CUATRECASAS

Legal Update
2nd Quarter 2025

Banking, Finance and Capital Markets Newsletter

Portugal

1.

Banking and finance law

Portuguese law

Ordinance 187/2025/1 of April 15
Making the first amendment to Ordinance 236-A/2024/1 of September 27, which regulates the conditions for the state to grant a personal guarantee for loans for first-time purchasers of owner-occupied homes.

EU law

Commission Delegated Regulation (EU) 2025/1275 of March 17, 2025, published on June 27, 2025, correcting certain language versions of Delegated Regulation (EU) 2024/857 supplementing Directive 013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying a standardized methodology and a simplified standardized methodology to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities.

Regulation (EU) 2025/1215 of the European Parliament and of the Council of June 17, 2025, published on June 25, 2025, amending Regulation (EU) 575/2013 as regards requirements for securities financing transactions under the net stable funding ratio.

Commission Delegated Regulation (EU) 2025/1142, published on June 10, supplementing the Markets in Cryptoassets Regulation ("**MiCA**") with regard to regulatory technical standards specifying the requirements of policies and procedures on conflicts of interest for cryptoasset service providers and the details and methodology for the content of disclosures of conflicts of interest.

Commission Delegated Regulation (EU) 2025/1141, published on June 10, supplementing MiCA as regards regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for issuers of asset-reference tokens.

Commission Delegated Regulation (EU) 2025/1140, published on June 10, supplementing MiCA with regard to regulatory technical standards specifying the records to be kept for all cryptoasset services, activities, orders and transactions undertaken.

Commission Delegated Regulation (EU) 2025/1003, published on May 22, supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments as regards OTC derivatives identifying reference data to be used for the purposes of the transparency requirements laid down in articles 8a.2, 10 and 21.

Commission Delegated Regulation (EU) 2025/422, published on March 31, supplementing MiCA with regard to regulatory technical standards specifying the content, methodologies and presentation of information in respect of sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

Commission Delegated Regulation (EU) 2025/414, published on March 31, supplementing MiCA with regard to regulatory technical standards specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of a qualifying holding in a cryptoasset service provider.

Commission Delegated Regulation (EU) 2025/413, published on March 31, supplementing MiCA with regard to regulatory technical standards specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of a qualified holding in an issuer of an asset-referenced token.

Commission Delegated Regulation (EU) 2025/305, published on March 31, supplementing MiCA with regard to regulatory technical standards specifying the information to be included in the application for authorization as a cryptoasset service provider.

Commission Delegated Regulation (EU) 2025/300, published on March 31, supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards on information to be exchanged between competent authorities.

Commission Implementing Regulation (EU) 2025/863, published on May 12, laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from March 31, 2025, until June 29, 2025, in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

Commission Implementing Regulation (EU) 2025/306, published on March 31, supplementing MiCA with regard to standard forms, templates and procedures for the information to be included in the application for authorization as a cryptoasset service provider.

Bank of Portugal instructions

Instruction 9/2025 of June 26, 2025

Amending Instruction 8/2018, which regulates the Interbank Clearing System (SICOI), to extend the tax identification number to additional identifiers for initiating SPIN transactions by individuals.

Instruction 8/2025 of June 3

Revoking Instruction 15/2014, which regulates the conditions under which banking transactions can be made available by credit institutions outside their branches.

Instruction 7/2025 of June 3
Amending Instruction 2/2016, which characterizes and regulates the tender information system (SITENDER) and revoking Instruction 10/2015.

Instruction 6/2025 of June 3
Amending Instruction 7/2012, which establishes temporary measures related to the eligibility criteria of collateral for Eurosystem credit transactions.

Bank of Portugal circulars

Circular CC/2025/00000013 of June 3
Revoking Circular 007/2014/DET, which establishes the procedures and requirements for crossborder payments.

Circular CC/2025/00000012 of June 3
Announcing the termination of Circular 018/97/DSB of April 22.

Circular CC/2025/00000009 of April 24
Establishing the structure and rules for using the unique identifier of payment accounts domiciled with payment service providers established in Portugal (IBAN PT) and specifying the entities that can assign national BBANs and IBANs to payment accounts.

