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Gómez-Acebo & Pombo



Insurance and Financial Regulation

Insurance and Financial Regulation Practice Area, Gómez-Acebo & Pombo

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The aim of this newsletter is to bring together key legislation, supervisory criteria and documentation published in the period June - September 2023.

Editorial

The New Retail Investment Strategy

On 24 May 2023, the European Commission published its Retail Investment Strategy (“RIS”) initiative, which envisages major changes to the way investment and insurance products are distributed. The new retail investment package will amend several directives and regulations that underpin our current financial system (i.e., MIFID, IDD, PRIIPs, UCITS and AIFMD) and may lead to a significant change in the business and pricing models of institutions, whether they are product manufacturers or distributors.

The main objectives of this package of measures include (i) encouraging the participation of retail (consumer) investors in capital markets; and (ii) protecting retail clients in their investment decisions to ensure that these are aligned with their needs and preferences. The aim is to strengthen the EU’s capital markets union as a safe haven for citizens to invest in the long term and thereby boost the channelling of private funding into the economy.

In order to achieve the above objectives, the following measures have been included:

- Increase transparency and comparability of costs, to ensure that investment products bring real value for money to retail investors. In this regard, institutions should incorporate the analysis of the pricing process into their product approval processes to justify the cost of products and services in relation to the value for money provided to clients.
- Ensure that retail clients receive at least annually a clear view of the investment performance of their portfolio.
- Ban inducements in relation to the reception and transmission of orders or the execution of orders, except for orders (i) originating from prior advice; or (ii) given in the placement and underwriting services. In addition, it provides for stricter safeguards and transparency where inducements are allowed (i.e., advice on a non-independent basis), in order to justify the added value of such services.
- Strengthen the professional obligations and qualifications of advisors in the provision of advisory services, to demonstrate that they are acting in the best interests of the client. Ensure that advisors are held accountable for the use (and misuse) of marketing communication, to protect investors from misleading advertising.
- Improve the delivery of information on investment products and services to retail investors, through standardisation, use of standardised terms and adaptation to the digital age.
- Member States are encouraged to implement measures that support citizens’ financial literacy, to empower them to make better financial decisions.
- Enhance supervisory cooperation to ensure that rules are effectively applied across the

EU and to unify the fight against fraud and malpractices.

- Increase the obligations on the provision of the advisory service to justify acting in the best interests of the client (enhanced “acting in accordance with the best interest of the client” test - a test applicable to any investment advisory service - instead of the “quality enhancement” test).

The package is wide-ranging, and these developments, if adopted in the terms proposed by the European Commission, will force institutions to make profound changes to their business models and will equalise obligations in the distribution of investment products, be they pure investment products or insurance-based investment products.

The proposal envisages a transposition period of 12 months, and 18 months for effective implementation. The European Commission published the official translations on 6 July 2023 and by 28 August 2023 stakeholders submitted comments to the Commission on the newly published package of measures. Taking into account the above timetables, the final text is expected to be completed between 2023 and 2024 for approval by the Parliament and the Council, so that it will take effect in 2026.

Finally, while representatives of the European financial and insurance industry support the objectives of the proposal (investor protection and increased retail investor participation in capital

markets), they have also expressed certain concerns during the public consultation process, including the following:

- Limitations on the pricing of products and services, the best interest of the client test and excessive formalities and obligations.
- Excessive restrictions on inducements could generate effects contrary to the objectives pursued by the strategy and lead to fewer products being available to retail investors.
- In order to guarantee the value for money of products, the publication of benchmarks on costs and profitability by European authorities is established, which would function in practice as a maximum price limit, as the distribution of products that deviate from the benchmarks is prohibited unless additional tests and evaluations are carried out to determine the justification and proportionality of costs and expenses. Some consider that this measure raises doubts as to whether it fits within the framework of EU treaties and rules.
- The proposed transposition timetable is very ambitious, as time is needed to publish the necessary delegated acts (Level 2 legislation) and national legislation to implement the new requirements.

Cristina Esteban Díaz
Associate Lawyer

Legislation

Spanish

Royal Decree 571/2023, of 4 July, on foreign investment, Official Journal of Spain (“BOE”) of 5 July 2023¹.

