
Administrative Authority for the Protection of Financial Customers

Publication of the new draft bill establishing the Independent Administrative Authority for the Protection of Financial Customers regarding out-of-court resolution of disputes between financial institutions and their customers (the “Financial Authority”)

Spain - Legal flash

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Key aspects

- > The Financial Authority is set up as a public system for out-of-court dispute resolution between financial institutions and customers. It seeks to protect the general and individual interests of consumers of financial services.
- > Decisions on rules of conduct and unfair terms will be binding for claims of less than €20,000.
- > It will apply to complaints from financial customers in relation to the contracting or provision of financial services arising from non-compliance with the rules of conduct or good financial practices or from unfair contract terms.
- > The dispute resolution system will be financed through a fee charged to the financial entities based on the costs incurred by the Financial Authority, the complaints resolved and the decisions favorable to claimants.



Background

A [bill published on December 16, 2022](#) established the Financia Authority for out-of-court resolution of disputes between financial institutions and their customers. But the bill lapsed due to the call for general elections and the dissolution of the Spanish Parliament.

On March 19, the Council of Ministers approved the new [draft bill establishing an Independent Authority for the Protection of Financial Customers](#), which was published on April 5 in the Official Gazette of the Spanish Parliament (the “Bill”), thus reinitiating the parliamentary processing of this regulation.

Below we explain the most relevant aspects of the new Bill—which maintains the basic elements but incorporates significant changes and amendments introduced to the previous text during its parliamentary processing.

The Financial Authority

The Financial Authority is set up as a public system for **out-of-court dispute resolution** between financial institutions and their customers. It seeks to protect the general and individual interests of financial consumers based on the following axes:

- The Financial Authority will be a **public body** financed through a new complaint resolution fee.
- The system will be **voluntary** and alternative to civil litigation and other dispute resolution mechanisms.
- The Financial Authority’s **decisions** on rules of conduct and unfair terms will be **binding** for claims of less than €20,000. These binding resolutions may be challenged before civil courts, as explained in detail below. In all other cases, the Financial Authority’s decisions will not be binding.
- The Financial Authority will have powers to promote **financial education**, as well as to impose penalties for non-compliance with its binding decisions.

The Financial Authority will be governed by a **Governing Council** represented by a chairperson and a vice-chairperson and made up of representatives of the **Spanish Central Bank (BdE)**, the **Spanish Securities and Exchange Commission (CNMV)** and the **Directorate-General for Insurance and Pension Funds (DGSyFP)**, as well as certain administrative bodies with financial and consumer protection powers.

It will have an advisory body—the **Advisory Council**—composed of the chairperson and vice-chairperson, and 12 members from consumer protection organizations and associations, representatives of the financial sector, and independent experts.



Subject matter of complaints

The new act will apply to **complaints** from **financial customers** to **financial institutions** in relation to the **contracting or provision of financial services** arising from:

- > non-compliance with the **rules of conduct** or **good financial practices** established by the supervisory authorities; or
- > **unfair contract terms**.

Among others, it excludes complaints concerning:

- > poor **customer treatment** in the provision of services;
- > **refusal to grant financing** or to enter into a financial contract of any nature;
- > **commercial practices**;
- > **personal data protection**;
- > certain **major risk** insurance contracts that do not affect consumers;
- > group insurance or pension plans including **pension liabilities**;
- > government debt securities transactions in book-entry form filed by principals.

As a novelty in this Bill, the concept of “**rules of conduct**” is limited to those issued at **national** level—including **voluntary self-regulation codes**.

Subjective scope

For these purposes, “**financial customers**” may be any **natural or legal persons** using financial services, except for **large companies**, which the new Bill excludes.

The following will have **standing** to file complaints: (i) **institutional investors**, in the interests of their customers; (ii) **participants and beneficiaries of pension plans**; (iii) **associations and organizations** recognized as representing the interests of customers in rules of conduct and those legally authorized for their defense and protection; and, as a new feature of this Bill, (iv) **associations** representing **people with disabilities** and their families.

On the other hand, “**financial institutions**” is a broad concept that generally comprises all entities (natural or legal persons) **supervised by the BdE, the CNMV and the DGSyFP**, including institutions from other **Member States** and **third countries authorized** to operate in Spain. The Act will also apply to entities subject to the relevant legislation on **distance marketing of financial services** to consumers, contracting with consumers of **mortgage loans or mortgage-backed facilities, consumer and real estate credit** contracting, **cryptoasset market** regulations, as well as to other entities marketing financial products and services in Spanish territory—provided that their activity, whether supervised or not, is regulated by **sector-specific rules of conduct** aimed at consumer protection.



The provisions contained in the Bill will be **mandatory**, and thus the rights conferred on financial customers cannot be waived. Their early waiver and any acts carried out in fraud of the law will be null and void.

Financing of the system: complaint resolution fee

The first additional provision of the Bill regulates the **fee** charged to **financial institutions** for the financing of the Financial Authority.

The fee **will not consist of a fixed rate**, as under the previous bill, but will be determined according to a **formula** that takes into account the **expenses incurred** by the Financial Authority, the **complaints resolved**, and the decisions **favorable to claimants**.

Complaint refusals and claimants' withdrawals will not be taken into account to determine the fee.

For these purposes, decisions that record an agreement reached by the parties in **mediation or conciliation** will be considered **favorable to claimants**.

In line with the above, **the fee will not accrue upon admission of complaints**, as initially established, but on **December 31** of each year.

Financial institutions must **pay the applicable fee** no later than **April of the year following accrual**.

Complaint processing

The Bill establishes an **admissibility requirement**, namely that complaints must have been previously submitted to the **financial institution** by any means permitted by law—and they must have been refused or dismissed, or **one month** (or 15 days in the case of payment services) must have elapsed without a decision.

