
Iberian Financial Newsletter

Banking and Financial Institutions

July – September 2021



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SPAIN

Banking

Supervision criteria

SEPBLAC communication on the opening of accounts by credit institutions in the name of payment institutions (PEs) and electronic money institutions (EMIs) for use by their customers (in Spanish only). [Access Link](#)

On 5 August 2021, the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (*Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias*, SEPBLAC) issued a communication concerning the opening of accounts by credit institutions in the name of payment institutions (PEs) and electronic money institutions (EMIs) for use by their customers.

SEPBLAC reports that it has become aware of the opening of bank accounts in the name of payment institutions (PEs) and electronic money institutions (EMIs) whose ultimate beneficiaries are the customers of these institutions. According to SEPBLAC, PEs and EMIs sign agreements with credit institutions to open accounts with their corresponding IBAN code, in the name of the PEs and EMIs themselves, so that their customers can use these codes to identify the payment accounts they hold with these PEs and EMIs.

In view of this situation, SEPBLAC clarifies that it considers good practice that, when PEs and EMIs decide to provide customer-specific IBAN codes, they should issue their own codes, and not use codes issued by third parties.

In the communication, SEPBLAC provides guidance on how to comply with some of the obligations relating to the prevention of money laundering and terrorist financing, in relation to the following obligations:

- > Identification of the ultimate customer at the start of transactions;
- > Updating customer information;
- > Recording of information on transactions carried out; and



- > Declaration of information to the Centralized Banking Account Register (*Fichero de Titularidades Financieras, FTF*).

Guidelines on the criteria for organization and operation of the customer service departments of entities supervised by the Bank of Spain (in Spanish only). [Access Link](#)

According to the provisions of Article 54 of Law 10/2014, of June 26, on the regulation, supervision and solvency of credit institutions, the Bank of Spain has published the Guidelines on the criteria for organization and activity of the customer care service departments (“CSDs”) of entities supervised by this regulator.

The Guidelines identify recommended best practices in the organization and operation of CSDs to, among others: (i) credit institutions; (ii) specialized credit institutions; (iii) payment institutions; and (iv) electronic money institutions.

The criteria set out in the Guidelines should be used to assess the performance by CSDs of their two main functions: processing of customer complaints and claims and early warning and detection of problems arising from the marketing of products and/or the relationship between institutions and their customers.

The Guidelines establish, among others, the following criteria of organization and operation in relation to the CSDs:

- > Organizational and functional independence, by adopting the necessary measures to separate the CSD from the other commercial or operational services of the financial institution;
- > Good repute of the person in charge;
- > Adequate human, material, technical and organizational resources for the fulfillment of its functions;
- > Policies for the identification and prevention of conflicts of interest that may affect the person in charge of CSD and the staff assigned to it;
- > Channels for receiving complaints and claims that allow documents to be read, printed and retained;
- > Clear and direct communication channels between the person in charge of CSD and the management body of the entity; and



- > Follow-up and monitoring of complaints and claims, which should include all those processed within the entity, regardless of the body that has resolved them.

Securities market and collective investment

Supervision criteria

CNMV Communication regarding the provision of investment services in Spain by third country firms without the establishment of a branch in Spain (in Spanish only). [Access Link](#)

On July 23, the Spanish National Securities Market Commission ("CNMV") published a communication regarding the provision of investment services in Spain by third country firms without the establishment of a branch office as a consequence of the Brexit.

Third country firms may provide investment services in Spain without establishing a branch office, without prejudice that the CNMV may require the establishment of a branch office taking into consideration certain factors.

The CNMV summarizes those cases in which the establishment of a branch is not required in order to provide investment services in Spain:

- > When there is reciprocity with the home country, so that a Spanish credit institution or investment services company may provide services in such country without the need for permanent establishment and, in addition, both of the following two situations are cumulatively met.
- > When the provision of investment services by third-country firms is addressed to Spanish clients, provided that such clients:
 - are considered eligible counterparties pursuant; or,
 - are considered as professional clients and (a) do not provide services to less than 20 professional clients *per se*; or (b) the income generated by such provision of services does not exceed EUR 2 million.
- > Other cases in which, exceptionally, in view of the specific and duly justified circumstances, in the opinion of the CNMV, it is appropriate to authorize the provision of investment services to clients without the establishment of a branch office.