Royal Decree-law 5/2023, of 28 June, adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposing European Union Directives on conversions of commercial companies and reconciling work and family life for parents and carers; and on the implementation and enforcement of European Union law, BOE of 29 June 2023².

Royal Decree 668/2023, of 18 July, amending the Pension Schemes and Funds Regulations approved by Royal Decree 304/2004, of 20 February, for the promotion of workplace pension schemes, BOE of 20 July 2023³.

Draft Royal Decree on the legal regime for investment firms and other entities providing investment services⁴.

Draft Royal Decree amending Royal Decree 1082/2012, of 13 July, approving the Regulations for the implementation of the Collective Investment Schemes Act 35/2003 of 4 November⁵.

Draft Royal Decree implementing the CNMV’s administrative powers⁶.

Draft Royal Decree on financial instruments, admission to trading, registration of negotiable securities and market infrastructure⁷.

Draft Order approving form 430 for “ Insurance Premium Tax. Self-assessment” and determining the filing method and procedure, and amending the Ministerial Orders approving the registration designs of forms 165, 180, 184, 188, 189, 193, 194, 196, 198, 296 and updating the contents of Schedules I and II of the Ministerial Order approving form 289⁸.

European

Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on in-

¹ [Link.](#)

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formation accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849, Official Journal of the European Union (“OJEU”) of 9 June⁹.

Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJEU of 9 June¹⁰.

Commission Implementing Regulation (EU) 2023/1672 of 30 August 2023 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2023 until 29 September 2023 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance, OJEU of 31 August¹¹.

Commission Regulation (EU) 2023/1803 of 13 August 2023 adopting certain international accounting standards in accordance with Regulation (EC) 1606/2002 of the European Parliament and of the Council, OJEU 26 September 2023¹².

Other documents of interest

National authorities

Bank of Spain

Quarterly report and macroeconomic projections for the Spanish economy. Third quarter of 2023¹³.

Spanish Securities Market Authority (CNMV)

Notification to ESMA confirming compliance with the Guidelines on certain aspects of the MIFID II suitability requirements, 2 June 2023¹⁴.

Notification to ESMA confirming compliance with the Guidelines on certain aspects of the MIFID II remuneration requirements, 2 June 2023¹⁵.

2022 Annual Report detailing developments in “sustainable finance” and warning about “boiler rooms” 19 June 2023¹⁶.

⁹ [Link.](#)

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¹¹ [Link.](#)

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Communication to EBA of the intention to comply with the Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) under Directive (EU) 2019/2034, applicable from 19 June 2023¹⁷.

CNMV Decision of 11 July 2023 on product intervention measures relating to financial contracts for differences and other leveraged products (pending publication in the BOE), 12 July 2023¹⁸.

Good Governance Code on Cybersecurity, 13 July 2023¹⁹.

Directorate-General for Insurance and Pension Funds (DGSFP)

DGSFP's Supervisory Priorities for the period 2023-2025, 8 June 2023²⁰.

Quarterly Information Bulletin on Insurance and Pension Funds, 12 June 2023²¹.

DGSFP's Quarterly Information Bulletin on Insurance and Pension Funds - First Quarter 2023, August 2023²².

DGSFP: Supervisory Actions on Payment Protection Products related to Mortgage Loans, Con-

sumer Finance Transactions and Credit Cards, August 2023²³.

Circular 1/2023, of 30 August, of the Directorate-General for Insurance and Pension Funds, on the mandatory use of electronic means for communications and notifications between insurance intermediaries, reinsurance brokers and certain complementary insurance intermediaries, and the Directorate-General for Insurance and Pension Funds, 31 August²⁴.

DGSFP's Insurance and Pension Funds Report 2022, 19 September 2022²⁵.

Briefing note issued by the Directorate-General for Insurance and Pension Funds and the Directorate-General for Animal Rights on liability insurance for dog owners²⁶.

European Authorities

European Commission

Commission Delegated Regulation .../... of 31.7.2023 supplementing Directive 2013/34/EU as regards sustainability reporting standards²⁷.