Complaints must be submitted to the customer service department or customer ombudsman, if applicable. If the financial institution does not have such a department (and is not legally obliged to have one), the customer should contact the institution, which must in any case have adequate internal mechanisms for the resolution of complaints.

On completion of this step, financial customers will have **one year** to file a complaint with the Financial Authority.

They may also file a complaint before the Financial Authority if, **one month** after obtaining a favorable resolution from a financial institution, it has not been implemented in accordance with its terms.



Implementing regulations will determine the **minimum content** of the complaints, and the Governing Council will propose a **model form**.

Complaints should be preferably submitted by **electronic means**. The Financial Authority will publish the **registration addresses** to which complaints should be sent.

The intervention of external professionals, advisors or **representatives** is not required.

Complaints will be dealt with on a **first-come, first-served basis**, and the Financial Authority will decide on admission **within 10 days** and will notify the interested party.

The Bill establishes the **grounds for inadmissibility**. Specifically, complaints will be inadmissible if they have been resolved or raised before a **court** or through an **alternative consumer dispute resolution mechanism**.

The Financial Authority will inform the financial institution of the complaint, which will have **20 working days** to submit **observations** and documentation by electronic means.

The Bill expressly requires financial institutions to **prove compliance** with the **reporting obligations** set forth in the **rules of conduct** and to provide any documentation and **pre-contractual and contractual information** that may be required depending on the financial service referred to in the complaint. To this end, financial institutions must **keep this documentation for at least six years**.

In certain cases, complaints may be **accumulated** for processing purposes—although they will be resolved **on a case-by-case basis**.

The processing may be **suspended** for one month if the parties agree to submit to **conciliation or mediation**. If an agreement is reached, the resolution of the Financial Authority recording that agreement will be **binding** and will terminate the proceedings.

Resolution

The Financial Authority should notify its **decision** within **90 days** of the complaint being filed. This period may be extended (up to double) in particularly complex cases.

The Financial Authority **must issue a decision**. **Failure to do so** within the time limit will be construed as a **dismissal** and will allow the filing of a judicial appeal, as the case may be.

The parties **may not initiate any judicial or extrajudicial action** against each other on the same subject matter until termination of the administrative proceedings by a decision, dismissal due to lack of response from the administration, or withdrawal of the claimant. However, **interim judicial protection** may be sought in certain cases.

Once **civil judicial proceedings** are initiated against dismissal due to lack of response from the administration, any decision by the Financial Authority may be incorporated into the judicial



proceedings and the claimant may withdraw the claim without imposition of **costs**.

Complaints before the Finance Authority will **suspend the statute of limitations** for judicial actions until resolution.

If the Financial Authority upholds an **economic** complaint, it may order reimbursement **plus late payment interest** accrued until admission.

Unlike the previous bill, the new one does not provide for **compensation** for non-economic complaints.

The Financial Authority may impose **fin**es between €50 and €250 if, having totally rejected the complaint, it finds **bad faith** in the claimant's conduct. Recidivism may result in higher penalties.

Under the new Bill, **decisions that do not establish a specific amount will not be binding**. This is also the case of decisions on **good financial practices**.

Decisions will only be binding when referred to rules of **conduct and unfair terms**, provided that the amount claimed is **less than €20,000**.

For decisions establishing a **specific amount**, that amount will be determined as provided in the **implementing regulations**. The Bill provides for the possibility of **amending the €20,000 threshold**.

Financial institutions must **prove compliance** with **binding decisions favorable to claimants** within 30 working days, which may be doubled in particularly complex cases. Binding decisions will terminate **administrative proceedings** without the right to **appeal for reconsideration**.

In the event of **non-binding decisions favorable to claimants**, financial institutions must communicate whether they accept or reject the decision within 30 days. The Financial Authority's decisions will have the value of expert reports in civil judicial proceedings.

Sanctioning regime

The Bill establishes a detailed sanctioning regime for non-compliance with the Financial Authority's decisions. **Financial institutions** may be sanctioned, as well as persons holding **directorship or management positions** if they are responsible for the infringement. The new Bill has introduced an additional requirement—i.e., that non-compliance must be due to willful **misconduct or negligence**.

The Bill provides for the following fines:

- Serious infringement: up to 2% of the net annual turnover, with a maximum of €2 million. Fines on directors or managers may reach up to €1 million.
- Minor infringement: up to 1% of the net annual turnover, with a maximum of €500,000



and, in the case of directors or managers, up to €250,000.

Another new provision is the **publication in the Official Gazette of the Spanish State** (“BOE”) of serious penalties once they have become final in administrative proceedings, although there may be exceptions in certain cases.

Entry into force

According to the new Bill, the Act will **enter into force 20 days after its publication** in the BOE (rather than on the following day as under the previous bill).

However, the **start-up** of the Financial Authority remains unchanged: it will begin on the date to be determined by order of the Ministry of Economic Affairs and Digital Transformation. Until then, the complaints service of the BdE, CNMV and DGSyFP will continue to perform the functions entrusted to them and resolve the claims submitted in accordance with the regulations in force.

Once the Financial Authority is up and running, financial institutions must include in the **pre-contractual information** they provide to their customers the possibility of turning to this body if their complaint to the customer service department or external ombudsman is not satisfactory. They must also post this information on their physical bulletin boards and provide easy access on their websites.

Within **six months** of the entry into force of the Act, the supervisory authorities will publish an annual **compilation** of good financial practices.

We will continue to analyze the processing of the Bill until its approval.

For additional information, please contact our [*Knowledge and Innovation Group*](#) lawyers or your regular contact person at Cuatrecasas.

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