
Iberian Financial Newsletter

Banking and Financial Institutions

January – March 2021



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SPAIN

Banking

Spanish regulation

Circular 1/2021, of 28 January, of the Bank of Spain, amending Circular 1/2013, of 24 May, on the Central Credit Register and Circular 5/2012, of 27 June, on the transparency of banking services and responsible lending. [Access Link](#)

On 30 January, Circular 1/2021 of the Bank of Spain was published in the Official State Gazette, with the aim of adapting Circular 1/2013 and Circular 5/2012 to the changes introduced by Ministerial Order ETD/699/2020 on the regulation of revolving credit, which affect both the Spanish Risk Information Centre (CIR) and the official reference interest rates.

Regarding Circular 1/2013, the scope of declaring entities to the CIR is extended to include payment institutions and electronic money institutions. Besides, further information must be reported to the CIR in accordance with Law 5/2019 of 15 March on real estate credit agreements and the information that the Bank of Spain must collect from declaring institutions for the reporting to the European Central Bank under Regulation (EU) 867/2016.

Likewise, the second rule of the Circular amends certain aspects of Circular 5/2012 relating to official reference interest rates, since Order ETD/699/2020 also modified Order EHA/2899/2011, on transparency and customer protection in banking services.

Lastly, annexes to Circular 1/2021 update the relevant annexes to Circular 1/2013 (data modules and instructions for preparing them) and Circular 5/2012 (official mortgage market reference interest rates: definition and determination process).

The amendments to Circular 1/2013 and Circular 5/2012 entered into force on 31 January 2021, without prejudice to the provisions of the second final provision of the Order ETD/699/2020, which provides that the amendments made to the CIR regime by that Order shall enter into force twenty-four months after the publication of that Order.



Proposals

Draft Circular of the Bank of Spain to credit institutions and other supervised institutions, on model confidential statements on market conduct, transparency and customer protection and the register of complaints. [Access Link](#)

On 23 March, a public consultation was published concerning the Draft Circular of the Bank of Spain to credit institutions and other supervised institutions, on confidential statements on market conduct, transparency and customer protection and the register of complaints.

The purpose of the Draft Circular is to achieve a framework of complete and standardized information in matters of conduct with a greater breakdown of the information available from institutions, to guarantee the proper exercise of the Bank of Spain's supervisory functions.

In particular, the Draft Circular regulates the half-yearly request for various statements of conduct concerning:

- The type of banking products and services, including payment services, offered by institutions;
- The fees and incomes derived from interests; and
- The complaints filed with the institutions.

Furthermore, the Draft Circular establishes the requirement of entities to have a register of complaints available to the Bank of Spain with a predefined content.

The period for submitting comments on the Draft Circular ends on 19 April 2021.

Securities market and collective investment

Supervision criteria

Brexit - CNMV Q&A on the UK's exit from the European Union. [Access Link](#)

The CNMV has published its Questions and Answers document in relation to the withdrawal of the United Kingdom from the European Union and Royal Decree-Law 38/2020 of 29 December.



Under Article 13 of Royal Decree-Law 38/2020, contracts for the provision of banking, securities and insurance or other financial services concluded before 31 December 2020 will remain in force. The application of this article will be extended to investment firms, management companies of open-ended and closed-ended collective investment schemes of the United Kingdom operating in Spain.

Furthermore, undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) which have not regularized their situation as at 31 December 2020 will be subject to ex officio de-registration by the CNMV.

Moreover, UK firms will not be required to request a new authorization to execute client orders or to deal on their own account to continue being participants of the Spanish securities markets, as this circumstance was already included in the authorization initially submitted. In relation to Direct Electronic Access (DEA), it will not be necessary for UK-domiciled DEA users to be an investment firm authorized by a Member State in accordance with MiFID II in order to continue using the services of the Spanish markets through DEA.

CNMV communication on the upcoming implementation of Regulation 2019/2088 on sustainability disclosures in the financial sector. [Access Link](#)

On 18 February, the CNMV published a communication containing several considerations on the entering into force of Regulation (EU) 2019/2088 on disclosure of information on sustainability in the financial sector, which will apply from 10 March 2021 and whose provisions will apply management companies of collective investment schemes and financial advisors, as well as entities that provide discretionary portfolio management services.

The provisions included in this regulation relate to disclosure duties, both at the level of financial market participants and at the level of financial products, on the integration of sustainability risks, transparency of adverse sustainability events and sustainability disclosures in respect of financial products.

Although technical regulatory standards have not yet been developed in this area, the CNMV, in line with the European Commission, notes that the application of the Regulation is not conditioned on the development of technical standards, so that financial market participants must comply with the aforementioned transparency requirements from 10 March 2021.

To this purpose, the CNMV has set up a simplified procedure to speed up the insertion of this information into registered prospectuses.



Fintech

Spanish regulation

Order ETD/1305/2020 of 29 September regulating the Coordination Commission provided for in Law 7/2020 of 13 November for the digital transformation of the financial sector and establishing its operating rules. [Access Link](#)

On 5 January 2021, Order ETD/1305/2021 of the Ministry of Economic Affairs and Digital Transformation was published in the Official Gazette, the purpose of which is to set up the Coordination Committee provided for in Law 7/2020, of 13 November, for the digital transformation of the financial sector (regulation of the Spanish sandbox) and to establish its operating rules in accordance with the provisions of article 23.1 of the aforementioned Law.

