

Pérez-Llorca

Year in Review 2023

Financial Services and Investment funds

CONTENT

Index

Innovation and progress: a look at the future of financial regulation and investment funds	3
Regulatory developments	4
Securities market, UCIs, venture capital and crypto-assets	4
Banking (credit institutions, payment services, e-money institutions and financial credit institutions)	6
Legal Briefings	7
Newsletters	13
Books	14
Financial Services and Investment Funds team	15

Financial Services and Investment Funds



Josefina García Pedroviejo
Financial Services and Investment Funds

jgarciapedroviejo@perezllorca.com

+34 91 389 01 09

SECTION I

Innovation and progress: a look at the future of financial regulation and investment funds

Pérez-Llorca's Financial Services and Investment Funds practice presents the first edition of our Year in Review. This publication has been created and designed to compile the main regulatory developments approved at both European and Spanish level during 2023. Our aim is to provide a regular point of reference so as to optimise the time management of those of us who work in this branch of law, given the complexity and volume of applicable regulations.

The past year has witnessed noteworthy developments in the field of securities markets, marked by the approval of its key legislation, Law 6/2023 on Securities Markets, and also its implementing Royal Decrees. This legislation has substantially reshaped the financial regulatory landscape, affecting everything from the representation of securities to the settlement and operation of investment firms.

One of the most prominent dynamics of 2023 has been what has become known as the “democratisation process of private markets”, in line with the objectives of the European Union’s Retail Investment Strategy. This move promises to broaden access to sophisticated assets and investment strategies for non-professional investors, opening up a range of possibilities for diversifying portfolios with potentially attractive returns. However, it also poses significant challenges for fund managers, especially in the design and marketing of products that ensure adequate protection for the non-professional investor, who must be properly informed of the characteristics of these products and, in particular, their lower liquidity. Advice and transparency therefore become crucial in this new scenario, something to which special attention will have to be paid this year.

The recent enactment of Directive 2023/2225/EC is a milestone in the regulation of consumer credit within the European Union, and establishes an updated regulatory framework in response to rapid technological developments and changes in consumer behaviour. This new regulatory context not only strengthens consumer protection but also presents new opportunities and challenges for consumer credit institutions, which will have to adapt their strategies and operations to the demands of a more regulated and client-oriented environment.

Lastly, the impact of artificial intelligence on securities markets deserves a special mention. Although still in its early stages, this new technological era already promises to revolutionise not only the day-to-day operations of financial institutions, but also to become a valuable asset in investment portfolios. In the coming year, we will need to keep an eye on both the current applications and the future potential of these tools, and in particular how they can facilitate decision making, improve operational efficiency and open up new investment opportunities.

We are committed to keeping you informed and at the forefront of regulatory trends, and we hope that this Year in Review will become a valuable document for all our readers.



SECTION II

Regulatory developments

Securities market, UCIs, venture capital and crypto-assets

National Legislation

1. **18/03/2023** – Law 6/2023, of 17 March, on Securities Markets and Investment Services.
2. **09/11/2023** – Royal Decree 813/2023, of 8 November, on the legal regime of investment firms and other entities providing investment services.
3. **09/11/2023** – Royal Decree 814/2023, of 8 November, on financial instruments, admission to trading, registration of transferable securities and market infrastructures.
4. **09/11/2023** – Royal Decree 815/2023, of 8 November, implementing Law 6/2023, of 17 March, on Securities Markets and Investment Services, in relation to the official registers of the National Securities and Exchange Commission, cooperation with other authorities and supervision of investment firms.
5. **09/11/2023** – Royal Decree 816/2023, of 8 November, amending the Regulation implementing Law 35/2003, of 4 November, on Undertakings for Collective Investment, approved by Royal Decree 1082/2012, of 13 July.
6. **28/12/2023** – Royal Decree 1180/2023, of 27 December, amending Royal Decree 948/2001, of 3 August, on investor compensation schemes and the Regulation implementing Law 35/2003, of 4 November, on Undertakings for Collective Investment, approved by Royal Decree 1082/2012, of 13 July.
7. **28/12/2023** – Royal Decree-law 8/2023, of 27 December, adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East, as well as to alleviate the effects of drought.
8. **26/04/2023** – CNMV Technical Guide on enhancing the transparency of UCIs with a specific performance objective and fixed income UCIs with a buy-and-hold strategy.
9. **22/02/2023** – CNMV Code of good practices for institutional investors, asset managers and proxy advisors in relation to their duties in respect of the assets entrusted to or services provided by them (“Stewardship Code”).
10. **14/07/2023** – Resolution of 11 July 2023 of the Spanish National Securities and Exchange Commission on product intervention measures relating to financial contracts for differences and other leveraged products.
11. **17/07/2023** – Updated CNMV Q&A document on the regulation of undertakings for collective investment, venture capital entities, and other closed-end collective investment vehicles.
12. **19/04/2023** – Updated CNMV Q&A document on MiFID II.
13. **19/04/2023** – CNMV communication on the activities of entities that provide investment services through agents.
14. **5/06/2023** – Adoption by the CNMV of ESMA Guidelines on MiFID II suitability and remuneration requirements.
15. **11/10/2023** – Adoption by the CNMV of ESMA Guidelines on MiFID II product governance requirements to reinforce investor protection.

