provide necessary information or provides insufficient information.[10]

For warnings regarding insufficient information, the following message is suggested:[11]

– "We inform you that, given the specifics of this transaction XXX (identify the transaction), ZZZ (name of the investment service provider) is required to conduct an appropriateness assessment for you. This means evaluating whether, in our opinion, you have the necessary knowledge and experience to understand the nature and risks of the instrument you wish to trade. By not providing the necessary information for this assessment, you forfeit the protection afforded to retail investors. Without conducting this assessment, the entity cannot determine if this transaction is appropriate for you".

– When dealing with a complex instrument, the entity must obtain the client's signature on the above statement, along with a handwritten note from the client stating: "This is a complex product, and due to a lack of information, it has not been possible to assess whether it is appropriate for me."

Regarding the warning on inappropriateness, the following message is suggested:[12]

– "We inform you that, given the specifics of this transaction XXX (identify the transaction), ZZZ (name of the investment service provider) is required to conduct an appropriateness assessment for you.

  In our opinion, this transaction is not appropriate for you. A transaction is deemed inappropriate when you lack the knowledge and experience necessary to understand the nature and risks of the financial instrument you intend to trade".

---

7 Guidelines on certain aspects of the appropriateness and execution-only requirements of the MiFID II Directive, of 12 April 2022 (ESMA 35- 43-3006).

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

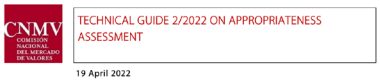
9 Article 205.4 and 205.5 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

10 Article 205.4 and 205.5 of Law 6/2023, of 17 March, on Securities Markets and Investment Services.

11 Rule 5 of CNMV Circular 3/2013, of 12 June, on the obligations for providing information to clients receiving investment services, specifically regarding the appropriateness and suitability assessments of financial instruments.

12 Rule 4, paragraph 4 of CNMV Circular 3/2013, of 12 June, on the obligations for providing information to clients receiving investment services, specifically regarding the appropriateness and suitability assessments of financial instruments.

– For transactions involving a complex instrument, the client must sign the above statement and include a handwritten note: "This product is complex and is considered inappropriate for me".



Both the warnings and handwritten notes must be part of the transaction's contractual documentation, even if they are provided in a document separate from the purchase order. The CNMV has clarified that: "In the event that the warnings are given in documents separate from the order, the appropriate procedures must be established so that they refer unequivocally to the transaction in question."[13]

ESMA guidelines specify that: "To ensure its effectiveness, the warning issued by firms in case no or insufficient information is provided by the client on his/her knowledge or experience, or in case the assessment of such information shows that the investment service or product offered or demanded is not appropriate for the client, must be prominent, clear, and not misleading.

Firms should take reasonable steps to make sure the warnings they issue to clients are correctly received and understood as such. To this end, warnings should be prominent. This could be done, for example, by using a different colour for the warning message from the rest of the information provided or, if the order is placed over the telephone, by explaining the warning and its impact to the client while answering any questions from the client to ensure that the client has correctly received and understood the warning.

The warnings issued by firms should clearly state the reason for warning the client: either that no information was provided by the client or that the information collected is insufficient and that the firm therefore is not in a position to determine the appropriateness of the envisaged transaction, or that the assessment of the information provided by the client shows that the envisaged transaction is inappropriate for the client. For example, ambiguous messages stating that the product is appropriate for "basic/intermediate/expert clients" should be avoided. Similarly, firms should avoid issuing warnings containing imprecise language (e.g., stating that the product or service "may not be appropriate" for the client), as they are unlikely to make the client sufficiently aware of the risks of proceeding with the transaction. Firms should also avoid overly long warnings that obscure the key message that the client does not have or did not demonstrate having the necessary knowledge and experience for the investment service or product.

Firms should not downplay the importance of warnings and should not encourage the client to ignore them (e.g., during telephone conversations or in language used in the warning).

13 Section 10, Paragraph 32 of *Technical Guide 2/2022 on Appropriateness Assessment*, 19 April 2022.

Firms should avoid the use of messages in the warnings that could encourage the client to proceed with the transaction, to re-take the appropriateness assessment or to request an upgrade to professional client. For example, firms could implement a process that the client needs to confirm that s/he is aware of the information provided in the warning before s/he can proceed with the transaction [...]".[14]

R/42/2024

The institution conducted an appropriateness questionnaire before subscribing to an investment fund. The complainant indicated that she had no formal education and had never held a professional role related to financial markets. She was unfamiliar with how stock exchanges and financial markets function or the risks involved. Over the past three years, she had only once engaged with or held investment funds, plans, insurance-based investment products, or unstructured ETFs and had not traded or held positions in any other products mentioned in the test.

The questionnaire concluded that the complainant lacked financial knowledge and experience. It stated: "Based on your answers, we consider that financial investment products are not suitable for you". The investment fund subscription order indicated that the entity was required to "assess whether the transaction was appropriate for the complainant. In our opinion, this transaction is not appropriate for you. A transaction is deemed inappropriate when you lack the knowledge and experience necessary to understand the nature and risks of the financial instrument you intend to trade".

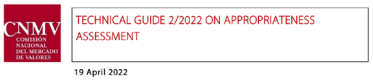
The Complaints Service concluded that the entity had acted correctly. It had performed an appropriate test consistent with the service it was providing – namely, mere execution or the reception and transmission of orders concerning a non-complex investment fund. Based on the complainant's responses, the entity warned her that the investment was inappropriate.

➢ Delivery of the individualised test result by product families

The entity must give the customer a copy of the document containing the appropriateness assessment.[15]

14 Guideline 9, paragraphs 68 and 39, of *Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements*, of 12 April 2022 (ESMA 35-43-3006).

15 Article 205.3 of Law 6/2023, of 17 March, on Securities Markets and Investment Services of 17 March.



The CNMV has stressed that entities need to be able to demonstrate compliance with this requirement. Specifically, it states: "For this purpose, it is necessary for the document provided to include details of the questions asked and the customer's responses. If the assessment covers different products or product families, the results for each assessed family must be clearly communicated to the customer».

R/610/2023

The institution provided a signed appropriateness test for the trading of a foreign CIS. In this test, the complainant stated that he had investment experience in funds, possessed a basic education, and understood fundamental concepts such as *shares, investment funds,* and *interest rates.*

However, the assessment document did not mention any category of financial instruments or specify the outcome of its analysis, which the Complaints Service deemed as malpractice by the institution.

R/847/2023

The entity conducted an appropriateness test for subscribing to an investment fund. Based on the client's responses, the appropriate product categories were public debt, non-complex private and bank fixed income, listed equities, ordinary investment funds (UCITS), and unit-linked funds. The Complaints Service concluded that the entity had appropriately assessed the appropriateness of the investment fund purchase, as it fell within the product families deemed appropriate for the client.

R/147/2024

The institution conducted an appropriateness questionnaire before subscribing to an investment fund. The complainant stated that he was a self-employed professional, senior civil servant, middle manager, or similar role, holding a university or higher education degree in other fields. He understood general financial concepts and was familiar with stock markets and the risks associated with investing, including market risk, interest rate risk, liquidity risk, exchange rate risk, credit or default risk, and derivative risks.

He had frequently traded in: i) guaranteed structured savings-investment funds, plans, and insurance policies, as well as ii) financial investment funds and individual pension plans or savings-investment insurance, all unstructured. He had occasionally traded in: i) non-complex public and private fixed income, ii) private fixed income with early redemption options or mortgage and land bonds, ii) private fixed income with subordination clauses, and iv) listed equities and securitisation bonds. However, he had never traded in structured products or in structured funds, plans, and insurance.

The appropriateness assessment was valid for one year from the date of signing, unless the client completed another appropriateness assessment of the evaluated products before the period ended. The following were deemed appropriate: i) mixed income insurance; ii) unstructured savings-investment insurance investing in harmonised CIS; iii) unstructured savings-investment insurance investing in deposits; iv) Spanish Treasury public debt; v) other non-complex fixed income; vi) listed equities; vii) non-structured financial CIS, including mutual funds, SICAVs, and ETFs, but excluding venture capital funds, hedge funds, or funds of hedge funds; viii) pre-emptive rights.

In view of the above, the Complaints Service concluded that the institution had acted correctly. The previous appropriateness test was still valid for subscribing to the fund units and included unstructured financial CIS within the product categories suitable for the client.

A.3.2 Suitability in investment advice and portfolio management

When providing investment advice or portfolio management services, the firm must gather the necessary information regarding: the client's or prospective client's knowledge and experience in the investment area relevant to the specific type of product or service; their financial situation, including their capacity to withstand losses; and 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.[16]

In addition to the information on knowledge and experience mentioned in the appropriateness section,[17] the following will be considered:

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.

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 their sustainability preference.[18]

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 EU, 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 communiqué stating that it had notified ESMA of its compliance with these guidelines and would take them into account, as previously indicated in a communiqué on 18 July 2022.

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

17 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.

18 Articles 54.4 and 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

➢ Potentially vulnerable and inexperienced clients

The ESMA guidelines on certain aspects of the MiFID II suitability requirements establish measures to ensure that institutions collect all the information necessary to assess suitability and understand it, 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).

R/1/2024

In 2021, a married couple, aged 76 and 80, contracted portfolio management with a "balanced" risk profile. They had previously signed up for portfolio management with a lower, "moderate" risk profile in 2017. The entity provided tests conducted on each of the account holders in 2021, as well as a test from 2017 conducted on the wife. A summary of some test responses and their results is shown in the table below.

		2017	2021
Liquidity needs	How much of the assets you have invested in financial instruments do you expect to need in the next two years?	None	Less than 25%
Response to losses	How would you react to sharp and widespread market declines?	I would sell part of my investment to minimise potential additional losses	I would maintain my investment, even at the cost of potential additional losses
Maximum loss	What maximum loss are you willing to accept over different periods, considering market fluctuations?	0–5% (in all three periods considered)	5–10% (in all three periods considered)
Result		Moderate	Balanced

The Complaints Service noted that it is unusual for a 76-year-old, like the wife, to opt for a higher risk level more than four years later, particularly when the husband's health had deteriorated, as documented. The discrepancies raised doubts about whether the entity had exercised due diligence to ensure the reliability of the client's information.

Regarding the husband's diagnosed cognitive impairment, there was no court ruling declaring him incapacitated from making investment decisions, nor had the institution been informed about his cognitive issues. Nevertheless, the Complaints Service determined that this situation, combined with the couple's advanced age, indicated they were vulnerable. The entity should have taken steps to assess this situation, and there was no justification for assigning them a higher risk profile than four years prior. Moreover, the Complaints Service stressed that the couple being accompanied by their children to the office did not absolve the entity of its responsibility, unless the children had been acting as their legal representatives, which had not been proven in the documentation.

R/745/2023

On 18 February 2021, the complainant signed a recurring non-independent investment advisory contract. To provide the service, the entity conducted a suitability test on the claimant that same day. The complainant reported having a basic education, previous investment experience in equities, UCITS investment funds, and alternative investments, and was familiar with all product categories. The advised portfolio was valued at €585,158, with a time horizon of four years. When presented with potential positive and negative investment scenarios, the claimant chose 3 on a scale from 1 to 7. Concerning his financial situation, he had no plans to divest, and the advised investment constituted more than 75% of his investment portfolio. He was over 55, with an income of less than €30,000, did not anticipate significant changes in income, and regular expenses accounted for 25% to 50% of his income.