¹⁷ [Link.](#)

¹⁸ [Link.](#)

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²⁷ [Link.](#)

Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sustainable Finance Disclosure Regulation 2023/C 211/01, OJEU 16 June²⁸.

Commission Recommendation (EU) 2023/1425 of 27 June 2023 on facilitating finance for the transition to a sustainable economy, OJEU 7 July²⁹.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, COM(2023) 314 final, 13 June 2023³⁰.

Public consultation, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554, COM(2023) 360 final, 28 June 2023. End of consultation period, 28 August 2023³¹.

Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sus-

tainable Finance Disclosure Regulation. 16 June 2023³².

European Parliament

European Parliament and Council agreement on the amendment of the Alternative Investment Funds Directive and UCITS Directive. 20 July 2023³³.

European Supervisory Authorities

EBA

Guidelines amending Guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities under articles 15 and 16 of Directive 2014/59/EU (Resolvability Guidelines) to introduce a new section on resolvability testing, EBA/GL/2023/05, 13 June 2023³⁴.

ESMA

Opinion setting out suggestions to the European Commission for possible clarifications of the legislative provisions under the UCITS Directive

²⁸ Link.

²⁹ Link.

³⁰ Link.

³¹ Link.

³² Link.

³³ Link.

³⁴ Link.

and the AIFMD relating to the notion of “undue costs”. 17 May 2023.

Call for evidence on the integration of sustainability preferences in the suitability assessment and product governance arrangements ESMA35-43-3599, 16 June 2023. Deadline 15 September 2023³⁵.

Final Report, Review of the technical standards under Article 34 of MiFID II [European passport without establishment of a branch in the host state], ESMA35-36-2848, 11 July 2023³⁶.

Public Statement, Sustainability disclosure in prospectuses, ESMA32-1399193447-441, 11 July 2023³⁷.

Sustainable Finance - Implementation timeline for SFDR, TR, CSRD |MiFID, IDD, UCITS, AIFMD, 12 July 2023³⁸.

Technical Standards of the Consultation Paper specifying certain requirements of the Markets in Cryptoassets Regulation (MiCA), ESMA74-449133380-425, 12 July 2023. Consultation end date: 20 September 2023³⁹.

EIOPA

Annual Report 2022⁴⁰.

Financial Stability Report⁴¹.

Final Report on the Public Consultation Document on the proposed amendment to the regulatory technical standards adapting the base amounts in euro for professional indemnity insurance (PII) and the financial capacity of insurance intermediaries under the Insurance Distribution Directive (IDD)⁴².

Public consultation on EIOPA’s proposal on the supervision of reinsurance concluded with third country undertakings, 11 July 2023, deadline 10 October 2023⁴³.

Peer Review on Product Oversight and Governance (POG), 20 July 2023⁴⁴.

ESAs

Public Consultation, Digital Operational Resilience Act (DORA), [Regulation 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector]⁴⁵.

³⁵ Link.

³⁶ Link.

³⁷ Link.

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⁴⁴ Link.

⁴⁵ Link.

Progress Reports on Greenwashing in the Financial Sector, 1 June 2023⁴⁶.

ESAs Joint Committee Report, 18 September 2023⁴⁷.

ECB

Regulation (EU) 2023/1678 of the European Central Bank of 17 August 2023 amending Regulation (EU) 2015/534 on reporting of supervisory financial information⁴⁸.

IOSCO

The International Organization of Securities Commissions endorses the International Sustainability Standards Board's (ISSB) final standards on General Requirements for Disclosures of Sustainability-related Financial Information (IFRS S1) and Climate-Related Disclosures (IFRS S2), 25 July 2023⁴⁹.

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If you have any questions regarding the contents of this document, please contact any one of the following GA_P lawyers:

Ana Martínez-Pina

Tel.: (+34) 91 582 91 00
amartinezpina@ga-p.com

Cristina Esteban Díaz

Tel.: (+34) 91 582 91 00
cediaz@ga-p.com

José Francisco Canalejas Merín

Tel.: (+34) 91 582 91 00
jfcanelejas@ga-p.com

Belén Navarro Carmona

Tel.: (+34) 91 582 91 00
bnavarro@ga-p.com

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