SECTION II

Regulatory developments

Securities market, UCIs, venture capital and crypto-assets

European Union Legislation

16. **09/06/2023** – Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.
17. **20/03/2023** – Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules.
18. **30/11/2023** – Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.
19. **24/05/2023** – European Commission’s *Retail Investment Strategy*.
20. ESMA’s update of the following Q&A documents:
 - i. **02/06/2023** – Application of the DLT Pilot Regulation.
 - ii. **3/02/2023** – Application of the Prospectus Regulation.
 - iii. **14/06/2023** – Application of the UCITS Directive.
 - iv. **14/06/2023** – Application of the AIFMD.
 - v. **15/12/2023** – Application of the Benchmarks Regulation.
 - vi. **31/03/2023** – Application of the EMIR Regulation.
 - vii. **5/12/2023** – PRIIPs Key Information Document (ESAs).
 - viii. **15/12/2023** – MiFID II and MiFIR investor protection and intermediaries topics.
21. **11/07/2023** – Updated ESMA Supervisory Briefing on the definition of advice under MiFID II.
22. **11/07/2023** – ESMA Statement on how prospectus sustainability disclosure requirements should be fulfilled.

→

→

→

→

→

→

SECTION II

Regulatory developments

Banking (credit institutions, payment services, e-money institutions and financial credit institutions)

National Legislation

23. **02/03/2023** – Circular 1/2023, of 24 February, of the Bank of Spain, to credit institutions, branches in Spain of credit institutions authorised in another EU Member State and financial credit institutions (“*establecimientos financieros de crédito*”) on the information to be sent to the Bank of Spain regarding covered bonds and other loan mobilisation instruments.
24. **25/03/2023** – Circular 2/2023, of 17 March, of the Bank of Spain, amending Circular 1/2013, of 24 May, on the Central Credit Register.
25. **14/11/2023** – Circular 3/2023, of 31 October, of the Bank of Spain, amending Circular 2/2016, of 2 February, to credit institutions on supervision and solvency, which completes the adaptation of Spanish legislation to Directive 2013/36/EU and Regulation (EU) No 575/2013, and Circular 1/2022, of 24 January, to financial credit institutions (“*establecimientos financieros de crédito*”) on liquidity, prudential rules and reporting obligations.

European Union Legislation

26. **30/10/2023** – Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers.
27. **28/11/2023** – Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023, amending Directive 2011/83/EU as regards financial services contracts concluded at a distance.
28. **28/06/2023** – European Commission proposals on the digital euro and the preservation of the use of cash:
 - i. **Proposal on the legal tender of euro banknotes and coins.**
 - ii. **Legislative proposal for a legal framework for the digital euro.**

→

→

→

→

→

→

SECTION III

Legal Briefings

The CNMV publishes a Code of good practices for institutional investors, asset managers and proxy advisors in relation to their duties regarding the assets entrusted to or the services provided by them

FEBRUARY [Read more →](#)

On 22 February 2023, the Spanish National Securities and Exchange Commission (using the Spanish acronym, “CNMV”) published the [Code of good practices for institutional investors, asset managers and proxy advisors in relation to their duties regarding the assets entrusted to or the services provided by them](#), the main objective of which is to promote responsible, long-term oriented investment by institutional investors, asset managers and proxy advisors, so as to promote the sustainability of the entities in which they invest. The Code represents the CNMV’s alignment with the regulatory trend whereby, in recent years, more than 20 countries, seven of them European, have published this type of code, which are known as “*stewardship codes*”.