To verify the profile, the entity conducted a suitability test on the complainant on 14 June 2022.The responses were the same as those given in 2021, except for the percentage of regular expenses relative to income, which increased from 25–50% in 2021 to 50–75% in 2022. Based on the 2022 test responses, the institution assessed the complainant's risk profile as 3/7, with a maximum volatility of 10.7% and a minimum liquidity of 0.0%.

The Complaints Service criticised the entity for failing to implement enhanced protections for the complainant, who was vulnerable due to their advanced age (81 years), reported increase increased from 25–50% to 50–75%in regular expenses, status as a pensioner, and apparent lack of advanced financial product knowledge.

The Complaints Service emphasised that, generally, the risk profile should not be assigned by disproportionately weighing the response to how the profile aligns with profit and loss estimates. Furthermore, it was deemed inappropriate for the entity to set the minimum liquidity percentage at 0.0% for a vulnerable customer, considering the potential adverse contingencies related to their age. Explaining the risk profile to an elderly person in terms of a 10.7% maximum volatility was also not seen as a suitable way to help them understand how the risk could impact them.

Finally, on 8 May 2023, the entity suggested the customer significantly increase their equity holdings from 32.95% to 45.37%. The Complaints Service regarded this as malpractice, as the percentage was excessively high for a vulnerable person, especially given the proportion of risk assets in the complainant's portfolio after the recommendation.

R/344/2024

The complainants were dissatisfied with how the investment portfolio management contracts were marketed, as they found themselves in a particularly vulnerable situation after being defrauded just four days prior to entering into the contracts. At the time, they were 83 and 78 years old.

The previous telephone scam was carried out by an individual impersonating an employee of the entity, and a court ruling had already addressed this issue. The Complaints Service noted that the complainants' altered psychological state following these events was far from ideal for making investment decisions. It would have been more prudent to reassure them that their savings were secure with the entity and to defer the investment decision to a later date.

The institution provided the suitability test results for each client, which indicated a balanced investor profile. This suggested that they were willing to take risks and accept medium-term financial losses. However, in the event of widespread market declines, they might consider selling part of their holdings to mitigate risk. The institution could manage portfolios for clients with a balanced profile (the middle level among five possible options) or a lower level.

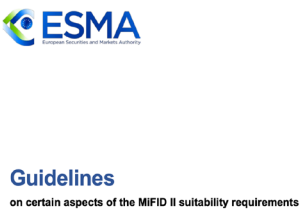
The Complaints Service believed that elderly, retired pensioners (aged 83 and 78) should have been recognised as vulnerable individuals. Therefore, the entity should have taken measures to protect them by applying special protocols during profile assessment. For instance, it was notable that they intended not to use the investment, except under unforeseen circumstances, in 90% of cases – an uncommon response for people of that age. Considering the complainants' ages, the Complaints Service determined there was a high likelihood of unforeseen age-related issues arising due to their vulnerability. This should have prompted the entity to assign a lower risk profile, as the one given was evidently too high.

As a result, the Complaints Service concluded that the entity had engaged in malpractice by failing to properly evaluate the vulnerability situation and adjust the suitability test outcome accordingly.

➢ Actions of different representatives of the same legal entity

Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement a policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.[19]



With respect to situations where applicable national legislation provides for a representative, paragraphs 63 and 64 of the ESMA Guidelines on certain aspects of the MiFID II suitability requirements provide that: "Subparagraph 2 of Article 54(6) of the MiFID II Delegated Regulation defines how the suitability assessment should be done with regard to situations where the client is a natural person represented by another natural person or is a legal person having requested treatment as a professional client. It seems reasonable that the same approach could apply to all legal persons, regardless of the fact that they may have requested to be treated as professionals or not.

Firms should ensure that their procedures adequately incorporate this article in their organisation, which would imply amongst others that they verify that the representative is indeed – according to relevant national law – authorised to carry out transactions on behalf of the underlying client".

19 Article 54.6 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.

R/189/2024

The representative of a legal entity claimed that the firm had not conducted the mandatory suitability test before proposing that the company she represented should invest in an investment fund.

The firm provided: i) a suitability test in the name of the company conducted on its chief executive officer on 28 April 2021, and ii) the investment proposal and subscription order in the company's name, signed by the complainant on 10 June 2021. The firm asserted that the chief executive officer had sufficient banking authority at the time of the test, and the complainant was also authorised, as she had been appointed administrator on 2 June 2021, with joint authority alongside the chief executive officer.

The Complaints Service highlighted that, since the complainant signed the investment proposal and subscribed to the recommended investment fund on the company's behalf, the firm should have conducted a new suitability test for her before making the proposal. Therefore, it concluded that the firm acted improperly by recommending the investment fund to the complainant on behalf of the company, as there was no evidence that the recommendation aligned with the knowledge and experience of the new individual representing the entity at the time of the investment.

➢ Consistency of the information obtained in the suitability test

Firms shall be entitled to rely on information provided by clients unless they know or ought to know that it is manifestly out-of-date, inaccurate or incomplete.[20] Investment firms shall take reasonable steps to ensure that the information collected from their clients or prospective clients is reliable and shall adopt such measures as are appropriate to ensure the consistency of that information, for example by checking whether there are manifest inaccuracies in the information supplied by the clients.

CNMV COMISIÓN NACIONAL DEL MERCADO DE VALORES — STATEMENT ON THE OBLIGATION INCUMBENT ON ENTITIES TO TAKE MEASURES AIMED AT ENSURING THE RELIABILITY OF INFORMATION OBTAINED FROM CLIENTS IN ORDER TO ASSESS THE APPROPRIATENESS AND SUITABILITY OF THEIR INVESTORS

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

20 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.

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.

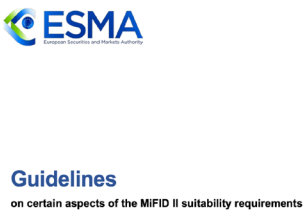
In this regard, it is important to note that entities can consider the following when analysing whether atypical situations exist:

- 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.



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".

R/759/2023
R/66/2024

The entity provided an advisory service, recommending that clients invest in a portfolio managed by the entity itself. It conducted two suitability tests for the clients: one for the advisory service and another for the portfolio management service.

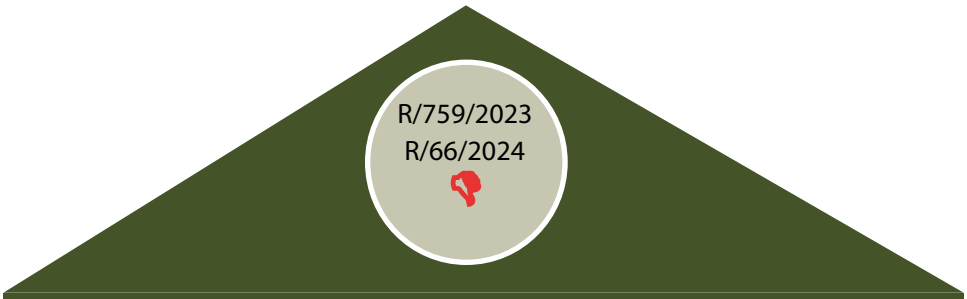
In case R/759/2023, the Complaints Service found that the entity had engaged in malpractice due to contradictions between the two suitability tests, which the entity should have identified, especially since both tests were conducted on the same day. In the portfolio management test, the client indicated their annual net income was between €30,000 and €75,000, with regular expenses accounting for less than 25% of their income. However, in the advisory service test, they reported annual net income of less than €30,000, with regular expenses representing between 25% and 50% of their income.

In case R/66/2024, the Complaints Service also identified malpractice due to contradictions between the two suitability tests, which the entity should have detected. In the portfolio management test, the client indicated their annual net income was between €30,000 and €75,000, with regular expenses accounting for less than 25% of their income. However, in the advisory service test, they indicated that their annual net income was below €30,000 and that regular expenses accounted for more than 75% of their income.

There was also a contradiction regarding their knowledge of product categories. In the portfolio management test, the client claimed not to be familiar with any products, whereas in the advisory test, they indicated familiarity with investment funds, annuities, and portfolio management. Furthermore, in both tests, they stated that they had experience with trading annuities and portfolio management.

➢ 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.[21] 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 client's knowledge and experience, attitude to risk, capacity to bear losses, and sustainability preferences.[22]



To provide advisory services, the institution conducted a suitability test on its clients to collect information about their investment knowledge and experience, investment objectives, and financial situation.

The institution then presented investment proposals that only included the risk profile of the advised portfolio. This profile matched the investment options chosen by the clients in response to the various positive and negative scenarios presented (5 out of 7 in case R/759/2023 and 3 out of 7 in case R/66/2024). However, the entity did not provide any documentation regarding the test results.

The Complaints Service concluded there was malpractice due to the failure to inform clients of the suitability test outcomes, which prevented them from evaluating if the proposed investments suited their profiles. Additionally, it determined that determining the risk profile based solely on a single question – specifically, one from the "Investment Objectives" section of the test – was inadequate. This approach effectively amounted to self-assessment by the investor. The institution should have conducted a comprehensive evaluation of all the responses and considered any circumstances they knew about their client to ensure the assigned profile accurately reflected the client's characteristics.

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

22 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.

➢ Periodic assessment of suitability

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:

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.[23]

Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at 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.[24]

Entities providing portfolio management services must use a standard contract[25] that clearly and understandably sets out the procedure for updating client information regarding their knowledge, financial situation, and investment objectives. This ensures the entity can provide the best possible service to retail investors when necessary.[26]

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.[27] 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.[28]

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23 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.

24 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.

25 Article 5.2 of Order EHA/1665/2010, of 11 June, implementing Articles 71 and 76 of Royal Decree 217/2008, of 15 February, concerning the legal framework for investment firms and other entities providing investment services, specifically regarding fees and standard contracts.

26 Rule 7, section 1, letter h), of CNMV Circular 7/2011, of 12 December, concerning information leaflets on fees and the content of standard contracts.

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

28 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.

The ESMA guidelines on certain aspects of the MiFID II suitability requirements provide, in its general guideline 5, that: "Where a firm has an ongoing relationship with the client (such as by providing ongoing advice or portfolio management services), in order to be able to perform the suitability assessment, it should adopt procedures defining:

(a) what part of the client information collected should be subject to updating and at which frequency;

(b) how the updating should be done and what action should be undertaken by the firm when additional or updated information is received or when the client fails to provide the information requested".

R/89/2024

The complainants had signed a portfolio management contract on 31 October 2018 and another on 21 September 2022. Both contracts specified that the suitability test was valid for up to 18 months and should be updated after this period.

For the 2018 portfolio management, the suitability test was provided, showing a conservative profile that matched the contracted portfolio's profile, with a time horizon of 1 to 2 years and a maximum volatility level of 5% (with an average equity position reference of 15%).

However, for the 2022 portfolio management, the necessary suitability test that should have been conducted before the new contract was signed was missing, along with the successive 18-monthly suitability tests required by the previous contract (at least two more should have been conducted between the signing of the two contracts). As a result, the Complaints Service did not find sufficient evidence that the investment percentage and the time horizon in the 2022 contract matched the complainants' investor profile, since the only document provided was the 2018 test, and its results did not validate the parameters in the latest contract.

R/19/2024

On 6 May 2019, the complainant invested in a fund through an advisory service. The fund had a risk and return profile of 3 out of 7, in the euro fixed income category, with an investment horizon until 15 September 2022.

