



## PUBLIC STATEMENT ISSUED BY THE CNMV IN RELATION TO THE RECENT DECISION HANDED DOWN BY THE SPANISH SUPREME COURT ON ACCESS TO FILES PURSUANT TO THE SPANISH TRANSPARENCY LAW

22 March 2022

In a recent Decision dated 10 March 2022, the Spanish Supreme Court (*Tribunal Supremo*) has ruled on the appeal filed by the Spanish National Securities Market Commission (CNMV) in respect of the relationship between the Recast Text of the Spanish Securities Market Act (Recast Text SMA) and Spanish Act 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance.

In the decision, the Supreme Court confirms that the confidentiality regime under Article 248 of the Recast Text SMA prevails over the provisions of Spanish Act 19/2013 on Transparency. However, the Court considers that said article does not necessarily cover all the information contained in a supervisory file, and that it is not sufficient, for these purposes, that the CNMV Internal Regulations (IRs) consider such content as confidential.

In the absence of a rule with the rank of an Act to this effect, the *Tribunal Supremo* considers that not all information contained in a file of a financial supervisory authority should be considered as confidential information covered by the duty to maintain professional secrecy.

Accordingly, the *Tribunal Supremo*, in this specific case, requires the CNMV to notify the application for access to the administrative file concerned to the relevant natural person whose right to privacy might be affected, to enable such person to argue that his or her rights have been affected; and so that the application shall continue to be processed.

The *Tribunal Supremo* also considers that it is not necessary to refer the matter to the European Court of Justice for a preliminary ruling, since its case law has been applied and for being a case in which only an interpretation of national rules (Recast Text SMA and IRs) is involved, contrary to what [the CNMV claimed in December 2020](#).

The CNMV will, of course, abide by and execute the ruling. At the same time, it is worth noting that there are ongoing legislative initiatives to establish a comprehensive regime on this matter with the rank of Act, to align the CNMV's confidentiality regime with that of other EU national supervisors.

The aim of this amendment is to bring the CNMV into line with practices of other EU countries to avoid distortions in the exchange of information among supervisors, thereby facilitating the CNMV's proper exercise of its powers so that they continue to be aligned with the confidentiality regime of other EU supervisors, and thus not compromising international cooperation in the field.

The CNMV hereby reiterates its commitment to provide maximum transparency and dissemination of its actions, within the limits established by the applicable rules and always complying with the duty of secrecy, to ensure the best possible fulfilment of its functions of supervision of the securities markets and investor protection.