New Securities Markets and Investments Services Law: new developments in crypto-assets and distributed ledger technology

MARCH [Read more →](#)

Law 6/2023 of 17 March, on Securities Markets and Investment Services, introduces important new developments regarding crypto-assets and distributed ledger technology, which originate from the new regulations approved in the framework of the “Digital Finance Strategy” published in September 2020 by the European Commission. This Strategy seeks to help transform the EU financial sector and adapt the financial regulatory and supervisory framework to the increasing digitisation of the financial sector, while also removing potential barriers to digitisation. Accordingly, on 30 May 2022, Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No. 600/2014 and (EU) No. 909/2014 and Directive 2014/65/EU (the Pilot Scheme Regulation) was published. This Regulation is the inspiration for the new regime contained in the SML, which seeks to adapt the regulation of Spanish financial markets to the digital era, as well as to facilitate the introduction of innovative technologies, without affecting investor protection.

New Securities Market Law: developments for investment services firms

MARCH [Read more →](#)

Law 6/2023, of 17 March, on Securities Markets and Investment Services, introduces important developments concerning the legal regime of investment services firms, as a direct consequence of the incorporation into Spanish law of: (i) the new European prudential regulatory framework, consisting of the IFD and the IFR; and (ii) in relation to standards of conduct, the Quick Fix Directive. However, most of the reforms applicable to investment firms will be included and detailed in the final text of the Royal Decree on the legal regime of investment firms and other entities providing investment services, which is pending publication.



SECTION III

Legal Briefings

New Securities Market Law: new developments regarding collective investments

Law 6/2023, of 17 March, on Securities Markets and Investment Services amends in its Fourth Final Provision some articles of Law 35/2003 of 4 November on Undertakings for Collective Investment. This legal briefing analyses these amendments.

MARCH [Read more →](#)

New Law on Securities Markets and Investment Services: National Financial Advisory Firms

One of the most significant aspects of the new Law 6/2023, of 17 March, on Securities Markets and Investment Services is the creation of National Financial Advisory Firms (“NFAFs”). Article 128.5 of the SML discusses the new figure of NFAFs, which can be natural or legal persons, and which can provide the investment advisory service contained in Article 125.1.g) of the SML and the ancillary services of “*advice to companies on capital structure, industrial strategy and related matters, as well as advice and other services in relation to mergers and acquisitions of companies*” and “*the preparation of investment and financial analysis reports or other forms of general recommendations relating to transactions in financial instruments, in accordance with the provisions of Article 36 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016*” of Article 126.c) and e) of the SML, respectively.

MARCH [Read more →](#)

The CNMV publishes a communication on entities that provide investment services through agents

On 19 April 2023, the National Securities and Exchange Commission published a communication setting out its conclusions regarding certain practices observed in the course of various supervisory actions in entities that provide investment services through tied agents.

APRIL [Read more →](#)

Commentary on the Supreme Court’s judgment of 5 April 2023

The Supreme Court, in its judgment of 5 April 2023, held that Spanish legislation infringes the freedom of movement of capital enshrined in Article 63 of the Treaty on the Functioning of the European Union (TFEU), as it establishes unjustified differential treatment between resident and non-resident free investment funds (hedge funds) in comparable situations. While Spanish legislation provides for a tax rate of 1% for resident hedge funds, non-resident hedge funds are taxed at 19% on income in the form of dividends from Spanish companies.

MAY [Read more →](#)



SECTION III

Legal Briefings

The results of the CNMV's review of the implementation of sustainability regulations by investment funds are published

MAY [Read more →](#)

In May, the CNMV published a communication announcing the results of its review “Monitoring of the implementation of the ESG regulation: transparency and investment policies of UCIs”, included in its 2022 Activity Plan. With this review, the CNMV sought to (i) ascertain the degree of adaptation of Spanish investment funds to the new obligations arising from the implementation of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (“SFDR”), which requires financial market participants and financial advisors to disclose certain information relating to environmental, social and governance risks and factors when making their investment and advisory decisions; and (ii) communicate the appropriate guidelines to the industry.

The European Commission approves a package of measures to protect retail investors

MAY [Read more →](#)

On 24 May, the European Commission adopted [a package of retail investment measures](#) (the “Retail Investment Strategy”), aimed at protecting the interests of retail investors by empowering them to make investment decisions that are aligned with their needs and preferences. Among the objectives it pursues, it is worth noting that the European Commission’s own press release notes that the Retail Investment Strategy addresses “*potential conflicts of interest in the distribution of investment products by banning inducements for “execution-only” sales*”.

Amendments to the regime for covered bonds

JULY [Read more →](#)

This legal briefing provides a brief analysis of the new features included in Royal Decree-law 5/2023, of 28 June, amending Royal Decree-law 24/2021, of 2 November, regarding covered bonds.