On 16 November 2021, the fund manager sent a letter to the complainant's home, notifying him of upcoming changes to the fund's investment category, policy, and name. Then, on 23 February 2022, the fund manager sent another letter informing him that his investment fund (the absorbing fund) would merge with another fund (the absorbed fund). The letter provided details about both funds, the merger's purpose, the return achieved at the maturity of the absorbed fund's guarantee, the new fund's investment policy, fees, and more.

The fund management company met its obligation to notify the complainant in advance. Since the complainant did not use his right to redeem or transfer his units within the allowed time frame, he tacitly agreed to the new conditions outlined in the letters.

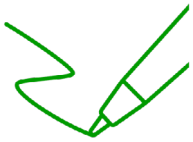
However, the complainant had contracted a recurring advisory service with the entity, which required the entity to assess at least annually whether the fund remained suitable. If the fund no longer matched the complainant's risk profile, the entity was expected to propose alternative investments or recommendations to align with his profile.

As a result, the Complaints Service found that the institution had engaged in malpractice. There was no evidence that it had verified, either before or after the change in the fund's investment policy, whether the fund continued to be suitable for the complainant.

A.3.3 Prior information

➢ Delivery of prior information on CISs

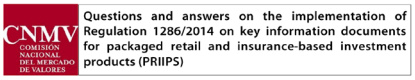
Before subscribing to units or shares in a CIS, investors must be provided, free of charge and upon request, with the prospectus and the most recent annual and semi-annual reports.[29]



The key investor information document must be supplied, in line with regulations on packaged retail and insurance-based investment products (PRIIPs). These regulations require that anyone advising on or selling a PRIIP to a retail investor must provide the key investor information document well in advance of the investor being bound by any related contract or offer.[30]

For the initial provision, compliance must be demonstrated by keeping a copy of the information, signed by the unitholders or shareholders, on a durable medium, for as long as they hold that status.[31]

Given the context, to prove that the entity has provided the investor with the required prior information, it is not enough for the framework contract for CIS transactions to state that the relevant document will be provided before acquisition. Similarly, a mention in the CIS subscription order or a client declaration that such documentation has been given in advance is insufficient. Instead, the entity must provide evidence of the actual delivery of this information.



In the case of additional subscriptions to the same CIS, the CNMV has clarified that:

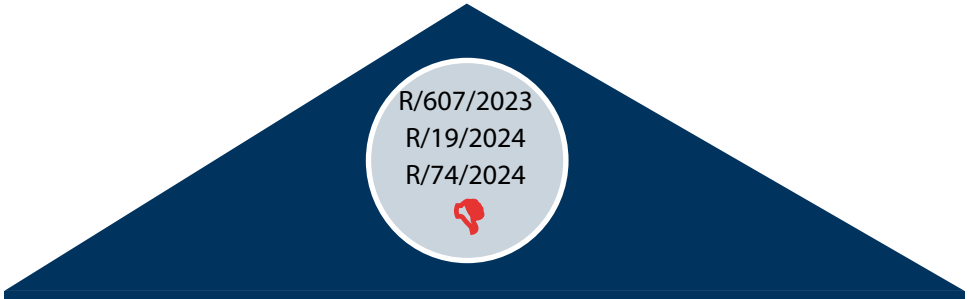
> According to Article 13.4 of Regulation (EU) 1286/2014 on PRIIPS, when retail investors carry out multiple successive transactions in the same product based on instructions they gave before the first transaction, the obligation to provide the KID applies only to the first transaction. It also applies to the first transaction completed after the document has been revised.
>
> Additionally, Question 2a of Section II in ESMA's Questions and Answers on the application of the UCITS Directive states that for investors participating in a regular savings plan, a KID is not required for periodic subscriptions unless there is a change in the plan concerning those subscriptions.
>
> Consequently, in cases of periodic subscriptions agreed upon within a pre-established plan, the KID will only be provided for the first subscription and whenever the document or plan conditions are revised. The additional subscriptions mentioned in Rule 5.2 of Circular 4/2008 will pertain to those

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

30 Article 13.1 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products (PRIIPs).

31 Rule 5 of CNMV Circular 4/2008, of 11 September, on the content of quarterly, semi-annual, and annual reports of collective investment schemes and the statement of position.

that are part of a prior commitment to periodic subscriptions. If this is not the case, such additional subscriptions will require the provision of the KID. As stated in the aforementioned Question 2a, each new subscription without a periodic subscription plan is considered a new contract, and the KID serves as pre-contractual information.



Regarding the sale of investment funds, the entities provided a document signed by the unitholder stating that the entity had supplied them with free information about the fund, which included the key investor information document and the semi-annual report. They then presented copies of each of these documents; however, these were not individually signed, paginated, or attached to the document delivery confirmation.

The Complaints Service determined that the institution had engaged in malpractice by merely providing a statement asserting that it had delivered the pre-contractual documentation. Such a statement was insufficient to prove delivery in accordance with the regulations. It was necessary to maintain a copy, in a durable medium, of all the information signed by the unitholders, and proof of delivery by referral was not valid.

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 to the principles outlined in the applicable conduct of business rules.[32] 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.[33]

- **Information on the rejection of an order to sell securities traded on foreign markets**

Investment firms shall satisfy the following conditions when carrying out client orders:

i) They shall ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated.

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

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

ii) They shall carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise.

iii) They shall inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.[34]

Some complaints concern incidents related to the acquisition of securities traded on foreign markets. The Complaints Service's jurisdiction is strictly limited to Spanish markets and the individuals or entities involved in them. It does not have information about trading activities on foreign markets or the participants involved. In these cases, the Complaints Service examines only the conduct of the Spanish entity regarding compliance with the applicable rules of conduct.

R/286/2024

The complainant placed an order to sell shares on the Frankfurt open outcry market, which was rejected. He could not submit a new order the same day. When he contacted the entity to address the issue, no solution was provided that would allow the sale of the securities that day.

The institution explained that the order was rejected because it did not comply with the conditions of the German market. Although the Complaints Service could not confirm whether the incident occurred or ascertain the circumstances on the Frankfurt open outcry market that day – since it lacks jurisdiction over foreign stock markets and, therefore, has no information on the day's trading details – it was able to verify that the sell order included a warning. The order specified the possibility of non-execution if market conditions were unfavourable or if the order did not meet market requirements, which appears to be what happened.

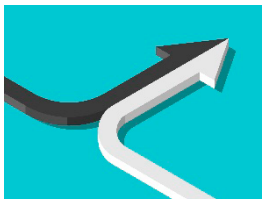
34 Article 67 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

However, irrespective of whether there was an operational restriction in the German market that prevented the complainant's order from being executed and led to it being blocked – an issue that cannot be attributed to the entity in question – the Complaints Service found that the entity had acted incorrectly. It failed to promptly and diligently inform the customer of the specific reasons for the rejection of his order and did not provide possible alternatives for successfully completing the sale under the prevailing conditions of the German open outcry market at that time. The recordings submitted by the entity confirmed that it did not inform the complainant of the reason for the rejection or possible solutions, despite having addressed these points in its statements to the Service.

➢ Information and right of separation in CIS mergers

The information to be provided in the event of a CIS merger covers the following aspects:[35]

✓ General information to be provided



CISs involved in a merger must provide their unitholders or shareholders with a document containing adequate and accurate information about the proposed merger. This will enable them to make an informed judgement on how the merger may affect their investments and to exercise their rights.

The information should be concise and written in plain language to ensure that unitholders or shareholders can clearly understand the implications of the proposed merger on their investments.

If the proposed merger is cross-border, all CISs must explain, using plain language, any terms or procedures related to the CIS that differ from those commonly used in the other affected EU Member States.

The information provided to the unitholders or shareholders of the merging CIS must consider the needs of those with no prior knowledge of the receiving CIS's characteristics or operation. They should be directed to the key investor information document of the receiving CIS and encouraged to read it.

For the unitholders or shareholders of the receiving CIS, the information should focus on the merger process and its potential impact on the receiving CIS.

✓ Timing and notice for providing information

The information will only be given to the unitholders or shareholders of the CISs involved in the merger once the CNMV and, if applicable, other relevant authorities from another Member State where a merging CIS is established, have authorised the proposed merger.

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35 Article 42 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

This information must be provided at least 30 calendar days before the final date to request a buyback, redemption, or, if applicable, conversion, with no additional cost, in accordance with the regulations.

✓ Content of the information

The information will include the following:

– The context and rationale behind the proposed merger.

– The potential impact on unitholders or shareholders, highlighting in particular but not exclusively any significant differences concerning investment policy and strategy, costs, expected outcomes, periodic reports, potential decreases in performance, and, if applicable, a clear notice to investors that their tax treatment may change after the merger.

– Any specific rights of unitholders regarding the proposed merger, particularly: the right to obtain additional information, the right and procedure to request a copy of the independent auditor's or depository's report, the right to request the buyback or redemption of their units or shares, or their conversion, without any commission or charge, and the deadline for exercising this right.

– The information will also cover the relevant procedural aspects and the expected effective date of the merger.

– An updated version of the key investor information document for the receiving CIS must be provided to the unitholders or investors of the merging CIS. If this document has been amended due to the proposed merger, the updated version should be shared with the existing unitholders or shareholders of the receiving CIS. While compliance with the information obligations for changes to the articles of association, statutes, regulations, and prospectuses of CISs is required, these obligations will not apply to mergers of certain Spanish CISs where significant elements of the key investor information document are amended simultaneously.

The content of this information is subject to specific rules detailing the information that must be included.[36]

✓ Particularities of harmonised Spanish CISs notified for distribution in the European Union

If either the merging CIS or the receiving CIS has been notified by the CNMV to market its shares or units within the European Union under the UCITS Directive, the information must be provided in the official language, or one of the official languages, of the host Member State of the CIS in question, or in a language accepted by its competent authorities.

36 Article 43 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

The CIS responsible for providing the information must ensure the translation is accurate and faithfully reflects the original content.

✓ Information for new subscriptions

From the time the information document outlined in the regulation is provided to the unitholders or shareholders until the merger takes effect, the specified document, along with the key investor information document for the beneficiary CIS, must be given to anyone who acquires or subscribes to shares of the beneficiary CIS or the merging CISs. This also applies to anyone requesting a copy of the regulations, articles of association, prospectus, or the key investor information document for any of the CISs.

✓ Method of providing information

The beneficiary CIS and the merged CISs will provide unitholders or shareholders with information either on paper or via another durable medium.

If the information is to be given to all or some of the unitholders or shareholders in a medium other than paper, the following conditions must be satisfied:

i) The way the information is delivered should be suitable for the context of the current or future commercial relationships between the unitholder or shareholder and the merged CISs or beneficiary CIS, or, where applicable, their respective management company.

   For these purposes, delivering information electronically is considered appropriate if there is proof that the unitholder or shareholder regularly accesses the internet. Providing an email address by the unitholder or shareholder is regarded as valid evidence.

ii) They should be given the option to receive information either on paper or another durable medium. If they prefer a medium other than paper, they must make this choice explicitly.

Additionally, unitholders or shareholders have the right to withdraw from CIS mergers under certain conditions:

✓ Content of the right of withdrawal

In mergers, CISs must allow unitholders or shareholders the right to request the buyback or redemption of their units or shares without incurring any costs other than those retained by the CIS to cover divestment expenses. Alternatively, whenever possible, they can transfer their units or shares to another CIS with a similar investment policy, managed by the same management company, or a company linked to it through a management or control community or a substantial direct or indirect

holding. In certain mergers involving Spanish CISs,[37] investors also have the option to transfer their shares or units to any other CIS.