Circular CC/2025/00000008 of April 10
Publishing the Bank of Portugal's position on terminating account and card contracts, the account switching service, and the procedures following the death of a joint account holder.

Bank of Portugal notices

Notice 14664/2025/2 of June 11
The commemorative coin "Always alert. Always ready" enters circulation.

European Banking Authority acts

Report of May 14
On monitoring the liquidity coverage ratio and the net stable funding ratio in the European Union ("**EU**").

European Central Bank acts

Decision (EU) 2025/1148, published on June 10
Amending Decision (EU) 2025/222 on access by non-bank payment service providers to Eurosystem central bank operated payment systems and central bank accounts.

European Central Bank Decision (EU) 2025/1114, published on May 28

On delegation of the power to make certain decisions on the publication of sanctions for failing to hold minimum reserves.

2.
Insurance and pension funds law

Portuguese law

New rules for mandatory automobile civil liability insurance mandatory third-party liability motor insurance (SORCA)

Decree-Law 26/2025 of March 20 **("Decree-Law 26/2025"), transposing Directive 2021/2118 of the European Parliament and of the Council into Portuguese law, defines the new concept of vehicle subject to mandatory third-party liability motor insurance ("SORCA").**

The current SORCA regime was originally based on Directive 2009/103/EC of the European Parliament and of the Council of September 16, 2009 ("**Directive 2009/103/EC**"), transposed into national law by Decree-Law 291/2007 of August 21 ("**Decree-Law 291/2007**").

Directive (EU) 2021/2118 of the European Parliament and of the Council of November 24, 2021 ("**Directive 2021/2118**") amended Directive 2009/103/EC, thereby bringing about the amendment of Decree-Law 291/2007.

The amendment introduced by Decree-Law 26/2025 aims to further a public policy objective aimed at enhancing protection of victims of motor vehicle accidents, particularly those involving trailers, as well as in situations of insurance company liquidation or insolvency. Accordingly:

- To enhance the protection of victims in cases of accidents involving vehicles with trailers, particularly when the vehicle and trailer are insured by different companies, a specific regime has been established for claiming against insurance companies. Under this regime, the injured party may request either of the two insurance companies (i.e., insuring the vehicle or the trailer) to identify the other insurance company and pay the compensation up to the corresponding insured capital limit. Also, if only one of the vehicles involved is insured or if only one of the insurance companies can be identified, that company must pay the full compensation to the injured party. In these scenarios, the Motor Guarantee Fund ("**FGA**") assumes a subsidiary role in compensating damages arising from the accident.
- In compliance with Directive 2021/2118, regarding the possibility for victims residing in a Member State to claim compensation owed by an insurance company undergoing insolvency or liquidation through a

compensation body within their Member State of residence, Decree-Law 26/2025 establishes the terms governing FGA's coverage of compensation owed for physical and material damages by an insolvent or liquidating insurance company. These terms also encompass provisions regarding cooperation between the insolvent or liquidating insurance company—or its designated representatives—and the FGA, as well as the provision of any pertinent information. Victims may directly approach the compensation body of their Member State of residence, which will retain the right of recovery against the equivalent body in the Member State where the insurance company is based, which ultimately bears responsibility. Therefore, depending on the specific circumstances of the case, the FGA will operate either as the compensation body or as the entity responsible for the right of recovery.

However, the reasons that ultimately led to Decree-Law 26/2025 being the subject of various comments in recent weeks—including those from the Insurance and Pension Funds Supervisory Authority ("**ASF**") and the National Road Safety Authority (ANSR)—include the introduction of a new article (1-A) entitled "Scope." This article specifies the vehicles subject to the SORCA regime, identifying them as follows:

"any motor vehicle intended for travel on land, not operating on rails, powered by mechanical force, as well as its trailers (including those not currently attached), provided the vehicle has (a) a maximum design speed exceeding 25 km/h; or (b) a maximum net weight exceeding 25 kg coupled with a maximum design speed exceeding 14 km/h, excluding wheelchairs intended solely for individuals with physical disabilities."

