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# Iberian Financial Newsletter

Banking and Financial Institutions

April – June 2022



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## SPAIN

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### Securities markets and collective investments

#### Supervision criteria

##### CNMV Technical Guide 2/2022 on appropriateness assessment ([Access link](#))

On March 30, the CNMV approved the Technical Guide 2/2022 on appropriateness assessment ("Guide 2/2022").

Guide 2/2022 aims to update the content of the Guidelines for the Analysis of Suitability and Appropriateness published on June 17, 2010 by the CNMV ("**Guidelines for the Analysis of Suitability and Appropriateness**") to the new regulations that have arisen since then, particularly from the MiFID II Directive, the ESMA documents and guidelines and the supervisory experience gathered by the CNMV. Furthermore, it is also underlined that the Guidelines for the Analysis of Suitability and Appropriateness remains in force in all aspects that have not been modified by the 2/2022 Guidelines or the new ESMA guidelines.

Guide 2/2022 applies to entities that provide investment services and aims to establish criteria on how entities should assess the knowledge and experience of retail clients when providing them investment services.

In particular, the main objectives pursued by the 2/2022 Guide are the following:

- To identify situations where no assessment of appropriateness is required ("execution-only" regime) and to clarify situations where, as a general matter, it is unlikely that the initiative came from the customer. For example, the Guide 2/2022 emphasizes that, in cases where in-house sales campaigns for a particular product are conducted through the distribution network or by phone (without the support of advertising campaigns directed to the general public) for a short period of time, in general, it would not be reasonable to consider the initiative to have been taken by customers.
- To clarify the requirement to act in the best interest of the customer, particularly when actively approaching customers to offer or market financial products. Therefore, Guide 2/2022 highlights those entities should ensure that products that they consider non-appropriate for certain investors are not actively marketed to those investors, particularly in the case of complex products.



- > The mechanisms to determine the customer's familiarity with financial products, their characteristics and risks to prevent the risk of overestimating the customer's real level of financial knowledge. Entities should always ask the client about this aspect (a necessary, but not sufficient condition) regardless of whether the customer may have previous investment experience or a certain level of academic training.
- > To establish criteria for the non-presumption of appropriateness based on the mere investment experience of the customer (nature, volume and frequency of transactions with financial products), without gathering information and analyzing other aspects that should be considered when assessing appropriateness. In order to reinforce mechanisms against such presumption, among other issues, the Guide 2/2022 highlights that, if the previous investment experience declared by the customer on complex products in other entities does not correspond to the financial products acquired by the customer in the entity, reinforced contrasting mechanisms must be established to verify the consistency and accuracy of such information.
- > The customer's level of education and profession will only provide a generic idea of the customer's financial knowledge and therefore only allow for general assumptions to be made.
- > To establish records of the appropriateness assessments carried out, as well as analysis of the information gathered and checks on the consistency of the assessment. These measures should include a periodic (e.g., annual) ex post evaluation of the overall or aggregate reasonableness of the information used in assessing appropriateness.

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## Common

### Draft regulations

#### **Preliminary Draft Bill for the Creation of the Independent Administrative Authority for the Protection of Financial Customers. [Access link](#)**

On April 6, 2022, the Spanish Council of Ministers approved the Preliminary Draft Bill for the Creation of the Independent Administrative Authority for the Protection of Financial Customers.

The purpose of the Draft Bill is to create the Independent Administrative Authority for the for the Protection of Financial Customers, to promote the out-of-court resolution of conflicts and to avoid the excessive judicialization of conflicts in the financial sphere, thus reducing economic



costs and time for the involved agents. In addition, it is also intended to make progress in guaranteeing financial inclusion, particularly for the elderly and vulnerable collectives.

The objective scope of application will cover any claim filed by one or more financial clients against financial entities, including in the pre-contractual phase, as a consequence of non-compliance with the rules of conduct, good practices and financial uses or the unfairness of contractual clauses.

A financial client is understood to be any natural or legal person and entities without legal personality, Spanish or foreign, to the extent that they are users of financial services provided by financial entities or potential clients contacted in a pre-contractual phase.

Particularly, the Draft Bill regulates the following aspects:

- > The regulation of the complaint system and its legal regime;
- > The creation of the Independent Administrative Authority for the for the Protection of Financial Customers;
- > The cooperation between the Independent Administrative Authority for the for the Protection of Financial Customers with the Spanish Ministry of Economic Affairs and Digital Transformation, the Spanish Ministry of Consumer Affairs and the supervisory authorities for conduct in the financial sector;
- > The fostering by the Bank of Spain, the CNMV and the Directorate General for Insurance and Pension Funds, in coordination with the Independent Administrative Authority for the for the Protection of Financial Customers, of financial education of the customer; and
- > The sanctions regime attributed to the Independent Administrative Authority for the Protection of Financial Customers.

Lastly, the Draft Bill regulates the financing of the Independent Administrative Authority for the Protection of Financial Customers, based essentially on a fee of EUR 250, to be paid by the financial institution concerned, and accrued at the time of admission of the claim.