✓ Effectiveness and expiry of the right of withdrawal

The right of withdrawal takes effect once the unitholders or shareholders of the involved CIS are notified of the planned merger. This right expires five business days before the date set for calculating the exchange ratio.

✓ Information on the right of withdrawal and consequences of not exercising it

As mentioned in this section, the document provided by the CIS involved in the merger will contain details about the right of withdrawal and the final date to exercise this right. For unitholders or shareholders of the merged CISs, the information will also include: i) the period during which they can continue to subscribe to, or request the redemption or repurchase of, units or shares of the merged CISs; ii) the moment when those who do not exercise their right of withdrawal within the relevant timeframe can exercise their rights as unitholders or shareholders of the beneficiary CIS; iii) a warning that shareholders who vote against the merger or abstain and do not use their right of withdrawal will automatically become shareholders or unitholders of the beneficiary CIS.[38]

R/599/2023

The complainant alleged that he had not been informed about the merger of the investment fund he owned and that this merger had occurred without his consent.

The institution provided a copy of the letter that the fund manager had sent to the claimant at the designated communication address. The letter explained that the merger aimed to preserve the accumulated returns of the merged funds for the benefit of the unitholders. It detailed the context and rationale for the merger, highlighting substantial differences in investment policy and strategy, among other points. It also outlined the specific rights of the unitholder, stating that if the investor wished to remain in the fund, no action was needed. Conversely, if they opted for redemption or transfer of units to another fund, they could do so without incurring any fees or charges, based on the net asset value at the date of the request.

37 CISs mentioned in Article 371, letter c), of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes.

38 Article 43.6 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

The Complaints Service noted that regulations do not mandate such communications to be sent by registered post or via methods other than those typically used by the manager to contact the unitholder. Therefore, it could not be concluded that any non-receipt was due to factors attributable to the entity in question. In this case, the letter was addressed to the complainant and sent to the address listed on their complaint form. As a result, failing to exercise the right of withdrawal within the designated timeframe was considered implicit acceptance of the fund merger.

➢ Digital gap in information targeting vulnerable investors

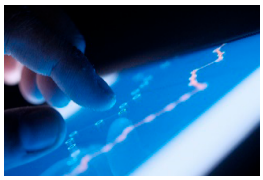
Where information is required to be provided to clients using a durable medium, investment firms shall provide that information in a durable medium other than on paper only if:

i) The provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on.

ii) The person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.[39]

The provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by a client of an e-mail address for the purposes of that business shall be regarded as constituting such evidence.[40]

The Securities Market Act requires investment firms to provide all the information laid down in the Act and its implementing regulations to their clients or potential clients in electronic format, understood as a durable medium other than paper, except where a retail client has requested in writing to receive the information on paper. In that case, it must be provided on paper free of charge.[41]



The Collective Investment Schemes Act provides that periodic reports and any other communications to unitholders or shareholders must be sent electronically, unless the necessary data are not supplied or the recipients expressly state in writing that they prefer to receive them in hard copy. In such cases, paper versions must always be sent free of charge.[42]

39 Article 3.1 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.

40 Article 3.3 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.

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

42 Articles 18.2 and 18.3 of Law 35/2003, of 4 November, on Collective Investment Schemes.

However, the Complaints Service considers that, notwithstanding the general rule on electronic delivery of information, institutions should take into account the different levels of digital skills and adoption across population groups (for example, by age).

Reducing the digital divide among vulnerable groups is one of the objectives of the CNMV and the Bank of Spain, as reflected in the successive agreements they have signed with different ministries.

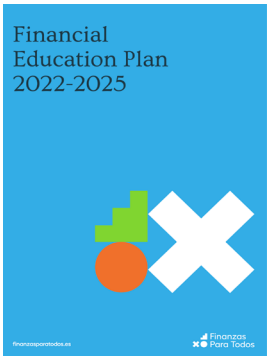

Consumo, Banco de España y CNMV firman un convenio para mejorar la protección de los consumidores a través de la educación financiera

On 25 January 2021, the Ministry of Consumer Affairs, the CNMV and the Bank of Spain signed a cooperation agreement to develop the Financial Education Plan (PEF). The aim of the three institutions is to broaden and strengthen the Plan among consumers in order to reduce financial exclusion and narrow the digital divide affecting vulnerable groups.


prensa

El Ministerio de Asuntos Económicos y Transformación Digital refuerza su colaboración con el Banco de España y la CNMV para impulsar la Educación Financiera

On 14 January 2022, the Ministry of Economic Affairs and Digital Transformation, the Bank of Spain and the CNMV signed an agreement to continue and expand the Financial Education Plan for the period 2022–2025.



The Financial Education Plan makes particular mention of the cooperation agreement with the Ministry of Consumer Affairs. To achieve its goal of broadening and strengthening the Financial Education Plan so as to reduce financial exclusion and the digital divide among vulnerable groups, the Plan specifically provides for the inclusion of new training and educational initiatives in the financial sector aimed at young people, older adults, over-indebted families and single-parent households.

R/263/2024

The complainant's daughter, acting as her legal representative, complained that the entity had not provided her mother with written information about the performance of her managed portfolio and the management fees charged. She specifically noted that the information was not sent to her mother's physical address and was only available on the entity's app, which her mother could not access due to almost complete blindness.

On 28 January 2021, the complainant had signed a portfolio management contract specifying that communications would be sent to the postal address she provided. On 10 February 2022, she signed a digital banking contract stipulating that communications related to services contracted through this digital platform would be sent electronically.

The Complaints Service determined that, between 28 January 2021 and 10 February 2022, the entity should have sent the documentation by post to the physical address listed in the portfolio management contract. The institution confirmed compliance by providing evidence of the communications sent to the address specified in the contract.

The Complaints Service criticised the practice of offering digital banking services to vulnerable individuals, particularly the elderly affected by the digital divide. Such practices often mean that once these individuals sign up, they no longer receive information about their financial products by post and this is replaced by electronic communications, leading to a lack of information or incurring costs if they wish to continue receiving postal updates.

In this case, the complainant's daughter was expressly designated as an authorised user in the contract for digital banking access. Since she could access information about the financial product purchased by her mother, the Complaints Service considered that this mitigated the negative impact on the mother's right to information, had she been the sole signatory of the contract.

Finally, despite the entity's assertion that the daughter had access to digital banking, supported by images of her user account and connection history, the Complaints Service deemed it poor practice not to provide details of the digital banking repository (mailbox). This would have shown that communications regarding the managed portfolio's performance had been made available to the customer since February 2022.

A.3.5 Orders

➢ Transfer of securities versus block trading

A transfer order allows for the movement of a set of securities from one depository to another. The owner of the securities must issue these transfer orders, and for them to be executed, the securities accounts at both the origin and destination must have the same ownership.

Block trades, on the other hand, are a type of transaction on the stock market designed for handling large volumes. These trades can only involve orders that are valid for a single day and must come from one orderer. Any securities traded on the Stock Exchange Interconnection System can be traded in this manner. Block trades can be conducted throughout the open market's hours, except during auction periods.

The complainant wanted to transfer his shares to a company where he was a shareholder and the sole director. The employee at the institution informed him that securities transfers must occur between accounts with the same ownership, so transferring securities between accounts with different owners was not possible.

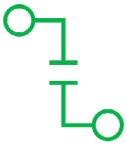
Later, the complainant emailed the employee, expressing his desire to conduct an off-market block trade at the previous day's closing price to move shares worth €200,000 from his personal account to the company. The employee confirmed that this was feasible and suggested they finalise the transaction the following morning at the previous day's closing price, which they did.

However, the complainant argued that he was not properly informed because he intended to make a transfer, not a sale.

The Complaints Service determined that the entity had acted appropriately. During the initial phone call, the complainant was informed that transferring securities between accounts with different ownership was not possible. Additionally, the institution simply executed the block trade as proposed by the complainant and therefore had no obligation to inform him of any potential tax or other consequences.

➢ Impossibility of exercising the right of withdrawal of a contracted investment fund

Investment firms which provide any investment service or the ancillary service of safekeeping and administration of financial instruments for the account of clients shall enter into a basic written agreement with the client, setting out the essential rights and obligations of the firm and the client. That agreement may be in paper form or another durable medium. Investment firms providing investment advice shall comply with the obligation laid down in the first paragraph only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.[43]



In the distance marketing of financial services to consumers, the right of withdrawal does not apply to contracts for financial services whose price depends on fluctuations in the financial markets that the provider cannot control and that may occur during the withdrawal period, including transactions in:[44]

i) Foreign exchange operations.

ii) Money market instruments.

iii) Transferable securities.

iv) Units in collective investment schemes.

v) Financial futures contracts, including equivalent instruments settled in cash.

vi) Interest rate futures contracts.

vii) Interest rate swaps, currency swaps, swaps linked to shares or a share index, or options to buy or sell any of the instruments listed above, including equivalent instruments settled in cash. This category includes currency options and interest rate options.

viii) Contracts referenced to market indices, prices or interest rates.

ix) Linked contracts in which at least one of the legal transactions involves any of the transactions listed above. For the purposes of this law, linked contracts are deemed to be complex legal arrangements resulting from the combination of two or more independent legal transactions, where the performance of one depends on the performance of all the others, either simultaneously or successively.

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43 Article 58 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.

44 Article 10 of Law 22/2007, of 11 July, on the distance marketing of consumer financial services.

R/3/2024

On 12 January 2023, the complainant invested in an investment fund, and on 26 January 2023, she requested to withdraw from the fund, citing the right of withdrawal provided by consumer regulations, and asked for a full refund of the subscription amount.

The CIS investment advisory contract she signed on 12 January 2023 informed the complainant that she did not have the right of withdrawal, stating that this right does not apply to certain cases stipulated by law due to the nature of financial services. The subscription order did allow for cancellation, but only if requested before the subscription was executed.

The Complaints Service concluded that the entity had acted appropriately, as the subscription could not be cancelled nor the right of withdrawal exercised after it had been executed. Investments in funds, regardless of their investment strategy, are subject to market fluctuations and other inherent risks, which are beyond the control of the fund's distributor, thus making the right of withdrawal inapplicable. The complainant could terminate the contract by requesting the redemption of the fund, accepting its net asset value at that time, but not by invoking the right of withdrawal.

➢ Sales order without updated data

To properly process their clients' orders, financial institutions must ensure their records are up-to-date and promptly inform account holders of any significant events that could impact their deposited securities and related transactions. Such events may include capital increases, stock splits, reverse splits, delistings, mergers, or restrictions imposed by markets or intermediaries.

R/96/2024

The complainant held foreign shares that underwent a reverse split, increasing their value at a ratio of 1:10, on 8 December 2023. On the same day, these shares, still under the same ISIN, began trading on the Nasdaq at market open.

Despite the actual position being reduced to one-tenth, the complainant's securities account still showed the pre-reverse split number of shares on 8 December. He proceeded to sell them, and the sale was executed that day, settled on 11 December, resulting in an overdraft, which the entity informed him about on 14 December.

The institution explained that this situation arose from the handling of international securities through intermediary agents. They stated that the agents received information about the event only after the market opened on 8 December, and the entity notified the complainant about the overdraft once it was identified following the settlement of the sale.