SECTION III

Legal Briefings

The Council of Ministers approves the creation of the Central Registry of Beneficial Ownership and its regulation

JULY [Read more →](#)

On 12 July, the Council of Ministers, at the request of the Ministries of Justice and Economic Affairs and Digital Transformation, approved Royal Decree 609/2023, of 11 July, creating the Central Registry of Beneficial Ownership and approving its regulation. The purpose of these rules is to implement the provisions of the third and fourth additional provisions of Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing. This Royal Decree completes the transposition of Directive (EU) 2018/843 of the European Parliament and of the Council into Spanish law. The Royal Decree also implements into national law the provisions of the judgment of the Court of Justice of the European Union in Joined Cases C-37/20 and C-601/20, concerning the Fifth Directive.

The CNMV updates its Q&A document on the regulation of collective investment institutions, venture capital entities, and other closed-end collective investment vehicles

JULY [Read more →](#)

On 17 July, the CNMV published an update of its Q&A document on the regulation of Undertakings for Collective Investment, Venture Capital Entities, and other closed-end collective investment vehicles.

Publication of the Code of Good Governance on Cybersecurity

JULY [Read more →](#)

In July, the National Cybersecurity Forum published the [Code of Good Governance on Cybersecurity](#) on the CNMV website. It is a document of great interest, and despite the fact that it was not prepared entirely by the CNMV (although the CNMV was involved in its drafting), it is aimed at listed companies and regulated entities. The Code offers broad recommendations which, although not mandatory, can guide any organisation that intends to carry out suitable governance of its cybersecurity, regardless of its size, sector or activity, and can even be used as a guide to comply with the reporting obligations that may be required of it by supervisory bodies.



SECTION III

Legal Briefings

ESMA statement on the expected sustainability disclosures in prospectusesJULY [Read more →](#)

In July, the European Securities and Markets Authority (“ESMA”) issued a public statement, addressed to national competent authorities (“NCAs”), on what sustainability information it considers should be included in prospectuses for both equity and non-equity securities under the Prospectus Regulation. With its publication, ESMA establishes criteria for NCAs to adopt a coordinated approach to the supervision of prospectuses on Environmental, Social and Governance (“ESG”) issues and, additionally, provides highly relevant guidance for issuers on the information they must include in their prospectuses on this matter, ensuring that potential investors have access to all the information on sustainability that will enable them to make informed decisions on their investments.

The new process for the admission to trading of wholesale notes or bonds on the AIAF marketJULY [Read more →](#)

Since 18 September, article 63 of Law 6/2023, of 17 March, on Securities Markets and Investment Services has been applicable and the verification of the requirements for admission to trading on the Fixed Income Market, AIAF, has been the responsibility of its governing body. This legal briefing provides a summary of the procedures that issuers must carry out with the CNMV and AIAF for the admission to trading of wholesale notes or bonds (i.e., with denominations equal to or greater than EUR 100,000) issued on a stand-alone basis or under a programme, following the disbursement of the issuance.

A new version of the Draft Royal Decree amending the UCI Regulation has been publishedSEPTEMBER [Read more →](#)

On 20 September, the Ministry of Economic Affairs and Digital Transformation published a new version of the Draft Royal Decree amending Royal Decree 1082/2012, of 13 July, approving the Regulation implementing Law 35/2003, of 4 November, on undertakings for collective investment, together with three other draft royal decrees implementing Law 6/2023, of 17 March, on Securities Markets and Investment Services. It introduces new features to the first version of the Draft amendment of the UCI Regulation, published in 2021, arising from the approval of the SML and the new European regulations on sustainability.

The Council of the EU adopts the new Consumer Credit DirectiveOCTOBER [Read more →](#)

On Monday 9 October, the Council of the EU adopted the final text of the new Consumer Credit Directive. This will repeal the current Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers. The new Directive seeks to ensure a higher level of protection for consumers in the European Union and to promote the development of a single credit market.

Legal Briefings

The new European Green Bond standard

DECEMBER [Read more →](#)

On 30 November 2023, Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable bonds and for sustainability-linked bonds (the “**EuGB Regulation**”) was published in the Official Journal of the European Union. It entered into force on 20 December 2023 and will apply from 21 December 2024, subject to certain exceptions. The EuGB Regulation is the next step in the European strategy for financing sustainable growth and the transition to a climate-neutral and resource-efficient economy. It seeks to increase transparency in the green bond market, allowing issuers to demonstrate that they are financing projects aligned with the European taxonomy. For their part, investors will benefit from greater consistency and comparability between bonds, through a new framework that aims to combat “*greenwashing*” (i.e. the misleading promotion that a financial product meets sustainable objectives) and to encourage the channelling of funds to environmentally sustainable projects.



