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# Iberian Financial Newsletter

Banking and Financial Institutions

January – March 2017



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# SPAIN

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## Banking

### Regulation

Royal Decree 1/2017, of January 20, 2017, on urgent measures for the protection of **consumers as regards “ground clauses”**. [Access to document](#)

This Royal Decree establishes a channel that facilitates consumers the possibility of reaching agreements with financial institutions with which they have signed a mortgage or loan **agreement that includes a “ground clause” (i.e., a minimum interest rate)**. This regulation is in line with the judgment given by the European Court of Justice on December 21, 2016, in joined cases C-154/15, C-307/15, and C-308/15.

It provides the obligation of financial institutions to establish, in a maximum period of 1 month, a complaints system that consumers can access before filing a judicial claim. This system will have to be voluntary and free of charge. Once the financial entity has received the **consumer’s complaint, it will have 3 months to provide the consumer with the amount to be refunded** (including interest), or, alternatively, an explanation of why the complaint has not been accepted. After receiving such communication, the consumer will have to confirm whether or not he agrees with the calculation of the amount to be refunded. If the consumer rejects the amount calculated by the financial institution, and, subsequently, files a judicial claim obtaining a more favorable ruling than the offer received from the financial institution, this will be only required to pay the judicial expenses.

Royal Decree 5/2017, of March 17, amending Royal Decree 6/2012, of March 9, on urgent measures for the protection of mortgage debtors without financial resources, and Law 1/2013, of May 14, on measures to strengthen the protection of mortgage debtors, debt restructuring and social housing. [Access to document](#).

Given the current economic situation as well as the situation of the mortgage market, this Royal Decree seeks to adopt several measures to protect mortgage debtors in vulnerable situations:

- › To expand the group of families that can benefit from the Code of Good Practices (Código de Buenas Prácticas) to include families with minors, as well as families in which there is a victim of gender violence.



- › To grant the possibility that the beneficiaries of the suspension of eviction orders which are, at the same time, clients of the entities adhered to the Code of Good Practices, are able to request more favorable rental measures for 5 years.
- › To offer an additional period of 3 years (up to May 2020) for the suspension of eviction orders on the homes of especially vulnerable groups.

In addition, an adherence procedure of the financial entities to the new and broader Code of Good Practices, is also considered. Financial institutions shall communicate its adherence to former versions of the Code within 1 month.

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## Securities markets and collective investment

### Supervisor criteria

Communication from the Spanish national regulator, Comisión Nacional del Mercado de **Valores (“CNMV”)** on measures on the marketing of CFDs and other speculative products to retail investors. [Access to document](#)

Due to the increase of marketing to retail investors by certain financial brokers of complex and high-risk instruments, the CNMV has established several measures to protect those who invest in contracts for differences (CFDs), forex products and binary options.

These measures focus mainly on warning investors about the risks and complexity of the financial products. Financial institutions will have to obtain a signed document or a recording of the client stating that he is aware of the complexity of the product he is about to purchase as well as of the fact that the CNMV considers such product non-suitable for retail investors.

Financial institutions will have to adapt their procedures to the recommendations established by the CNMV, and will have to display the disclaimers and obtain the above mentioned signed document or recording as soon as possible, and, in any case, in a maximum period of 1 month after the request.

Supervisory actions taken by the CNMV, in regards to the marketing of financial products **in bank offices using, for the first time, “mystery shopping”**. [Access to document](#)

With the goal of supervising the marketing of financial products, the CNMV has, for the first time, conducted a “mystery shopping” exercise by visiting 450 bank offices pretending to be a client or potential client. The CNMV published a communication with the results of such activity on February 22, 2017.



In said communication, the CNMV highlighted that, during their first approach with potential **clients, financial institutions provide true financial advice, without the client's complete** awareness. Furthermore, during this first approach, most entities do not apply the appropriate rules for investment advice.

**The CNMV also stressed the fact that entities tend to substitute the Investor's Key** Information Documents (KIID), which that clients should be provided with, for commercial documents that, in some cases, do not accurately reflect all the necessary data of the offered financial products.

Other aspects highlighted in the communication are: (i) the lack of oral information provided to the clients concerning the fees, costs, and expenses associated with the financial instruments, or (ii) the fact that, during the oral explanation of the offered instrument, particular emphasis is placed on the advantages, whereas the risks involved are not as emphasized.