The Complaints Service found that the institution had acted incorrectly, as it had not been prompt or diligent in line with the securities custody and management agreement signed with the client. This contract required the entity to inform the client of any known circumstances that could affect the securities in custody.

The entity did not meet its obligation to notify the client about the reverse stock split before executing the order. As the investment service provider, this was a responsibility it held, regardless of any internal agreements with third-party companies, which had no direct relationship with the complainant. Relying solely on a subcontracted third party for liability would have left the complainant in a clear situation of vulnerability, as he would not have been in a position to make a claim. He was a client of the entity, not the third-party service provider.

➢ Combined orders

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:** 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.

Some entities offer the option to issue advanced contingent orders, such as combined orders. In the case reviewed by the Complaints Service, this type of order was created using two orders placed on the same securities and included a limit order and a market stop order in the same direction (i.e., both had to be buy orders or both sell orders). Executing one order would automatically cancel the other.

R/342/2024

On 27 March 2024, the complainant placed a combined order to sell securities, which included two types of orders: a limit order with a limit price of €5.77 and a market stop order with a stop price of €4.789. She complained that the combined order was executed incorrectly at an unauthorised price, leading to financial loss due to the discrepancy between the sale price and the price specified in the order.

The limit order should have been executed only when the shares reached or exceeded the set limit price of €5.77, to ensure a specific return. The market stop order should have been triggered only when the shares reached the stop price of €4.789, to limit potential losses from selling the securities once they reached a certain price. This stop price acted as a trigger for placing a market order, meaning no limit price was specified, and the order would be executed at the best available market prices until fully completed. Additionally, executing one of these orders would automatically cancel the other.

The sell order executed on 27 March 2024, from the two parallel orders in the combined order, was the market stop order. Its execution depended on the shares reaching a price of €4.789. The Complaints Service found that the combined sell order was executed correctly. When the shares hit the stop price of €4.789, the limit order at €5.77 was automatically cancelled, and a market order was placed without a specified price, trading at the best possible price, which was €4.804.

However, the Complaints Service noted that the entity had engaged in malpractice as it failed to provide clear information about the executed order. The settlement document given to the complainant could have misled her regarding which type of order was executed. It could have been mistakenly interpreted as a limit order at a fixed price, when in fact, a market order was executed.

➢ Transfer of investment funds through a platform

To start a transfer between CISs), the investor or shareholder must contact the destination management, distribution, or investment company (referred to as the destination company) and issue a written order for the necessary procedures. Once the destination company receives the transfer request, it must, within one business day, inform the original management, distribution, or investment company (referred to as the origin company). The notification must include at least: the name of the destination CIS and the sub-fund, if applicable; the identification details of the CIS account where the transfer will be made; the depositary or management company, if relevant; and the name of the origin CIS and sub-fund, if applicable.

The origin company has up to two business days from receiving the request to perform any necessary checks.

Both the transfer of cash and the transmission of all necessary financial and tax information from the original company to the destination company must occur from the third business day after the request is received, following the regulatory timeframes for paying redemptions or selling shares.

The net asset values applied to the transfer operations discussed in the previous section will be those specified in each fund's regulations for subscriptions and redemptions, or in the company's articles of association for the acquisition and disposal of shares.[45]

Some entities provide clients with access to a platform where they can enter transfer orders between funds managed by different national managers themselves. The entity managing the platform sends the order to the destination fund manager, who begins the transfer process and coordinates with the original fund manager to exchange the necessary financial and tax information.

Since the transaction is an external transfer – from one domestic manager, which maintains the register of unitholders for the original fund, to another domestic manager, which maintains the register for the destination fund – the deadlines mentioned earlier, as set out in CIS legislation, apply to this transaction.

The complainant was unhappy with the net asset value applied to the redemption of the original fund when executing a transfer order between investment funds through a platform. He was dissatisfied because a later net asset value, the one for 19 April 2024, was applied to the redemption implied in the transfer order placed on 16 April 2024.

The customer initiated the transfer order directly on the platform via their online banking on 16 April 2024 at 12:13:34. The entity managing the platform sent the order to the destination company, which received it on 16 April 2024 at 13:30.

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

The destination company had one business day to pass on the transfer request to the original company, which received it on 17 April 2024. The original company had two business days to perform the necessary checks and processed the transfer on 19 April, which was the date linked to the assigned net asset value.

Since this was an external transfer from one national management company, responsible for the register of unitholders in the original fund, to another national management company handling the register in the destination fund, the timeframes outlined in the CIS legislation applied to the transaction. Consequently, the Complaints Service concluded that the original company had processed the order within the legally defined deadlines, and that the net asset value assigned to the redemption implied in the transfer was correct.

➢ Execution of an order outside the validity period

The duration of the validity of the order shall be promptly recorded and shall be available to the competent authority in relation to each initial order received from a client.[46]

In the Spanish market model for the official equity market managed through SIBE, orders may have the following validity periods:

- **Valid for one day:** they remain in force until the end of the current trading session. If they are not executed during the session, the order, or any unexecuted part of it, is automatically cancelled.

- **Valid until a specific date:** they remain in force until the date entered by the trader, which may not exceed 90 calendar days. At the close of trading on that date, the order, or any unexecuted part of it, is automatically cancelled.

- **Valid until cancelled:** they remain in force for 90 calendar days, after which the order, or any unexecuted part of it, is automatically cancelled. Orders with a validity period of more than one day retain their priority in SIBE according to their price and time of entry, in comparison with orders entered during the session.

46 Article 74 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.

R/285/2024

The complainant was dissatisfied because she placed a purchase order on 26 April 2024, but it was executed on 29 April, outside the one-day validity period stated in the order.

The purchase order was conditional – triggered if the price fell below €4.85 – and limited to €4.84. On 26 April, the price did fall below €4.85, activating the conditional order and sending the limit order to the market. However, the price never reached €4.84 – the price limit indicated in the order –, so the purchase order was not executed on that day. Despite this, the order was executed on 29 April at 9:00:29 at a price of €4.84.

According to the complainant's order, both the conditional order and any subsequent limit order were only valid for a single day, i.e., 26 April 2024.

As a result, the Complaints Service determined that the entity had engaged in malpractice by executing the limit buy order on 29 April 2024. The limit buy order should have expired on 26 April, as it was not executed within its validity period.

A.3.6 Fees

Institutions providing investment services must comply with certain obligations regarding information on costs and related charges.[47] In order to ensure that clients are aware of all costs and charges they are required to pay and to enable them to understand the overall cost as well as the cumulative effect on the return of the investment, and to compare different investment services or instruments, investment firms should provide their clients with appropriate information on costs and associated charges.[48]

➢ **Illustration showing the cumulative impact of the costs on performance**

Investment firms shall provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

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

48 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.

i) It shows the cumulative effect of total costs and charges on the return of the investment.

ii) It shows any anticipated spikes or fluctuations in the costs.

iii) It is accompanied by a description of the illustration.[49]

CNMV Questions and answers on the implementation of the MiFID II Directive

On how this information should be provided, the CNMV has clarified the following:

Article 50.10 of the Delegated Regulation requires entities to give clients an illustration showing the cumulative effect of costs on the product's performance. This illustration must be provided both ex-ante and ex-post. The illustration must: i) include all costs that affect performance, ii) show any anticipated fluctuations or spikes in costs, and iii) be accompanied by a description of the illustration. So far, the regulation has not specified either the methodology for calculating the relevant returns or the format and presentation of the information. With regard to the illustration to be provided **ex-ante**, since no methodology has been laid down in the regulation, for investment services other than portfolio management an appropriate approach may be to present an indicative annual return for the product, enabling the client to compare that return with the reported costs. It is therefore essential that both the return and the costs refer to the same period, and that percentage figures are expressed on the same basis. This information must be accompanied by a clear statement that it is for guidance only, specifying whether the return shown is gross or net of costs. For equities, the indicative annual return may be calculated as the average annual return of the share over the previous five years, or, if that is not available, of the representative stock market index in which the share is traded. For fixed income, the calculation may be based on the IRR of the transaction ordered by the client. For CISs or PRIIPs, no such calculation is required, since the KIID and KID already contain information on product returns.

The ex-ante illustration must then be supplemented by an **ex-post** illustration showing the cumulative effect of costs on the product's actual return. Since the regulation does not establish a specific methodology, for services other than portfolio management a suitable approach may be to show the product's return for the calendar year covered by the periodic statement, or at least the overall return of the portfolio. This enables the client to compare those returns with the reported costs. It is essential that both returns and costs relate to the same period and that percentage figures are expressed on the same basis. This information must be accompanied by a clear statement specifying whether the return is shown gross or net of costs. To calculate the actual return for the calendar year, unrealised gains and losses may be included by comparing the market or fair value of the instruments at the beginning and end of the period, and adding realised gains or losses and other income (dividends, coupons, etc.) received during the year.

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49 Artículo 50.10 del Reglamento Delegado (UE) 2017/565 de la Comisión, de 25 de abril de 2016 por el que se completa la Directiva 2014/65/UE del Parlamento Europeo y del Consejo en lo relativo a los requisitos organizativos y las condiciones de funcionamiento de las empresas de servicios de inversión y términos definidos a efectos de dicha Directiva.

In portfolio management, specific regulations require firms to provide a periodic management statement that includes details of the portfolio's return and a comparison with a benchmark. In general, this information on returns, together with details of product and service costs, is considered sufficient to meet the obligation to provide an illustration of the cumulative effect of costs on returns, provided it specifies whether the return is shown gross or net of costs (in whole or in part).[50]

R/812/2023

The institution provided the customer with a pre-contractual information document regarding bonds traded on foreign markets:

- On one page, the document included a maturity flow chart showing an internal rate of return (IRR) of 2.73% without costs and expenses, and an IRR of 2.42% with costs and expenses.

- On a later page, it mentioned total expenses of 1.13%, which, since the product costs were zero, corresponded to the service expenses, namely the initial brokerage fee and ongoing custody fee.

The complainant noted that he did not understand the IRR stated in the pre-contractual information document because the management and custody contract included a custody fee of 1% of the bond's nominal value. The institution argued that the IRR calculation only considered the initial costs.

The Complaints Service determined that the entity had engaged in malpractice, as the information on the IRR with costs and expenses in the pre-contractual document contradicted the details in the associated tables of costs and expenses. Moreover, the information on the IRR with costs and expenses should have included estimates for both initial expenses and ongoing expenses, such as the custody fee. Alternatively, it should have clearly noted that only initial expenses were considered in the IRR calculation. Without this clarification, the information was confusing and misleading.

➢ Appreciation fee in portfolio management services

Portfolio management contracts generally offer one of the following fee structures:

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

– Fixed fee: this is an annual fee, settled biannually, calculated on the portfolio's net value.

– Variable fee: also known as a performance fee, this is typically charged annually. It is based on the portfolio's appreciation over the year, calculated by comparing the portfolio's value on 1 January (or the start date, if it is later) with its value on 31 December. Any fixed fees already charged to the client are deducted from this amount.

– Mixed fee: this combines elements of both the fixed and variable fees.

These fees are determined by the contractual agreement between the client and the service provider. When a performance fee is agreed upon for portfolio appreciation, no other limits apply. This differs from specific provisions for other products, such as the high-water mark used for performance fees in investment funds.