This provision should be interpreted alongside the Highway Code, particularly article 112, which defining bicycles and similar vehicles (*velocipedes,* in Portuguese) as follows:

"1 - A bicycle is a vehicle with two or more wheels powered by the rider by using pedals or similar mechanisms.

2 - A motorized bicycle is one equipped with an auxiliary motor with a maximum continuous power of 1.0 kW, whose power output is progressively reduced as speed increases and is cut off when the speed reaches 25 km/h—or earlier if the rider stops pedaling.

3 - For the purposes of the Highway Code, the following are considered equivalent to bicycles:

a) Motorized bicycles

b) Electric scooters and other self-balancing or self-propelled devices with motors, or similar motorized means of transportation, when equipped with a motor producing a maximum continuous power of 0.25 kW and reaching a maximum speed of 25 km/h.

4 - For the purposes of point b) in the preceding paragraph, a scooter is defined as a vehicle consisting of two wheels aligned in sequence that support a platform for the driver's feet, operated standing up and controlled via a handlebar that extends to waist height.

5 - The circulation regime and technical specifications for electric scooters, as well as self-balancing or self-propelled motorized devices and other analogous motorized means of transportation, not complying with the provisions of paragraph 3.b) are governed by regulatory decree.

6 – Individuals operating scooters or self-balancing, self-propelled or analogous motorized devices equipped with motors producing a maximum continuous power exceeding 0.25 kW or reaching maximum speeds above 25 km/h, in violation of the technical specifications or circulation regime established by the preceding paragraph, are subject to fines ranging from €60 to €300.

7 – Vehicles mentioned in the preceding paragraph will be seized immediately.

8 - The provisions of paragraphs 6 and 7 also apply to bicycles equipped with auxiliary motors exceeding a maximum continuous power of 1.0 kW, whose power supply does not cut off when pedaling ceases, or whose maximum speed exceeds 25 km/h."

Currently, public roads are used not only by traditional motor vehicles but also by electric bicycles, electric scooters, segways, and hoverboards, many of which exceed speeds of 25 km/h.

A combined reading of the current SORCA regime and article 112 of the Highway Code suggests the following:

- Electric bicycles, electric scooters, segways, and hoverboards are exempt from the requirement of obtaining a SORCA if they meet the following criteria: (a) their maximum design speed does not exceed 25 km/h; and (b) their maximum net weight does not exceed 25 kg, and the maximum design speed does not exceed 14 km/h. However, for devices exceeding these thresholds, their users must obtain a SORCA to be able to operate them on public roads.
- Under article 112.5 of the Highway Code, bicycles equipped with auxiliary motors that (a) have a maximum continuous power exceeding 0.25 kW, (b) continue supplying power even when the rider stops pedaling, or (c) exceed 25 km/h in maximum speed cannot operate on public roads until regulated by a regulatory decree. In these cases, under article 112.7 of the Highway Code, these vehicles must be seized immediately and their operators fined between €60 and €300.
- The rules outlined in the preceding paragraph also apply to bicycles equipped with an auxiliary motor producing a maximum continuous power exceeding 1.0 kW, whose motor does not cut off when pedaling ceases, or whose maximum speed exceeds 25 km/h.

Note that the rules introduced under Decree-Law 26/2025 in no way conflict with the regulatory framework governing access and operation of driverless rental services, approved by Decree-Law 181/2012 of August 6, as amended. Therefore, for electric bicycles, electric scooters, segways, and hoverboards offered in sharing systems, personal accident and civil liability insurance continues to be mandatory and must be provided by the lessor.

ASF acts

Amendment to the regulation on the legal regime for insurance and reinsurance distribution

Regulatory Standard 4/2025-R, published on June 11

Amending Regulatory Standard 13/2020-R of December 30 on the regulation of the legal regime for insurance and reinsurance distribution.