Communication from the CNMV in reference to the ESMA Guidelines regarding the adequate remuneration policies for Collective Investment Funds Managers. [Access to document](#)

In this communication, the CNMV notifies of its intention to comply with the ESMA Guidelines on adequate remuneration policies, in accordance with the AIFM and UCITS Directives.

## Proposals

Public Consultation on the draft bill for the implementation of Directive 2014/65/EU and its Delegated Directive on markets in financial instruments (MIFID II). [Access to document](#)

The General Secretariat of Treasury has published a public consultation on the draft bill for the law implementing Directive 2014/65/EU and its Delegated Directive into Spanish law. The purpose of this consultation is to obtain the opinion of the individuals and entities potentially affected by the transposition of said Directives.

Among other, the following questions are made in the public consultation: (i) whether natural persons may carry out activities other than investment advice, (ii) whether investment firm may be incorporated as limited liability companies (*sociedades de responsabilidad limitada*), (iii) categories of investment firms should be modified, (iv) whether an exemption should be included in relation to the obligation to have remuneration and risk committees, (v) whether branches should be subject to the registration requirements with the Spanish Commercial Registry, (vi) whether additional cases allowing the payment and



reception of incentives should be included and (vii) whether investment advice firms (EAFI) should be able to appoint agents.

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## Insurance

### Regulation

Circular 1/2017 of the General Directorate of Insurance and Pensions (Dirección General **de Seguros y Fondos de Pensiones (“DGSFP”)**), **on the content of the special review report** related to the financial situation and solvency report of insurance companies. [Access to document](#)

Within the framework of Solvency II, Spanish Royal Decree 1060/2015 provides that the report on the financial situation and solvency shall be subject to review. The content of such review must be specified of the DGSFP, being this the purpose of this Circular.

The special review report shall be prepared by the auditors and insurance actuaries, being a professional and independent judgement on (i) the valuation for solvency purpose, (ii) capital management and (iii) compliance with the requirements.

The Circular becomes effective from January 1, 2016.

### Supervisor criteria

Communication of the DGSFP regarding electronic communications. [Access to document](#)

This communication states that entities registered with the DGSFP must submit to the DGSFP certain documentation for notification purposes, which will become exclusively electronic. February 28 was the deadline for submitting the documentation.

All other entities may submit this information on a voluntary basis.

### Proposals

Draft bill of Law on private insurance and reinsurance distribution. [Access to document](#)

Directive 2016/97/EU on insurance distribution aims at harmonizing insurance distribution systems at a European Union level, not only by including insurance and reinsurance companies, but also intermediaries and distributors. The purpose of this draft bill is to start



the process for implementing such Directive into Spanish law, modifying and improving substantially the principles established in current Law 26/2006 on insurance mediation, which only refers to insurance intermediaries, leaving outside of its scope insurance entities that distribute their insurance products.

The draft bill (i) includes both the insurance and distribution entities, (ii) regulates the complementary insurance intermediary figure and (iii) combines, into a unique system, certain aspects of exclusive and tied insurance agents, without prejudice to the specifics concerning bank assurance operators.

As regards insurance distributors, the draft bill include a regulation related to the precontractual information and the standards of conduct they must follow.

## PORTUGAL

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### Securities markets and collective investment

#### Regulation

MIFID II – Transposition Preliminary Draft: amendments to the Securities Code and to the Legal Framework applicable to credit institutions and financial companies. [Access to document](#)

On 29 December, the National Council of Financial Supervisors has sent for public consultation the preliminary draft of the document aimed at transposing into Portuguese Law the Directive no. 2014/65/UE of the European Parliament and of the Council, of 15 May 2014 (MiFID II) and implementing the Regulation (EU) no. 600/2014 of the European **Parliament and of the Council, of 15 May 2014 (MiFIR), hereinafter the “Preliminary Draft”**. The transposition provisions (with certain exceptions) shall come into force in 1 January 2018, the same date of the entry into force of the MIFIR and of certain level 2 acts. Please find below a summary of the most relevant amendments introduced by the Preliminary Draft.

#### Amendments to the Securities Code

##### 1. General aspects:

- › Amendment to the list of financial instruments provided for in article 2 of the CVM, with the inclusion of the emission allowances and the exclusion of commodity derivatives that



have the characteristics of wholesale energy products that must be physically settled traded on an organized trading facility.

- › Amendments to the exceptions to the principle of exclusivity of exercise of financial intermediation activities (article 289.º, number 3, of the CVM).