Managers of financial investment funds must set a performance reference period, ensuring that the performance-based management fee is only payable when positive returns have been achieved during this timeframe, covering at least the most recent five-year period of the fund. This high-water mark for performance fees applies to investment funds, following the CIS Regulations,[51] ESMA guidelines,[52] and the CNMV question and answer document.[53] However, it is not required for other financial instruments or investment services.

The complainant was unhappy with the annual performance or appreciation fees under a discretionary portfolio management contract. Their dissatisfaction stemmed from the entity's failure to consider the high-water mark outlined in the CIS regulations and the ESMA and CNMV guidelines. This mark involves a reference period of profitability, meaning the fee would only be payable after achieving positive returns during that period.

The Complaints Service clarified that this high-water mark is applicable to the investment funds for which it is intended, but not to other financial instruments or investment services. Consequently, the limits outlined in Article 5.3 of the CIS Regulations do not apply to portfolio management services.

51 Article 5.3 of Royal Decree 1082/2012, of 13 July, approving the Implementing Regulations of Law 35/2003, of 4 November, on Collective Investment Schemes.

52 Guidelines on performance fees in UCITS and certain types of AIFs, 5 November 2020 (ESMA34-39-992).

53 *Questions and answers on the regulation of CISs, VCFs and other closed-end collective investment vehicles*, 9 September 2024.

As this was a portfolio management service regulated by a specific contract, both parties were required to adhere to its terms. The contract specified an annual appreciation fee, calculated by comparing the portfolio's effective value on 1 January with its value on 31 December. The entity was entitled to charge this fee as long as the portfolio appreciated during that period.

The Complaints Service found that the entity had acted appropriately and the performance fees were settled in accordance with the terms of the portfolio management contract.

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.

Once this notification is made, the Complaints Service's policy is to freeze all securities accounts belonging to the deceased. This includes accounts where the deceased was the sole holder and those held jointly with others. This implies that, from the moment the institution is informed of the death, the co-owner of the deceased's account or the person authorised therein may not dispose of the securities.

However, if the heirs or interested parties do not report the death, the entities 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.

R/837/2023

The institution became aware of the account holder's death on 13 March 2019, as it issued a certificate of the deceased's holdings on that date, including shares held jointly with another person.

However, despite knowing of the account holder's death, the entity admitted that it failed to freeze the securities account. It processed orders to sell the shares between 2019 and 2020, with the proceeds credited to the cash account linked to the securities account. This led to a claim by one of the heirs.

The Complaints Service concluded that the entity had engaged in malpractice by not blocking the securities account and allowing the sale orders for the shares to be processed and executed.

R/215/2024

An heiress was dissatisfied because the securities in the deceased's account were redeemed, and the proceeds were deposited in the General Deposit Fund.

The deceased had died on 25 October 2002, while holding shares in a SICAV, but the entity was not informed of the death until March 2022, nearly 20 years later.

In February 2018, after unsuccessful attempts to contact the account holder and unaware of the death, the institution requested that the securities account containing the SICAV shares be marked as presumed abandoned. The change in circumstances led to the securities account being disconnected from the current account.

The SICAV was dissolved and liquidated, with the securities redeemed on 5 December 2022. The SICAV manager attempted to contact clients directly to request a current account number for the transfer. In cases where they could not be reached, the proceeds were deposited into the General Deposit Fund. Consequently, the liquidator deposited the redemption amount into the General Deposit Fund, establishing a cash deposit in favour of the deceased, identified by their national identity card number.

The inheritance was settled in July 2023, by which time the securities had already been redeemed due to the dissolution and liquidation of the SICAV.

The Complaints Service deemed the institution's actions appropriate. Although the institution learned of the death in March 2022, the heirs only presented the inheritance settlement to the entity in July 2023. During this period, the SICAV was liquidated, and the shares were paid out. Since there was no cash account linked to the securities account and the account holder could not be located to provide a current account number for the transfer, the SICAV manager, not the entity in question, deposited the amount into the General Deposit Fund. There is no record of the heirs requesting the removal of the presumed abandonment status of the securities account after reporting the death.

➢ Certificate of positions of the deceased

Once the investment service provider has been reliably informed of the death of the securities account holder, the heirs or legitimate interested parties can request a certificate of the deceased's holdings, provided they prove their status.

The institution must issue a document certifying the securities and cash the deceased held on the date of their death. For securities accounts, the certificate should detail the number of account holders, the financial instruments deposited, the number of securities, and their valuation at the time of the account holder's death.

If the requester cannot prove their status as an heir or legitimate interested party, the financial institution is entitled to refuse to provide this information, and the Complaints Service does not consider such a refusal to be improper.

R/240/2024

The institution engaged in malpractice by issuing a certificate of the deceased's holdings as of the date of her death, which contained inaccurate information. The certificate provided only an overall valuation of the securities in the deceased's account, whereas it should have detailed the positions in her securities account, specifically the three listed shares, along with their individual valuations.

➢ 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. Heirs and interested parties must provide all the necessary documentation for these procedures. Once the institution has received this documentation, it should promptly undertake all steps needed to complete the process.

R/165/2024

The heiress complained about delays in processing her mother's estate, as well as difficulties in obtaining information about the necessary steps and the financial products involved.

She submitted the deed of registration for the partition dated 14 December 2022 and claimed to have sent a fax on 20 April 2023 requesting probate information. She also provided an audio recording of a conversation with an employee from 7 November 2023, confirming that the fax was received. Additionally, she included a complaint filed on 4 January 2024 with the entity's Customer Ombudsman, whose response indicated that by March 2024, the estate settlement was still unresolved.

The institution claimed that, after reviewing and analysing the submitted documentation, it issued a legal opinion on 17 February 2023, which decided the allocation and settlement of the deceased's assets held with the institution. However, there was no record of the entity contacting the complainant in February 2023 to explain how to proceed with the transfer of ownership, nor any indication that it did so later.

The Complaints Service concluded that the institution had engaged in malpractice by mishandling the probate process, as there was a significant delay, and found no evidence that the entity had provided the complainant with the information she requested and was entitled to receive.

➢ Inheritance of seized investment funds

Some complaints have concerned delays in transferring units in an investment fund acquired by inheritance, caused by a seizure order from the State Tax Administration Agency (AEAT) on the units, even though the order had already been lifted.

In cases of this kind, the Complaints Service considers that institutions act only as agents of the judicial or administrative authorities, which alone decide whether the conditions are met to impose or lift a seizure order previously issued by them. The task of determining whether the freeze should remain in place lies solely with the authority that issued the order (AEAT, courts, etc.), not with the institution that merely executes it. The institution's role is limited to assessing whether the documentation provided is sufficient to support the lifting of a seizure ordered by a public authority. It must in any event receive an instruction to that effect from the authority that imposed the measure; otherwise, the securities will remain frozen.

R/238/2024

The claimant was unhappy that the heirs would not receive the shares of an investment fund, owned by two deceased individuals, until May 2024, despite the probate process beginning in 2021.

The institution explained the delay by noting that the Spanish Tax Administration Agency (AEAT) had imposed seizures on the shares of one co-holder.

- Specifically, 180.8658800 shares were blocked due to a proceeding issued by the AEAT on 28 November 2020. The institution received notice that the seizure was lifted on 27 May 2021, and the shares were unblocked on 3 June 2021.

- Another 13.8207100 shares were blocked following a proceeding from the AEAT on 23 April 2021, with the seizure lifted on 20 November 2023, making the shares available on the same day.

According to the documentation submitted, the heirs provided the necessary paperwork for probate and opened accounts to receive the investment fund shares in March 2022.

Considering the dates mentioned, from 20 May 2021 onwards, the heirs could have accessed the entire fund, except for the 13.82071 shares that were seized by the second AEAT order in 2021 and only released in 2023.

Therefore, the Complaints Service found that the institution had acted improperly by delaying the distribution of the fund's shares. Firstly, the institution did not allow the heirs to access the fund shares not affected by the ongoing AEAT seizure when they requested it in 2022. This was despite both holders being deceased, leaving no doubt that all the shares were due for distribution, the heirs having completed the necessary procedures to receive the shares, and the distribution not infringing on third-party rights or violating the AEAT's seizure order.

Moreover, the distribution of the 13.82071 shares involved in the second seizure should have occurred immediately after the seizure was lifted in November 2023, rather than being delayed until May 2024.

A.3.8 Ownership

➢ Waiver of the maintenance of the registration of shares of La Seda de Barcelona


CNMV
COMISIÓN NACIONAL DEL MERCADO DE VALORES

ACUERDO DE EXCLUSIÓN DE NEGOCIACIÓN DE LAS ACCIONES DE LA SEDA DE BARCELONA, S.A. (en liquidación)

Madrid, 12 de noviembre de 2015

The shares of La Seda de Barcelona, S.A. were delisted from the Madrid and Barcelona stock exchanges and from the Stock Market Interconnection System when liquidation proceedings began, with 13 November 2015 set as the last trading day.[54]

Once the shares had been delisted, one way of disposing of them was to transfer them to a third party by any means permitted under law (donation, sale, etc.).

Delisting prevents shareholders from trading the shares on the secondary market, but transfers outside the market remain possible, subject to the general provisions of the Spanish Corporate Enterprises Act and the company's articles of association. To complete a transfer, a counterparty must be found, terms or price agreed, and the transfer of ownership executed accordingly. It should be borne in mind, however, that given the insolvency proceedings affecting the company, completing a transaction on the terms described above may be difficult.

Apart from those options, investors may also use the voluntary waiver procedure set out in section 5.1 of PR230 of the Iberclear procedure manual, approved by Circular No. 8/2017 of 4 September. Under this procedure, the investor requests the waiver of maintaining the registration in their name of securities entered in the book-entry register which, having been delisted, are now inactive. This procedure applies to delisted companies that are inactive and that also meet certain

54 Material fact of 12 November 2015 at 14:25, registration number 230897. The CNMV announces that the delisting of La Seda de Barcelona, S.A. (in liquidation) has been authorised.

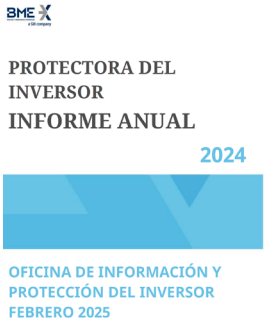
requirements laid down in the regulation, including a minimum period of four years without any entries in the issuer's record at the Commercial Register.

Some institutions reported that the shares of La Seda de Barcelona, S.A. did not meet this requirement, since the most recent entry was in July 2021.

In 2024, however, the legal department of Bolsas y Mercados Españoles (BME) informed the Complaints Service that the entries revoking powers of attorney, recorded in the Commercial Register in May and July 2021, interrupted the calculation of the four-year period required before the security could be subject to voluntary waiver of registration. A new certification from the Barcelona Commercial Register showed that the entries were the result of attorneys-in-fact relinquishing their powers.

BME's legal department explained that while a revocation of powers is an action taken by the company and would clearly interrupt its inactivity, the relinquishment of a power of attorney is an act by the attorney-in-fact, not the company granting the power. On that basis, this latter type of entry did not interrupt the period, and the procedure for waiving the registration of the security could therefore be initiated.

In light of BME's new position, the Complaints Service noted that the complainants could ask the institution to start – if it had not already done so – the waiver procedure before Iberclear. This would enable them to close the securities account and, in turn, the associated cash account.