Regulatory Standard 4/2025-R of May 27 (NR 4/2025-R) introduces the third amendment to Regulatory Standard 13/2020-R of December 30 ("**NR 13/2020-R**") on the regulation of the legal regime for insurance and reinsurance distribution. Below is a summary of the amendments:

- **Professional civil liability insurance**: The minimum insurance capital amounts for professional civil liability insurance of insurance intermediaries operating on an ancillary basis, stated in articles 15.f) and 16.1.f) of NR

13/202-R, have been amended. They are now set at a minimum of €751,016.27 per claim and €1,126,522.99 per annuity, irrespective of the number of claims.

- **Claims management and reporting duties**: Clarifications have been made regarding the applicable scope of the duty to establish a function responsible for managing claims from policyholders, insured persons, beneficiaries, and injured third parties. Insurance intermediaries operating on an ancillary basis, irrespective of their annual remuneration, are excluded from these obligations, including the duties established in article 35.4 of NR 13/2020-R and the requirement to send the annual claims management report, as specified in article 40.1 of NR 13/2020-R, to the ASF by the end of February. These duties now only apply to insurance intermediaries (agents and brokers) whose annual remuneration is €500,000 or over.

- **Client account rules**: Adjustments have been made to NR 13/2020-R regarding "client" accounts. Funds in these accounts may now only be debited through electronic transfers that enable the beneficiary to be identified or confirmed. Therefore, transactions through order checks are no longer permitted.

- **Portfolio dispersion requirements**: The rules on portfolio dispersion by insurance brokers have been amended. Consequently, dispersion requirements are now assessed annually, and brokers may account for the total remuneration earned over the preceding three financial years if a lower concentration ratio is calculated.

- **Publication of financial statements**: Clarifications were added to specify that the obligation to publish financial statements in full applies exclusively to insurance intermediaries (agents and brokers) and reinsurance companies.

- **Process for reporting infractions**: The process for reporting infractions to the ASF has been updated, allowing complaints to be submitted via the ASF's complaints channel available on its website.

Regulatory Standard 3/2025-R, published on May 6

Establishing the quarterly capital update indexes for "Fire and natural elements" policies starting or maturing in the third quarter of 2025.

Regulatory Standard 2/2025-R, published on April 22

Provision of information to the ASF for the purpose of supervising Pan-European Personal Pension Products (PEPP).

Circular 7/2025, published on June 26

Announcing the Decision of the European Insurance and Occupational Pensions Authority ("**EIOPA**") Board of Supervisors on the collaboration of the competent authorities of the Member States of the European Economic Area for the purpose of implementing Directive (EU) 2016/2341 of the European Parliament and of the Council of December 14, 2016, on the activities and supervision of institutions for occupational retirement provision, with regard to crossborder activities and transfers.

Circular 6/2025, published on June 3
Publishing standard health insurance conditions.

Circular 5/2025, published on May 27
Disclosing the "BCFT Prevention" file and reporting instructions, in compliance with article 29.3 of Regulatory Standard 10/2024-R of November 5, on preventing and combating money laundering and terrorist financing.

Circular 3/2025, published on April 14
On reporting severe ICT-related incidents and significant cyber threats.

Recommendations 3/2025, published on May 20
Concerning practices to be adopted by insurance and reinsurance companies for proper assessment and management of asset-liability management and liquidity risk.

Recommendations 2/2025, published on April 15
Establishing practices considered appropriate for the maximum time limits for settling claims in multirisk home insurance contracts.

Recommendations 1/2025, published on April 8
Conveying practices considered adequate by the ASF for differentiating between health insurance and health plans.

EIOPA acts

Consultations under the Insurance Recovery and Resolution Directive ("IRRD") of April 29, 2025
EIOPA has published its initial set of consultation documents addressing the implementation of the IRRD. These include the following:

- Pre-emptive recovery plans: Proposing preliminary regulatory technical standards ("**RTS**") establishing the minimum information required in the pre-emptive recovery plans for insurance and reinsurance entities subject to preventive recovery planning requirements.
- Selection criteria for entities: Proposing preliminary RTS defining specific criteria for selecting the insurance and reinsurance entities required to prepare pre-emptive recovery plans and detailing methods for calculating their market share.
- Critical function identification: Proposing guidelines outlining criteria for identifying critical functions.
- Resolution plans: Proposing preliminary RTS detailing the minimum information to be included in resolution plans.
- Resolving assessment: Proposing guidelines specifying criteria for assessing the resolvability of entities or groups.
- Removing impediment to resolvability: Proposing guidelines on measures to remove impediments to resolvability and the circumstances in which these measures could be applied.