### 2. Amendments to the investment advice legal framework:

- › Enhancing of information duties regarding the provided services;
- › Introduction of a duty to deliver to the investor a document exposing the suitability assessment of the investment or service recommended to him;
- › Introduction of a specific regime (more demanding) for the independent advice, a new concept introduced by the MiFID II and recognized in the Preliminary Draft.
- › **Amendment of the regulatory framework concerning to the investment advisers' registry.**

### 3. Amendments regarding the conduct duties of the financial intermediaries

- › Amendment of the provisions on illegitimate benefits prohibition, being the information duties in relation to this matter reinforced and being specified the conditions on which the benefit is granted for the improvement of the service quality, as well as the benefits allowed in relation to investment recommendations;
- › In respect of the transaction suitability assessment, the Preliminary Draft provides for (a) its reinforcement in case of provision of portfolio management services and investment advice, (b) **the limitation of the list of “non-complex” instruments for the purposes of the “execution-only” scheme provided for in article 314.º-D of the CVM (in which case the above mentioned assessment is not required) and (c) the application of the “execution-only” scheme only when an ancillary service regarding the granting of credit for the execution of transactions on financial instruments is not provided;**
- › **Regarding client categorization, the terminology “qualified investor/non-qualified investor” is replaced by MiFID’s terminology – “professional investor/non-professional investor”;**



#### 4. Amendments regarding the organizational duties of the financial intermediaries:

- Establishment of the duty of the financial intermediaries who provide investment services/activities to establish internal policies and approval arrangements in respect of the production and distribution of financial instruments (product governance), taking into account its target market;
- Adoption of rules on employees remuneration, including the obligation of the financial intermediaries to establish an employees' **remuneration and assessment policy that ensures that they do not conflict with the duty to act in the interest of the clients.**

Amendments to the Legal Framework applicable to Credit Institutions and Financial Companies (RGICSF)

#### 1. Amendments at prudential level

- Possibility of establishing in Portugal branches of investment firms with head office in third-countries, being the establishment terms and the authorization requirements, as well as the respective revocation, provided for in the Preliminary Draft;
- Establishment of an exception to the authorization requirement applicable to the provision of investment services at the exclusive initiative of the client by investment firms with head office in third-countries;
- Equivalence of the requirements for the establishment of branches of credit institutions with head office in a third-country and the establishment of branches of investment firms with head office in a third-country;
- In the scope of the authorization procedure for the incorporation of credit institutions and investment firms, it is expressly required the identification of the indirect shareholders and of the ultimate effective beneficiary or beneficiaries of the relevant holding.

#### 2. Amendments at the market conduct level

- Regulation of the duty of product suitability assessment in the scope of the marketing of banking retail products and services;
- Development of the provisions regarding conflicts of interest in the context of the activity of credit institutions in the retail banking markets;



- Adoption of rules regarding **employees' remuneration and assessment**, as well as the respective knowledge and skills;

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## Insurance

### Regulation

ASF Regulation No. 2/2017-R, of March 24, on the certification report on solvency and financial situation and the information that must be provided to the Portuguese Insurance and Pension Funds Supervision Authority ("**ASF**") for supervisory purposes. [Access to document](#)

This ASF Regulation regulates the scope of the certification to be issued by the responsible actuary and the statutory auditor. The certification on the solvency and financial condition **should include the auditor's** reasonable assured opinion as to whether the coverage ratios of the capital requirements are in accordance with the applicable legal and regulatory requirements. The latter requires the validation of the economic situation, the classification, **availability, and eligibility of the entity's own funds**, and the calculation of the solvency and minimum capital requirements. As regards the governance of insurance and reinsurance entities, **the certification requires an auditor's moderately assured opinion on their** implementation and compliance.

As to the remaining qualitative and quantitative information that must be provided in the certification report, the latter must include an opinion as to whether it is in accordance with **the certified information and with the auditor's knowledge obtained during the certification** process.

The certificate issued by the statutory auditor regarding the information that insurance and reinsurance entities must provide to the ASF for supervisory purposes must include the **auditor's moderately assured opinion as to whether the** quantitative information is free of significant errors and, when applicable, whether it is consistent with the actuarial certificate, **and with the internal records of the insurance and reinsurance entities. It was the ASF's** decision to limit the certification requirement to a limited number of annual quantitative models, excluding, among others, the regular supervision report.



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