Proposals

CNMV Public Consultation regarding the Draft of the Technical Guidelines for the Assessment of Appropriateness (in Spanish only). [Access Link](#)

On July 27, the public consultation regarding the new technical guidelines for the assessment of appropriateness (the “**Technical Guidelines**”) was launched by the CNMV.

In particular, the aspects covered by this Technical Guidelines are the following:

- > Situations where no assessment of appropriateness is required (the "execution only" regime).
- > The requirement to act in the client's best interest regarding the appropriateness.
- > The origin of the data used in the competence assessment.
- > The customer's familiarity with financial products, their characteristics and risks.
- > The nature, volume and frequency of the customer's transactions with financial products and the period over which they have been carried out.
- > Level of education and occupation.
- > The delivery to the client of a copy of the document containing the assessment performed.
- > Records of the appropriateness assessments.
- > The period of validity of the previous appropriateness assessments.
- > Warnings regarding the inappropriateness, the absence or insufficiency of data to perform the assessment, or the non-obligation to perform the assessment.
- > The evaluation of customers that operate jointly.

Appropriateness assessments must be renewed after 3 years for complex products and after 5 years for other products.



PORTUGAL

Banking

Law 54/2021 – Official Journal 157/2021, Series I, of August 13, 2021. [Access link](#)

Transposes Directive (EU) 2019/1153 of the European Parliament and of the Council of June 20, 2019, which lays down rules for facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and amends the Legal Framework for Credit Institutions and Financial Companies.

Decree-Law 70-B/2021 – Official Journal 152/2021, 1st Supplement, Series I, of August 6, 2021. [Access link](#)

Establishes protective measures for bank customers covered by exceptional and temporary credit protection measures and amends the system for the prevention and regularization of default on credit agreements.

Law 50/2021 – Official Journal 147/2021, Series I, of July 30, 2021. [Access link](#)

Establishes the additional extension of moratoria on loan repayments until December 31, 2021, amending Decree-Law 10-J/2020, of March 26.

Bank of Portugal Instruction 12/2021 – Official Bulletin 8/2021, 2nd Supplement, of September 9, 2021. [Access link](#)

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

Bank of Portugal Instruction 11/2021 – Official Bulletin 7/2021, 2nd Supplement, of September 28, 2021. [Access link](#)

Establishes uniform rules regarding the disclosure of information on prudential requirements and amends Bank of Portugal Instruction 1/2017 which implemented the Guidelines on the materiality, ownership, confidentiality and frequency of disclosure of information pursuant Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013, and revokes Instructions 28/2014, 5/2018 and 20/2019 on disclosures under Part VIII of the said regulation.



Bank of Portugal Circular Letter CC/2021/00000046 – Official Bulletin 8/2021, Supplement, of September 8, 2021. [Access link](#)

Informs, following the June 2021 plenary meeting of the Financial Action Task Force, on the continued adoption of countermeasures commensurate with the very high risk of money laundering and terrorist financing in respect of the Democratic People's Republic of Korea (North Korea) and the Islamic Republic of Iran.

Bank of Portugal Circular Letter CC/2021/00000036 – Official Bulletin 7/2021, 3rd Supplement, of July 29, 2021. [Access link](#)

Establishes that less significant credit institutions may benefit from the existence of exceptional circumstances for purpose of excluding exposures in the calculation of the leverage ratio exposure measure.

Capital Markets

Legislation

Decree-Law 72/2021 – Official Journal 158/2021, Series I, of August 16, 2021. [Access link](#)

Revises the legal regime of securities investment companies for economy improvement (*sociedades de investimento mobiliário para fomento da economia*).

Portuguese Securities Market Commission Circular of July 9, 2021. [Access link](#)

Circular on deactivation of the testing environment in CMVM's Extranet domain as of July 16, 2021.

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

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