The consultations are open for comments until July 31, 2025. EIOPA has indicated that it will review its proposals considering the contributions received and will publish a report on each consultation, including the reviewed proposal.

3.

Securities and capital markets law

Stop-the-Clock Directive

On April 14, the European Council approved the **Stop-the-Clock Directive**, which amends Directive (EU) 2022/2464 ("**CSRD**") and Directive (EU) 2024/1760. Specifically, the amendments affect dates from which Member States must apply certain sustainability reporting requirements and sustainability due diligence requirements for companies.

The **Stop-the-Clock Directive**, part of the Omnibus I package announced by the European Commission in February, aims to provide companies with additional time to adapt to new sustainability obligations. Key amendments include the following:

- **Postponement of the sustainability reporting requirements established in the CSRD for two years**:
  - Large companies must submit sustainability reports in 2028 for the 2027 financial year, instead of in 2026 for the 2025 financial year.
  - Listed SMEs must submit their sustainability reports in 2029 for the 2028 financial year, instead of in 2027 for the 2026 financial year.
- Postponement of the deadlines for transposing the CSRD to July 26, 2027, and the deadlines for applying the CSRD, progressively, between July 26, 2028, and July 26, 2030, depending on the company's size.

The **Stop-the-Clock** Directive entered into force on the day after its publication in the Official Journal of the European Union. Member States must transpose it into national law by December 31, 2025.

EU securitization package

On June 17, the European Commission presented a set of measures to review the EU securitization framework, focusing primarily on proposed amendments to Regulation (EU) 2017/2402 (the "**Securitization Regulation**").

The European Commission also proposed amendments to Regulation (EU) 575/2013 (Capital Requirements Regulation); launched a consultation on amendments to Delegated Regulation (EU) 2015/61 (Delegated Regulation on the Liquidity Coverage Ratio), which will run until July 15, 2025; and brought forward the submission of draft amendments to Delegated Regulation (EU) 2015/35 (**Delegated Regulation Solvency II**).

The proposed changes to the EU securitization framework aim to:

- simplify due diligence requirements for EU securitizations;
- clarify public and private securitization concepts and streamline reporting for private securitization (e.g., through the use of a specific reporting model);
- enhance supervisory convergence and improve coordination in supervision; and
- support the securitization of loans granted to SMEs.

This represents the most extensive revision to EU securitization rules since the introduction of the Securitization Regulation in 2017, which entered into force in 2019. In its press release, the Commission states, "Based on the implementation of the framework over the past six years, the Commission has identified that some aspects of the existing rules are hindering market developments." Therefore, the proposed changes have a clear aim of invigorating the EU securitization market.

Collective investment schemes

Portuguese Securities Market Commission ("CMVM") Regulation 3/2025 of April 17 - Investment for own portfolio in large-scale management companies

As we explained in our previous newsletter, CMVM Regulation 3/2025 was published on April 3 and entered into force on April 4. It introduced significant changes to the regulatory framework for collective investment undertakings.

Specifically, Regulation 3/2025 amends (i) CMVM Regulations 8/2018 of December 21 on information and marketing duties related to PRIIPs; (ii) CMVM Regulation 1/2020 of February 25 on sending information to the CMVM for prudential supervision purposes; (iii) CMVM Regulation 7/2020 of December 16 on sending information to the CMVM on complaints submitted by retail investors; (iv) CMVM Regulation 8/2020 of December 16 on sending information to the CMVM on pricing for retail investors, marketing and charges of collective investment undertakings; (v) CMVM Regulation 9/2020 of December 16 on the self-assessment report on governance and internal control systems; (vi) CMVM Regulation 6/2023 of August 25 on the CMVM's Electronic One-Stop Shop; and (vii) CMVM Regulation 7/2023 of December 29 on the regulation of the Asset Management Regime and revoking CMVM Regulation 1/2016 of May 25.