In February 2025, BME's Investor Protection Office published its 2024 annual report, which set out the following criterion:

Voluntary waiver of the maintenance of the Book-Entry Register for securities that are delisted and inactive, as a way of avoiding the custody fees borne by investors. The case of La Seda de Barcelona. As noted earlier, this listed company has traditionally been cited as an example where the waiver procedure could not be initiated because the requirement of four years of registry inactivity had not been met. In 2024, however, new developments made it appropriate to give a more detailed explanation. Based on the information available at the time – a simple extract from the Barcelona Commercial Register dated 2022 – the issuer appeared not to meet the four-year inactivity requirement, as two entries recorded acts of revocation. More recently, though, after reviewing an official certificate from the Barcelona Commercial Register relating to LA SEDA DE BARCELONA (IN LIQUIDATION), provided by an investor, we were able to begin a round of consultations. Several departments took part in this process to assess the nature of the entries listed in the certificate and to reach a conclusion. The detailed analysis confirmed that the entries related to attorneys-in-fact relinquishing their powers. Since these were actions taken by the attorneys-in-fact and not by the principal (in this case, the issuer), the 2022 entries did not interrupt the period. The waiver procedure for this security will therefore be initiated in Iberclear, in accordance with the Procedures Manual (PR 230, Section 5).

Shareholders of La Seda de Barcelona (in liquidation) should remain alert during 2025 for any notices from Iberclear concerning this security. Once such a notice is issued, any registered holder may ask their Iberclear participant institution to request, on their behalf, the initiation of the voluntary waiver procedure for maintaining the registration in the Book-Entry System.

Finally, it should be remembered that waiving the maintenance of registration entails the loss of the rights associated with it, including the means of proving ownership of the securities, the method of transfer, and the protection against third-party claims in the cases provided for in current legislation.

BME a SIX company

Anuncios / Communications

Boletín de Cotización / Daily Bulletin

Bolsa de Madrid

martes, 4 de febrero de 2025 / Tuesday, February 4, 2025

On 4 February 2025, IBERCLEAR published an announcement in the Madrid Stock Exchange bulletin concerning La Seda with the following content:

Announcement of the application to LA SEDA DE BARCELONA, S.A. of the procedure for voluntary waiver of registration of equity securities excluded from trading and inactive.

*The company LA SEDA DE BARCELONA, S.A. (hereinafter, the "***Company***"), with Tax Identification Number A08010571 and registered with the Barcelona Commercial Register, volume 44333, folio 65, page B-94693, is hereby notified of the following:*

1. A participant has requested IBERCLEAR to initiate the procedure for voluntary waiver of registration in respect of the shares forming part of the Company's share capital, code ES0175290008, in accordance with IBERCLEAR regulations and, in particular, PR230 of the IBERCLEAR Procedures Manual, approved by Circular 8/2017 of 4 September.

2. Under section 5.1 of PR230, IBERCLEAR will require the issuer (the Company) to appoint a new entity responsible for the book-entry registration of the shares forming part of its share capital, as provided for in Articles 40 and 51.1 of Royal Decree 814/2023 of 9 November. A formal notice to this effect was issued on 20 January 2025.

3. If the Company does not respond within two months of the publication of this notice, IBERCLEAR will record the request for voluntary waiver of registration, in line with the requests submitted by the registered holders of the security, provided that those holders have no charges or encumbrances on the securities.

4. The Company will remain liable for any outstanding amounts arising from IBERCLEAR's fees for maintaining the security in its book-entry register, accrued up to the present date.

R/433/2024

The complainant raised concerns about the inability to cancel the securities account holding shares in La Seda de Barcelona, S.A.

The institution explained that these shares did not meet one of the requirements for voluntary cancellation of the registration, specifically the absence of registry entries for four years, given that the last entry occurred in July 2021. The Complaints Service communicated to the entity the new BME criterion, which clarified that this registration did not interrupt the four-year period calculation required, as it was a waiver by the attorneys-in-fact rather than a revocation by the principal company.

The institution sent a letter to the complainant explaining that it had begun the process to voluntarily withdraw the shares of La Seda de Barcelona.

The Complaints Service determined that the institution acted correctly by taking the necessary steps to start the procedure for cancelling the registration of the shares. It also informed the complainant that, once the withdrawal process was completed and the securities account had no assets remaining, he could cancel both the securities account and the associated cash account.

➢ Requirement of LEI code for a change of ownership

Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day. For the purpose of reporting the identity of clients, investment firms shall use a legal entity identifier established to identify clients that are legal persons.[55]

In order to safeguard the effectiveness of market abuse surveillance in respect of legal persons, Member States should ensure that legal entity identifiers (LEIs) are issued, and that their allocation and maintenance is in accordance with internationally established principles, so as to ensure that legal persons are identified in a systematic and unique manner. Investment firms shall obtain the LEI from clients before providing services which would trigger the obligation to submit a transaction report in respect of transactions carried out on behalf of those clients, and shall use that LEI in their transaction reports[56]

55 Articles 26(1) and 26(6) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Regulation (EU) No. 648/2012.

56 56 Recital 14 of Commission Delegated Regulation (EU) 2017/590, of 28 July 2016, supplementing Regulation (EU) No. 600/2014 with regard to regulatory technical standards for the reporting of transactions to competent authorities.

INFORMACIÓN RELEVANTE SOBRE EL CODIGO LEI (LEGAL ENTITY IDENTIFIER) EN ESPAÑA

On 19 May 2017, the CNMV issued a statement with information on the Legal Entity Identifier (LEI) in Spain stating that:

What is the LEI code?

The Legal Entity Identifier (LEI) is a 20-character alphanumeric code (ISO 17442 standard) that uniquely identifies legal entities worldwide. It is unique, permanent, consistent and portable for each entity.

Further information is available on the websites of the Global Legal Entity Identifier Foundation (GLEIF) https://www.gleif.org/ and the Legal Entity Identifier Regulatory Oversight Committee (LEIROC) http://www.leiroc.org/.

Who needs an LEI?

Several pieces of European Union legislation require this code to identify legal entities that participate in financial markets through repos, derivatives or securities. Investment firms and credit institutions executing transactions in financial instruments admitted to trading on a market on behalf of clients that are legal entities must obtain the client's LEI before carrying out those transactions (Article 26 of MiFIR).

If a client does not provide their LEI to the financial intermediary, the intermediary cannot execute transactions on their instructions where those clients are eligible to obtain an LEI but have not provided one (Article 13.2 of Commission Delegated Regulation (EU) 2017/590).

When must an LEI be obtained?

Legal entities that place orders with financial intermediaries to carry out transactions in instruments admitted to trading must complete all the necessary formalities to obtain an LEI before 3 January 2018 if they wish those intermediaries to continue executing their instructions [...]

ESMA REMINDS COMPANIES OF THE IMPORTANCE OF OBTAINING THE LEI CODE BEFORE 2018

On 11 October 2017, the CNMV issued another statement noting that the European Securities and Markets Authority (ESMA) had published a reminder to firms of the need to obtain an LEI before the entry into force of MiFID II and its Implementing Regulation MiFIR on 3 January 2018. The CNMV attached ESMA's press release[57] together with a CNMV translation of ESMA's explanatory note on the subject.[58]

esma European Securities and Markets Authority

09 October 2017
ESMA70-145-238

BRIEFING

Legal Entity Identifier (LEI)

The ESMA explanatory note clarified, among other points, who could apply for and who would need an LEI:

57 Press release of 9 October 2017 (ESMA71-99-61). "ESMA highlights importance of LEI for MiFID II / MiFIR compliance".

58 Document of 9 October 2017 (ESMA70-145-238). "Briefing: Legal Entity Identifier (LEI)".

Who can apply for it

Any legal entity may apply for an LEI.

The term legal entity includes, but is not limited to, unique parties that are legally or financially responsible for the performance of financial transactions, or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way e.g. trust, partnership, contractual. It excludes natural persons, but includes individuals acting in a business capacity.[14]

It also includes governmental organisations and supranationals.[15]

[14] In the context of the LEI, this exception refers to natural persons who provide investment services that involve reporting obligations under the aforementioned European legislation, where such provision is recognised in their jurisdiction. In Spain, this situation does not currently arise.

[15] General information about ISO 17442: https://www.iso.org/standard/59771.html

[...]

From 3 January 2018, any client who is a legal entity or structure, including a charity or trust, will need to have an LEI code if it wants the investment firm to continue to act on its instructions or make a decision to trade on its behalf.

R/275/2024

The complainant was the trustee of her husband's estate, which included shares held with the institution. On 26 December 2023, she executed a fiduciary assignment of these securities before a notary, transferring them to her two children, who were the sole heirs, while renouncing the usufruct. To facilitate the transfer and changes of ownership, the institution required her to obtain and provide the LEI code. The complainant disagreed, believing that the transaction did not constitute a sale and was not conducted through an investment firm, but rather was an inheritance transfer between private individuals governed by inheritance law.

The Complaints Service highlighted that the institution's request for a LEI code for the trust estate is mandatory to change the ownership of the shares and transfer them from the trust estate's securities account to the individuals' securities account. This requires the institution to amend the detailed record it manages as a participant in the book-entry accounting system.

As an investment services provider, the institution must collect LEI codes from its clients that are legal entities. This is necessary not only for the entity to report transactions in financial instruments to the relevant authority using the LEI code, but also so that, as a participant in the book-entry accounting register alongside Iberclear, the entity can transfer ownership of the securities and register them in the individuals' names in the detailed register.

The book-entry accounting system operates on two tiers, with Iberclear responsible for maintaining the central register and participating entities managing the detailed register. This detailed register records securities ownership and identifies legal entity clients by their LEI code. Iberclear states that: "Participating entities must keep the detailed register permanently updated, documenting every transaction conducted by the entities with their third parties, or on their behalf, that affects the ownership or availability of the securities. This includes blocking securities affected by real rights or other types of encumbrances".

According to European regulations, customers must identify themselves in a consistent, unique, and reliable manner so that financial intermediaries can report transactions involving the financial instruments they order. Institutions must identify their corporate clients using their LEI code when executing transactions that include, among others, the transfer of financial instruments to or from the relevant securities accounts.

A.3.9 CSD operations

➢ **Non-admission due to the expiry of the one-year period**

As noted in the 2017 and 2018 Annual Reports, Law 7/2017, of 2 November, incorporated Directive 2013/11/EU of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution in consumer matters into Spanish law, and designated the CNMV as the competent authority in the financial sector within its area of supervision.

Until a new single authority for alternative dispute resolution is created, the existing complaints services were instructed to adapt their procedures and operations to the requirements of that Law. This adaptation involved a series of changes to the complaints procedure, described in detail in the above-mentioned reports.

On the subject of grounds for inadmissibility, the grounds for lack of competence of the Complaints Service listed in Article 10.1 of Order ECC/2502/2012 were retained, while those referred to in Article 18 of Law 7/2017 were added, replacing those in Article 10.2 of Order ECC/2502/2012.

Under Article 18.1 of Law 7/2017, entities must set out in their statutes or regulations the grounds on which a complaint may be declared inadmissible, including, among others, where "[...] the consumer submitted the complaint to the alternative dispute resolution body more than one year after it was first lodged with the business or its customer service departmente".[59]

Furthermore, Article 18.2 of Law 7/2017 provides that: "The grounds on which alternative dispute resolution entities may declare a complaint inadmissible must take into account the characteristics of the complaints and the type of contracts of the companies concerned, and under no circumstances may they undermine consumers' access to alternative dispute resolution procedures in consumer matters".

