

FOGAIN Investment Guarantee Fund Event

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I would like to start by thanking the Manager of Fogain for inviting me to open this event. I will also take the opportunity to join in the dedication to the memory of Antonio Moreno and to highlight the notable work performed in the name of the CNMV for many years at Fogain.

I consider the aim of the event, making the work of Fogain known, is particularly appropriate coinciding with significant changes in its regulatory regime. In my intervention I will underline some of these regulatory developments and will also refer to other challenges faced by the entities adhering to Fogain.

1 Developments in the regulation of Fogain

As commented, the regulation of Fogain has recently suffered certain important changes. I will focus on the two of greatest significance: the requirement for the adherence of EAFs and EAFNs (Financial Advisory Firms and National Financial Advisory Firms) and the modification of the rules for calculating the contribution by the entities adhered to Fogain.

- The LMVSI adopted in March last year included the requirement for the adherence to Fogain of EAFs and EAFNs as demanded by MiFID, both regarding harmonized firms (as in the case of EAFs) and other figures that may be developed by Member States by use of the optional exceptions foreseen in said Directive (this being the case of EAFNs that are not considered IFs and which, therefore, cannot benefit from the so-called European passport).

With EAFs and EAFNs adhering to Fogain it is expected that the trust of investors in the services of such firms will increase which, in turn, could aid in increasing their small market share. On the other hand, this will entail an important organisational and administrative effort for the manager of Fogain, with the adherence of some 140 new entities (76.5% regarding those adhered by the end of 2023).

- Although I imagine that the regulatory change that will undoubtedly interest the audience present at this event the most will be the recent modification of the system for calculating their contributions to Fogain. This is a regulatory modification pushed forward for years by the CNMV, in collaboration with SGTPF (Spanish General Secretariat of the Treasury and Financial Policy), which finally took place towards the end of last year. Beyond making the adherence of EAFs/EAFNs feasible, the reform had

two objectives. On the one hand, to establish a contribution system better adapted to the risk added by the different types of entity and, on the other, to align as far as possible the regulation on contributions to Fogain with that of the FGD (Deposit Guarantee Fund).

I will not delve into the details of the reform but just highlight that, according to our estimates, the average contributions for adhered entities will be reduced by around 60% when compared to those applicable with the previous system. This will free resources that the entities may dedicate to their normal business. However, it should be stated that, despite the important reduction in the contributions, the regulation of Fogain continues to be stricter, regarding the contribution suspension regime, than that applicable to deposit guarantee funds at European level.

From the point of view of the supervisor of the solvency of the adhered entities, it should be stressed that such reduction has been possible thanks to a series of factors that all market participants must maintain. Firstly, due to the actual assets of Fogain (some €130 million at the close of 2023) being considered enough to comply with its functions as they exceed several times the amount of the gross payments performed as a result of the crises occurred since its creation in 2001).

In second place, since the risk covered by Fogain has been progressively reduced, both as a result of the improvement in the controls of the sector and the regulatory modifications which have also contributed to reduce the risk of Fogain. In particular, this is due to the modification of the Royal Decree on IFs of 2018, promoted by the CNMV and the SGTPF after the Banco Madrid case, establishing the coverage by the FGD – not by Fogain – of the cash balances of clients of IFs held in credit institutions should these enter insolvency proceedings. Fogain would not have been affected if this regulation had been applicable at the time.

- One last possible change, one I wish to refer to within the operational scope of Fogain, is that relating to the reception and dispatch of information by adhered entities for the calculation of the contributions. Since 2010, the CNMV acts as “intermediary” as it receives from adhered entities the information necessary and conveys this information to the manager of Fogain. The supervisory experience and the search for greater efficiency led us to consider the appropriateness of modifying the flow of information, returning to the initial system in which the manager of Fogain received the information directly, in such a way avoiding complexities in the interaction with adhered entities. Also, the change of model should be accompanied by a reinforcement of the manager’s control tasks on the information received which, if necessary, could be backed by the CNMV exercising its powers on the reporting entities.

Anyhow, the change in information flows requires the modification of a CNMV Circular (included in our plan for 2024), for which reason it would be applicable to the information for the 2025 budget.

2 Challenges for the adhered entities

Besides these changes regarding the operation of Fogain and taking advantage of this forum, I would like to briefly share some thoughts regarding other common challenges regarding the adhered entities. Specifically, I will refer to three matters deriving from European regulations.

- 1) The initiative of the European Commission regarding the “Retail Investment Strategy”. On this issue there is a presentation at this event which will surely dive into the matter more deeply and in greater detail. On my behalf, I will simply qualify the situation as being one of great uncertainty. Indeed, after the initial proposal of the EC and the sector’s reaction regarding its content (in particular criticising that relating to the prohibition of incentives beyond advice and value for money), the proposals by the European Parliament (EP) and the Council, which are to be submitted to the corresponding debate between all three institutions before its approval, should be considered. We should add to this the upcoming EP elections in early June. Within this context, it is truly difficult to anticipate the final content, the potential impacts on the sector and even whether the legislative package will finally be approved and, if so, when.
- 2) The MiCA Regulation (on markets in crypto-assets). Unlike the RIS, in this case it is a regulation that has already been approved and coming into force in 2025. Thus, the public action plan of the CNMV includes several initiatives in view of the implementation of this Regulation. Among these, we have already launched a survey to learn about the interest of financial intermediaries in providing investment and custody services for crypto-assets. I encourage you to respond to the survey we sent and to adopt the strategic decisions prudently, adequately assessing the risks such activities would imply and with the corresponding reinforcement of the necessary controls, avoiding the risk of “contaminating” the traditional business.

Regarding this, I refer to the statement of October 2023 from the EU’s financial markets regulator and supervisor (ESMA) which stated that “Even with the implementation of MiCA, retail investors must be aware that there will be no such thing as a ‘safe’ crypto-asset”. Service providers should also consider this, given its eventual impact on the trust of investors if their expectations are dashed and the eventual reputational risk this may involve.

Finally, regarding MiCA and this event being held by Fogain, it should be highlighted that MiCA crypto-assets and the cash of clients destined to such operations are not covered.

- 3) The DORA Regulation (on the digital operational resilience of the financial sector). This is also a European Regulation in force from January 2025, its aim being to improve the resilience of the European financial system to the risks associated with digitalisation. Throughout this year, the CNMV intends to assess the level of readiness of IFs and managers regarding the Regulation and to provide guidelines aiding their adaptation.

This Regulation is applicable to all types and sizes of financial firms. Therefore, I believe it essential for its application to be carried out in a duly proportional manner. However, its feasibility will differ according to the type of entity. In the case of IFs, those considered to be small and not interconnected (the majority in Spain), the actual Regulation envisages a simplified regime exonerating these from several obligations

established. By contrast, such simplified regime does not exist for managers (probably due to the lack of a similar legal category). This poses legal objections, based on the principle of proportionality, so as not to apply such obligations on managers that may be considered small and not interconnected, despite the equivalence in operational terms and the cybersecurity risk regarding the IFs on which this exception is applicable.

3 Final considerations

As already indicated, the sufficiency of the assets of Fogain and the absence of losses have allowed for the contributions to be reduced, which will benefit adhered entities and the system as a whole. As a result, this new stage, also marked by this reduction due to the inclusion of new types of entity, all market participants must contribute to maintain the high security standards of the scheme and its low loss occurrence. For this, the challenges faced by the sector must be addressed with the utmost prudence and adequate control levels. I trust the capacity of the sector to successfully address this new stage and it can rely on the collaboration of the CNMV.