The main changes are as follows:

1. **Adaptation to the asset management regime ("AMR")**

   (i) Regulation 3/2025 updates terminology and adjusts prudential reporting duties for management companies.

   (ii) Following the entry into force of Decree-Law 89/2024, which amended the AMR, article 75-A of CMVM Regulation 7/2023 ("**AMRR**") was introduced. It specifies conditions under which large management companies may invest above the legally required own funds. These provisions aim to avoid conflicts of interest and preserve the ancillary nature of these investments.

2. **Strengthening prudential reporting duties**

   (i) Management companies and crowdfunding service providers now face more detailed and standardized reporting obligations. Also, reporting must be submitted digitally with greater data granularity.

3. **Clarification of procedures and obligations**

   (i) The regulation removes references to revoked regulations and improves procedural clarity by establishing clear deadlines and formats for submitting information to the CMVM.

   (ii) Reporting obligations for the prices and charges of collective investment undertakings ("**UCIS**") have been reduced. Only open-ended UCIS not targeted exclusively at professional investors must comply, easing demands on entities that cater solely to professional investors.

4. **Updating the information requirements for complaints**

   (i) Regulation 3/2025 updates the minimum content of self-assessment reports on governance and internal control systems, reinforcing transparency and the traceability of identified shortcomings and corrective measures.

Special attention should be given to the amendment to the AMRR, which provides a significant clarification regarding the conditions under which large management companies may invest amounts exceeding the legally required own funds. This amendment implements article 31.8 of the AMR, introduced by Decree-Law 89/2024.

Under the previous regime, the conditions for investing excess own funds was less clear. Specifically, there was no definitive list of eligible assets, nor were there uniform procedures for reporting and communication. The recent amendment addresses these uncertainties by standardizing both criteria and procedures.

Therefore, article 75-A of the AMRR now provides an exhaustive list of assets in which large management companies may invest in an amount exceeding the legally required own funds, as summarized below:

a) **Liquid assets or assets readily convertible into cash**: These must meet the requirements of article 31.7 of the AMR (i.e., they must be liquid and must not involve speculative positions).

b) **Holdings in financial sector companies**: These are permitted only if the companies are established within the EU or in third countries that adhere to prudential standards equivalent to those of the EU. This investment requires 30 days' prior notice to the CMVM, with detailed justification and supporting documents.

c) **Securities issued by UCIS under management or their portfolio assets**: This is permitted if the aim is to align interests and participate in the investment risk, including seed money and co-investments, provided the requirements for preventing conflicts of interest are followed.

d) **Assets essential for business operations**: Examples include real estate essential for business operations or other essential means of production.

However, certain prudential limits and safeguards must be observed when makes these investments.

(i) Investments are permitted only for amounts that exceed the legally required own funds, which must be maintained at all times.
(ii) Investments must not pose any risk to compliance with prudential requirements or jeopardize the sound and prudent management of the management company, including the potential losses that exceed the amount invested.
(iii) All investments must remain ancillary to the management company's main activity.
(iv) Investment decisions must comply with internal policies and the legal regime on preventing conflicts of interest.

Large management companies must report to the CMVM every six months on the composition of their portfolio and the use of the amounts exceeding their own funds. Where no such investments occur, a report is not necessary.

The CMVM's recent amendment is commendable for its detailed clarification of the conditions and limits governing large management companies' excess own fund investments, promoting greater legal certainty, transparency and prudential robustness. However, despite this improvement, the list of eligible assets may be considered overly restrictive. This limitation could potentially reduce the profitability of excess liquidity and discourage companies from maintaining own funds above the legal minimum.

CMVM circulars

CMVM Circular 006/2025 of June 11
On the governance structure of audit firms.

CMVM Circular 005/2025 of April 10 in conjunction with ASF Circular 5/025, published on April 8
Following the release of the FATF communications, this circular provides information about the adoption of countermeasures commensurate with the very high risk of money laundering and terrorist financing related to the

Democratic People's Republic of Korea and the Islamic Republic of Iran. It also stresses the continued suspension of the Russian Federation's membership status.