### **Draft Bill regulating Customer Services. [Access link](#)**

On June 10, 2022, the Spanish Council of Ministers approved the Draft Bill regulating Customer Services with the purpose of establishing minimum quality parameters for customer services.

The objective scope of application of the Draft Bill covers the sale of goods and the provision of certain basic services of general interest, including financial services. The rule will be mandatory for all companies that provide essential services under the Spanish territory, as well as for those



which, regardless of the sector, have more than 250 employees or a business volume of more than 50 million euros.

Particularly, the Draft Bill regulates the following aspects:

- > Minimum levels of quality and improvement of consumer rights through an agile, efficient and accessible service, as well as free and personalized telephone attention according to the specific needs of the user;
- > Requirements for the resolution of consumer complaints, such as setting a maximum time limit for providing a response to consumers;
- > Prohibition of customer service from generating additional income for the company at the expense of customers;
- > Implementation of a system to evaluate the quality level of the service, audited on an annual basis; and
- > Infringement and sanction regime.

In those sectors which already have their own regulations, and therefore the principle of specialization shall apply, the sectorial regulations shall be preferentially applied.

## PORTUGAL

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### Banking

#### Legislation

**Instruction 12/2022 – Official Bulletin 6/2022, 2<sup>nd</sup> Supplement, dated June 21, 2022. [Access Link](#)**

Amending Instruction 3/2015, which establishes uniform rules for implementing the single monetary policy by the Eurosystem.

**Instruction 11/2022 – Official Bulletin 6/2022, 2<sup>nd</sup> Supplement, dated June 21, 2022. [Access Link](#)**

Amending Instruction 7/2012, which establishes the temporary measures for the eligibility criteria for asset backed Eurosystem credit transactions.



**Instruction 10/2022 – Official Bulletin 6/2022, Supplement, dated June 21, 2022. [Access Link](#)**

Amending Instruction 8/2018, with a view to reviewing the Interbank Clearing System to accommodate the implementation of the new continuous gross settlement mechanism by EBA Clearing.

**Instruction 9/2022 – Official Bulletin 5/2022, 3<sup>rd</sup> Supplement, dated June 9, 2022. [Access Link](#)**

Releasing the maximum rates for the 3<sup>rd</sup> quarter of 2022 to be charged in consumer credit contracts under Decree-Law 133/2009 of June 2.

**Notice 1/2022 – DR 109/2022, Series II, Part E of June 6, 2022. [Access Link](#)**

Establishing the necessary aspects for ensuring compliance with the duties to prevent money laundering and terrorist financing within the scope of the activity of financial entities subject to BoP supervision, revoking Notice 2/2018 and Instruction 2/2021.

**BoP public consultation 4/2022 of May 18, 2022. [Access Link](#)**

The BoP has released for public consultation until July 1, 2022, a draft instruction to amend reporting in the field of securities statistics with a view to replacing Instruction 31/2005, now applicable to the branch offices of foreign credit institutions in Portugal.

**BoP public consultation 3/2022 of May 4, 2022. [Access Link](#)**

Draft instruction that partially amends BoP Instruction 7/2021, transposing into Portuguese law the new version of the questionnaire available on the website of the European Central Bank Information Management System. The public consultation will last until June 17, 2022.

**Instruction 8/2022 – Official Bulletin 4/2022, Supplement, dated April 20, 2022. [Access Link](#)**

Amending BoP Instruction 54/2012, which regulates the functioning of the real-time gross settlement automatic transfer system.

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## Capital markets

### Legislation

**Regulation 5/2022 –DR 112/2022, Series II of June 9, 2022. [Access Link](#)**

Amending Securities Market Commission (“CMVM”) Regulation 2/2020 concerning the prevention of money laundering and terrorist financing. The main amendments come from the approval of the legal regime for Real Estate Investment and Management Companies (“SIGIs”, in the Portuguese acronym) by Decree-Law 19/2019 of January 28 and the amendments made by Law 83/2017, which grant the CMVM the supervisory authority to prevent these companies,



which are classified as obliged financial entities under Law 83/2017, from committing money laundering and terrorist financing.

**Regulation 4/2022 –DR 92/2022, Series II of May 12, 2022. [Access Link](#)**

Regulating the specifics for management companies to send information about money market funds to the CMVM under article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council of June 14, 2017, on money market funds.

**Decree-Law 31/2022 – DR 88/2022, Series I of May 6, 2022. [Access Link](#)**

Approving the Legal Regime for Covered Bonds and transposing Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and Directive (EU) 2021/2261 on the use of key information documents by management companies of undertakings for collective investment in transferable securities.

**Regulation 3/2022 –DR 82/2022, Series II of April 28, 2022. [Access Link](#)**

Amending CMVM Regulation 2/2022 of January 31, which establishes the form and content of the duties of central securities depositories to report information about missed settlements to the CMVM.

**CMVM public consultation 4/2022 of April 1, 2022. [Access Link](#)**

Submitting the draft of Regulation 4/2022 for public consultation until May 17, 2022, which aims to amend Regulation 2/2020 on the prevention of money laundering and terrorist financing.

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