SECTION IV

Newsletters



Financial Regulatory Compass

MARCH [Read more →](#)



Financial Regulatory Compass

APRIL [Read more →](#)



Financial Regulatory Compass

JULY [Read more →](#)



Financial Regulatory Compass

SEPTEMBER [Read more →](#)



Financial Regulatory Compass

DECEMBER [Read more →](#)



SECTION V

Books



Publisher: Aranzadi

JANUARY

Estudios jurídicos sobre sostenibilidad: cambio climático y criterios ESG en España y la Unión Europea (Legal studies on Sustainability: Climate Change and ESG criteria in Spain and the European Union)

[Read more →](#)

Description:

Estudios jurídicos sobre sostenibilidad: cambio climático y criterios ESG en España y la Unión Europea (Legal Studies on Sustainability, Climate Change and ESG Criteria in Spain and the EU) is written entirely by authors from Pérez-Llorca and was published as part of Editorial Aranzadi's *Grandes Tratados* collection.

The book examines, from a multidisciplinary corporate and legal perspective, the main issues related to the new regulatory corpus on sustainability, which is being developed by the European Union within the framework of the European Green Pact. It also provides a first overview of European climate change policy, which affects all economic sectors and legal specialities, and examines some of the most significant matters emerging from this new reality.



Publisher: Tirant Lo Blanch

MAY

Ley de los Mercados de Valores (Securities Markets Law)

[Read more →](#)

Description:

Javier Carvajal, Josefina García Pedroviejo, Javier Gómez, Teresa Méndez, Carlos Pérez Dávila, Gabriel Salarich, Gabriel Borgogno, Álvaro Conde, Marisa Delgado, Enrique Hernández, Ricardo Maestro, Jon Marina, Carlos Rubio and Andrea Zubiaga have prepared a commentary that covers all the new features of the Securities Markets Law.

This commentary, written entirely by professionals of the firm and published by Tirant Lo Blanch, also includes two cross-referencing tables and a table comparing it with the previous Securities Market Law.

Financial Services and Investment Funds



Josefina García Pedroviejo

Partner, Financial Services and Investment Funds

jgarciapedroviejo@perezllorca.com

+34 91 389 01 09



Yolanda Azanza

Partner, Capital Markets

yazanza@perezllorca.com

+34 91 423 66 63



Álvaro Conde

Associate



Jon Marina

Associate



Enrique Hernández

Associate



Marisa Delgado

Senior PSL



Javier Ihatsu

Associate



Elena Pastor

Associate

SECTION VI

Financial Services and Investment Funds team

In an increasingly complex and changing regulatory environment, our team can guide you through the legislative changes affecting all areas and financial service providers: banks, fund managers, payment institutions and market infrastructure providers.

We help protect clients from regulatory risk and also advise them on how to take advantage of new opportunities. The financial regulation practice supports clients across the full spectrum of financial services and on all types of projects, especially those with an international or cross-border component.

We work closely with leading financial regulatory experts in Europe, the United States and Asia, who have the best experience and skill set to provide the legal advice our clients need.

We have a team of expert lawyers with extensive experience in the field and a great overview of the market, whose priority is to provide intelligent and accurate advice while offering creative and innovative solutions and always keeping the big picture in mind.

Pérez-Llorca's Financial Services team has experience that encompasses both ongoing day-to-day advice for regulated entities, alongside covering more complex transactions or projects such as regulatory adaptations or structuring international financial institutions' presence in Spain.

Capital Markets team

Pérez-Llorca's Capital Markets team has wide-ranging technical knowledge and considerable experience in matters related to capital markets, which places us at the forefront of legal knowledge in this regard and keeps us in regular contact with the authorities and bodies that regulate these markets. Likewise, support from other practice areas at the firm allows us to provide a complete legal service.

We offer comprehensive legal advice to issuers, insurers, placement entities, selling shareholders, sponsors, global coordinators and other market participants. Our services cover all types of Equity Capital Markets (ECM), Debt Capital Markets (DCM), as well as Structured Finance and Securitisation transactions. We also work closely with experts in other jurisdictions, enabling us to provide the legal advice our clients need in multi-jurisdictional transactions.

www.perezllorca.com

Barcelona · Brussels · Lisbon · London · Madrid · New York · Singapore