CMVM regulations

CMVM Regulation 2/2025 of April 11

Regulating the submission of information to the CMVM by crowdfunding service providers on the projects financed, specifically with regard to the nomenclature of the file to be sent.

CMVM Regulation 1/2025 of April 1

Regulating the duty of auditors of public interest entities to report to the CMVM on the application of auditor quality indicators.

European Securities and Markets Authority acts

ESMA Q&A of June 27, 2025

Q&As regarding the MiFIR regulation on market data, the EMIR regulation on OTC derivatives, clearing houses and trade repositories, as well as the regulation on prospectus publications.

ESMA final report of May 8, 2025

Technical advice to the European Commission on the Market Abuse Regulation and the Markets in Financial Instruments Directive (MiFID II), in the context of the Listing Act's implementation.

Portuguese caselaw

Supreme Court of Justice ruling 378/14.9TCFUN-A.L1.S1 of May 13, 2025

In its ruling of May 13, 2025, the Supreme Court of Justice examined the nature of a guarantee provided in a promissory note and the guarantor's ability to invoke the time bar on the underlying obligation to avoid payment. The court clarified that the guarantee constitutes an independent, personal guarantee for the obligation undertaken and not for the underlying legal relationship between the creditor and the principal debtor. Consequently, the guarantor's liability is limited to paying the amount specified in the promissory note, regardless of the existence, validity or circumstances of the underlying obligation.

The ruling underscores that the time bar is a defense that applies solely to the personal relationship between the creditor of the bill of exchange and the principal debtor. It does not automatically affect the exchange relationship established under the guarantee. The Supreme Court emphasized that, unless expressly agreed otherwise, the guarantor cannot invoke the time bar of the underlying debt to refuse fulfilling their obligation. This principle is rooted in the autonomy, abstraction and literalness that characterize bills of exchange (including promissory notes) and are designed to uphold certainty and trust in commercial transactions.

The Supreme Court further clarified that the guarantor's role is to secure payment of the promissory note and not the causal obligation. Its liability remains independent of issues arising in the fundamental relationship, such as the time bar or fulfillment of the underlying obligation. Guarantors can only invoke defenses based on the underlying relationship in exceptional cases where such actions have been expressly agreed upon by the parties.

This ruling reinforces the independence of the guarantee and protects the bearer of the security. It confirms that the circulation and enforceability of securities are not subject to complications tied to the causal relationship, unless expressly stipulated otherwise. By affirming these principles, the ruling enhances stability and predictability of these relationships, clarifying that personal defenses between creditor and principal debtor generally cannot be used by the guarantor against the creditor.

4.

What to expect in the next quarter?

European Banking Authority no-action letter (issued on June 10)[1]

In its no-action letter issued on June 10, the European Banking Authority ("**EBA**") addressed the European Commission's written request (dated December 6, 2024) to clarify, alongside the European Securities and Markets Authority (ESMA), the regulatory overlap between MiCA and the Payment Services Directive (PSD2/3) concerning cryptoasset service providers providing e-money token ("**EMT**") services.

This letter serves two main purposes:

(i) To guide EU bodies in resolving long-term regulatory overlaps, leveraging the ongoing legislative process for the PSD3 and the Payment Services Regulation ("**PSR**").

(ii) To provide interim guidance for national competent authorities during a transitional period of two to three years, while PSD2 remains in force and until the PSR is implemented and PSD3 is transposed into national laws.

During the MiCA transitional period and before PSD3 and PSR enter into force, the EBA recommends that certain activities involving EMTs should not require a second authorization under PSD2. However, some operations, such as the custody or transfer of EMTs for payment purposes, may still qualify as payment services, requiring authorization under PSD2.

The EBA further advises that (i) these authorizations should proceed through simplified procedures; and (ii) authorities grant an adaptation period extending until March 1, 2026, before requiring formal compliance.

[1] For a more in-depth analysis of this issue, see our **Legal Flash** "*In the EBA Action Letter on the interplay between MiCA and PSD2*."

CUATRECASAS

For additional information on the contents of this document, please contact Cuatrecasas.