The Complaints Service takes the view that the one-year period for bringing a case before this second instance starts either on the date the institution resolves the complaint (if it does so within one month) or, failing that, once the one-month waiting period has elapsed, after which complainants may bring their case before the Complaints Service. There are two reasons for fixing this as the starting point of the one-year period: first, the nature of the complaints, which may only be filed by retail clients and therefore warrant greater protection; and second, the need to safeguard consumers' access to the procedure, since the Complaints Service can only accept a complaint once one of those points in time has been reached.

R/234/2024

The entity argued that the complaint was inadmissible because more than a year had passed since the complainant submitted it to the entity's CSD before taking it to the Complaints Service.

However, the Complaints Service rejected this reasoning, clarifying that according to its criteria, the one-year period starts when the complaint can be handled by the Complaints Service. This is either after the CSD issues a decision within one month or if no decision is made within that timeframe. Otherwise, the time the complainant has to wait for the entity to address their complaint or for the one-month period to pass before they can approach the Complaints Service would unfairly shorten their one-year window to do so. If the entity resolves the complaint in less than a month, that time – along with the month itself – diminishes their effective time to complain. This situation is unacceptable, especially considering that complainants, as retail customers, are at a disadvantage and therefore entitled to greater protection compared to investment service providers.

59 Order ECC/2502/2012, of 16 November, regulating the procedure for submitting complaints to the complaints services of the Bank of Spain, the National Securities Market Commission and the Directorate-General for Insurance and Pension Funds.

➢ Lack of specificity in the CSD's response

Financial institutions are required to handle and resolve complaints and claims submitted by their customers in connection with their legally recognised rights and interests.[60]

Any decision on a claim must always be duly reasoned and include clear conclusions regarding the request made in each complaint or claim, and shall be based on the contractual terms, the applicable rules on transparency and customer protection, and generally accepted good financial practices and standards of conduct.[61]

R/344/2024

On 30 May 2024, the complainant lodged a complaint about a discretionary portfolio management service. He then sent a message to the entity on 2 July 2024, inquiring about the status of his complaint.

On 31 July 2024, the CSD responded, stating that the primary aim of the institution's staff is to provide the highest quality service to customers and ensure their satisfaction with the products, services, and attention they receive. They apologised if this objective had not been met on any occasion. Secondly, they informed the complainant that they had reached out to him to discuss the issues he raised in his document.

Based on the institution's response, the Complaints Service concluded that the entity had engaged in malpractice. The decision from the CSD did not comply with regulatory requirements because it failed to provide any conclusions on the issues presented in the complaint. It merely mentioned that someone had contacted the complainant to discuss the matters outlined in his document.

60 Article 3 of Order ECO/734/2004, of 11 March, on the customer service departments and services and the customer ombudsman of financial institutions.

61 Article 15.2 of Order ECO/734/2004, of 11 March, on the customer service departments and services and the customer ombudsman of financial institutions.

Annex 4 Most recurrent and relevant enquiries of 2024

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A.4.1 Most recurrent subjects of enquiry in 2024

Once again, documents concerning irregular practices by what are referred to as **"boiler rooms"** made up the largest number of enquiries. In 2024, they represented 30% of all written enquiries. Of these, 37% (211 enquiries) were about entities that the CNMV had already issued warnings about.

In 2024, these entities continued to concentrate their activities on products and services related to crypto-assets. Additionally, there was a notable rise in the offering of automated algorithmic trading services, which are allegedly based on artificial intelligence systems.

Fraudsters are using characteristics typical of entities properly registered with regulators, such as domain names or company names, and sometimes even their official registration numbers, to deceive investors into thinking they are legitimate. These fraudulent websites have been marked with the word "clone" in the warnings published by the CNMV on its website. They clarify that these sites have no connection whatsoever with the authorised entities they are impersonating.

A second major category of enquiries, making up 20% of the total, concerned the **provision of investment services.** These enquiries reveal discrepancies between customers and financial institutions. Responses are provided based on the criteria used in the resolution of complaints, or the individual is encouraged to file a complaint to receive a decision from the CNMV regarding the institution's actions in their specific case.

Enquiries in this category frequently involve investment protection systems in the event of a depositary's bankruptcy, or the process for acquiring shares and investment funds *mortis causa*. This includes questions about the need to open a securities account with the depositary, the blocking of accounts in cases of joint ownership, and associated expenses and costs.

An important issue for shareholders of delisted companies is the charging of securities custody fees and the inability to close the securities account, thereby preventing them from ending their commercial relationship with the financial institution. Investors are looking for ways to stop maintaining and paying custody fees for delisted securities, both Spanish and foreign, which seemingly hold no asset value.

A third category, accounting for 17% of written enquiries, relates to the **information services provided by the CNMV**. These were addressed using information from CNMV communications, statistics, publications, and press releases, all freely accessible to the public.

Within this category, particular focus is given to enquiries and complaints resolved through information shared in the CNMV's investor alerts. Numerous enquiries and complaints continue to expose irregular practices, such as fraudsters requesting upfront payments from victims for supposed tax payments to foreign authorities, or for other reasons, in order to recover an investment purportedly blocked by a supervisory body. To lend credibility to their schemes, fraudsters often misuse the images and logos of various organisations, including the CNMV.

A fourth category of enquiries, representing 15% of all written communications, is addressed using data from the **CNMV's official registers**. Investors often seek clarification or resolution of their questions through information in these registers, such as prospectus filings, significant shareholdings, or insider information on issuers.

Notably, there are a large number of enquiries from investors asking the CNMV for detailed information about their investments, including the number, type, and valuation of assets, or the date and purchase price of securities older than five years. These requests are usually motivated by tax considerations. However, it is important to note that the CNMV does not maintain official records with the requested data and therefore cannot provide this information. Financial institutions are responsible for supplying their clients with sufficient information about their assets, limited to the previous five years.

The fifth category of enquiries, making up 14% of all written queries, concerns **issuers and listed companies**. As in the previous year, there were repeated questions and complaints about loans transferred to securitisation funds, the status of companies suspended from trading, and corporate transactions or takeover bids. These include issues such as the bid acceptance process, the timetable, the authorised price, and the possibility of a compulsory purchase.

This category also covers any other documents, suggestions, or complaints that investors believe might indicate irregularities related to securities listings, the exercise of voting rights, or information provided to shareholders. These documents are brought to the attention of the relevant directorate general, which will take any appropriate action.

The final category of enquiries by volume relates to **collective investment schemes, their management companies, and depositaries,** making up 4% of the total documents received. A key concern is understanding the number of shareholders in the CIS of origin of the transfer, particularly for those CISs registered with the CNMV for marketing in Spain as corporate entities, in order to benefit from tax deferral.

A.4.2 Most relevant subjects of enquiry in 2024

In addition to these common topics, investors also made enquiries about issues related to market conditions or specific events which took place in 2024. These included:

➢ Sustainable finance

Throughout 2024, there were inquiries on several aspects of sustainable finance, including the issuance of sustainable debt, the integration of sustainability preferences in evaluating the suitability of clients in advisory services or portfolio management, and how well the recommendations of the Good Governance Code on sustainability were being followed.

➢ Trade Republic Bank GMBH/Freedom Finance Europe Ltd

In 2024, due to a more active commercial policy aimed at attracting customers, investors contacted the CNMV to verify the authorisation and registration of Freedom Finance Europe Ltd, a Cypriot investment firm operating in Spain under the freedom to provide services. They also enquired about Trade Republic Bank GMBH, a German credit institution that operated under the freedom to provide services but which has had a branch in Spain since 2025.

➢ Custody and cancellation fees for securities accounts of companies in liquidation

In 2024, the CNMV continued to receive complaints from shareholders of companies excluded from trading and in liquidation, with shares represented by book entries. These shares remain a burden for shareholders, as they are unable to close their securities accounts or end their commercial relationships with the entities, yet they must keep paying custody fees.

One of the companies frequently cited in these complaints is La Seda de Barcelona, S.A. (in liquidation), which was delisted from the Madrid and Barcelona stock exchanges on 16 November 2015. In 2024 alone, 221 complaints were received regarding this company.

However, regarding **La Seda de Barcelona, S.A. (in liquidation),** Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal (Iberclear), the entity responsible for maintaining the book-entry register, announced in 2024 that it intended to start a waiver procedure. Once completed, this would allow shareholders to opt out of having their shares registered in the book-entry system.

This means shareholders can stop paying deposit fees, and if they don't have other securities on deposit, they can choose to close their securities accounts with the financial institution. The procedure does not mean giving up ownership and can be reversed. However, no legal actions or transactions involving the disposal, administration, or other dealings with the securities can be registered in the accounting system until the original registration status is restored.

➢ Restrictions on marketing structured debt instruments (ETCs)

In 2024, retail clients submitted enquiries about their inability to purchase these complex instruments listed on regulated markets.

Such restrictions, or the ETC distribution strategies adopted by the investment service provider, stem from its obligations regarding product governance monitoring and control. The main objective is to ensure, as far as reasonably possible, that the products are compatible with the needs, characteristics and objectives of the identified target market.

As part of their distribution strategy for a financial instrument, firms may decide not to allow clients who fall within a defined negative target market to acquire the instrument.

In any event, as long as they comply with their product governance obligations and all other applicable requirements, investment service providers remain free to define the scope of the services they offer their clients and, in particular, to determine the financial instruments on which those services are provided.

➢ Fraudulent use of the CNMV's identity for managing investment recovery

Through investor enquiries, it came to light that certain individuals and companies were misusing the names of legitimate firms to contact victims of financial boiler rooms and offer to recover their losses, fraudulently invoking the identity and image of the CNMV. These firms claimed that they had been engaged by the CNMV to manage the recovery.

The practice involved approaching potential clients of registered investment firms and asserting that they had been hired by the CNMV to investigate possible irregularities and secure the return of funds.

The CNMV issued a new warning to investors to prevent such fraudulent approaches and false promises, regardless of the name or domain being used.

https://www.cnmv.es/webservices/verdocumento/ver?t=%7b26428d8f-e51c-4731-828c-92768f8e62b9%7d

➢ Investment advice on social media

The enquiries concerned the legality of issuing investment recommendations through social media.

Investors were informed of the requirements that such recommendations must meet in order not to be considered an activity reserved exclusively for firms authorised to provide investment services. Where the recommendation relates to specific financial instruments – whether explicitly or implicitly – and takes into account the personal circumstances of the investor, it is considered a reserved activity. In such cases, it must be carried out by entities duly authorised and registered in the relevant administrative registers of the CNMV or the Bank of Spain.

The preparation of investment reports, financial analyses or other forms of general recommendation relating to transactions in financial instruments is an ancillary service and is not regarded as a reserved activity.

However, this activity is subject to European legislation on market abuse. The CNMV statement of 24 October 2022 was shared with investors: "The CNMV has detected some influencers who may be disseminating investment recommendations without fully complying with the regulations".

https://www.cnmv.es/webservices/verdocumento/ver?t=%7bd6e36d88-f319-4671-98ca-fa8f1cecc112%7d

➢ Queries related to public takeover bids for securities

Queries on takeover bids submitted for Applus Services, S.A. by Amber Equityco, S.L.U. and Manzana Spain Bidco, S.L.U., and on the regime for competing offers; the procedure and applicable rules for the withdrawal and amendment of competing offers; and the period available to shareholders of Applus Services, S.A. to place acceptance orders, revoke them, or their settlement period.