The main objective of the Coordination Committee is to organize and coordinate the actions provided in Law 7/2020, the monitoring and promotion of the controlled testing area provided for therein and, in general, the monitoring of the process of digital transformation of the financial system.

In this regard, the Order establishes, among other matters, both the composition of the Coordination Committee (which will be made up of 15 members, representing different authorities and public bodies) and the functions of the Committee, its Chairman, the Secretary and the functions, rights and duties of the members of the Coordination Committee.

All members of the Coordination Commission will be subject to the duties of secrecy and discretion provided for in article 14 of Law 7/2020.

Order ETD/1305/2020 entered into force on 6 January 2021.

Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic. [Access Link](#)

On 13 March 2021, Royal Decree 5/2021 was published in the Official Gazette, amending the current revised text of the Securities Market Law with the aim of enabling the CNMV to control the advertising of crypto-assets.

Some of the new provisions introduced by this Royal Decree-Law in the area of crypto-assets are as follows: (i) the definition of cryptoassets as "digital representations of value or rights that can



be transferred and stored electronically, by means of distributed registry technology or other similar technology"; (ii) the risks of cryptoassets; and (iii) the powers of the CNMV to subject the advertising of cryptoassets and other assets and instruments to control or authorization.

Supervision criteria

Joint statement by the CNMV and the Bank of Spain on the risk of cryptocurrencies as investments. [Access Link](#)

Due to the high volatility of certain cryptocurrencies in recent months, the CNMV and the Bank of Spain issued a joint statement on 9 February to warn of the risks of this type of investment.

From a regulatory point of view, the two bodies warn that there is no framework at European Union level to regulate cryptoassets, which results in a lack of guarantees and protections. Moreover, they are not considered as a means of payment and do not have the backing of a central bank or investor protection mechanisms.

They also point out that cryptoassets are complex instruments and their price imply a high speculative component, which can even lead to the total loss of the investment. Their price formation is not backed by effective mechanisms to prevent manipulation, and many of them do not have the necessary liquidity to be able to unwind an investment without suffering significant losses.

On the other hand, the problems posed by cryptocurrencies in relation to theft, fraud or losses stand out, as their custody is outside any type of regulation or supervision.

PORTUGAL

Banking

Legislation

Regulation 2239/2021 – Official Journal 24/2021, Series II, of February 4, 2021. [Access link](#)

General Directorate of Treasury and Finance publishes the subsidiary default interest rates in effect in the first half of 2021: (i) a 7% rate applies to credits held by commercial companies,



individual or legal persons, under the terms of § 3 of article 102 of the Commercial Code; and (ii) a 8% rate applies to credits held by commercial companies, individual or legal persons, under the terms of § 5 of article 102 of the Commercial Code and of Decree Law 62/2013, of May 10, 2013.

Instruction 4/2021 – Official Bulletin 3/2021, of March 15, 2021. [Access link](#)

Regulates the management and reporting of operational and security risks, by payment service providers, implementing the requirements of the EBA Guidelines, including the duty to report annually on the assessment of the operational and security risks of the payment services provided.

Instruction 3/2021 – Official Bulletin 2/2021, 3rd Supplement, of March 10, 2021. [Access link](#)

Discloses the maximum rates to be applied to consumer credit agreements, under Decree Law 133/2009, of June 2, 2009, in the second quarter of 2021.

Instruction 2/2021 – Official Bulletin 2/2021, 2nd Supplement, of February 26, 2021. [Access link](#)

On the reduced and increased risk factors on money laundering and terrorist financing, and specific customer due diligence, simplified and enhanced measures. See above. One of the main aspects of the Instruction relates to the (already known) duty to apply, in increased risk circumstances, the enhanced measure for verifying the origin of customers' funds. Due to uncertainty in the market on how to implement this verification, the Instruction gives examples of documents that obliged entities may collect for that purpose. Another important aspect is that the Instruction includes in its annexes lists of reduced or increased risk factors, which aim to assist obliged entities with preparing their risk matrices for the prevention of money laundering and terrorist financing.

Instruction 1/2021 – Official Bulletin 1/2021, of January 15, 2021. [Access link](#)

Revokes Instruction 2/2007, which provided for the submission of informative elements on the development of a credit portfolio.

Circular Letter CC/2021/00000008 – Official Bulletin 3/2021, of March 15, 2021. [Access link](#)

Discloses, under no. 9 of Instruction 18/2015, (i) the reporting templates for financing and capital plans; (ii) an overview of the financial and macroeconomic scenario; and (iii) other



guidelines institutions are required to complete for the financial exercise and submission of information with the reference date of December 31, 2020

Capital Markets

Legislation

Circular of March 4, 2021. [Access link](#)

Circular on implementing the new regular reporting duties to CMVM under (i) CMVM Regulation 6/2020, on multiple reporting duties; (ii) CMVM Regulation 7/2020, on providing information to the CMVM about complaints filed by non professional investors; (iii) CMVM Regulation 8/2020, on providing information to the CMVM about price lists for non professional investors, marketing and charges of collective investment undertakings; and (iv) CMVM Regulation 9/2020, on the internal control and governance systems' self assessment report.

Circular of February 18, 2021. [Access link](#)

Circular on the duty to assess the appropriateness of operations under Directive 2014/65/EU on markets in financial instruments, notably tests on the investors' knowledge and experience (appropriateness) and their investment objectives and financial situation (suitability).

For additional information, please contact your usual contact person at Cuatrecasas.

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