
Iberian Financial Newsletter

Banking and Financial Institutions

January – March 2022



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SPAIN

Securities markets and collective investments

Supervision criteria

Spanish National Securities Market Commission (CNMV) Circular 1/2022 of 10 January, on the advertising of crypto assets presented as a means of investment. [Access Link](#)

On January 17, 2022, Circular 1/2022, on the advertising of crypto-assets presented as a means of investment (“**Circular 1/2022**”), was published, the purpose of which is to establish rules, principles, and guidelines to which the advertising of crypto-assets must be subject to.

Among others, Circular 1/2022 develops the following issues:

- The definition of “crypto-asset” or “crypto-asset services” is foreseen for the first time in Spain, and an open and illustrative list of such services is included.
- The content, format, and requirements to be met by advertising campaigns and ads are defined according to the nature and complexity of the product and the media used to promote them.
- The obligation for the parties subject to Circular 1/2022 to keep a record with information and documentation relating to advertising campaigns in progress or conducted in the last two years.
- The CNMV shall be notified in advance of mass advertising campaigns and any other campaigns for which the same is required, based on their impact on the target audience.
- The advertising of crypto-assets shall include clear information on the risks associated with this category of investment product.

The persons subject to Circular 1/2022 will not be limited to advertisers, but also to any other person involved in the creation and broadcast of the advertising of crypto-assets, such as agencies or media, influencers, exchange platforms and other social media.

Circular 1/2022 entered into force on February 17, 2022.



Common

Supervision criteria

Law 4/2022, of 25 February, on the protection of consumers and users in situations of social and economic vulnerability. [Access Link](#)

On March 1, 2022, Law 4/2022, on the protection of consumers and users in situations of social and economic vulnerability (“**Law 4/2022**”) was published in the Spanish Official Gazette.

The purpose of Law 4/2022 is to amend the revised text of the General Law for the Defense of Consumers and Users, by incorporating some relevant dispositions for the financial sector in its second and third additional provisions.

In this regard, Law 4/2022 not only announces the development of legislative amendments for the financial sector, but also incorporates a series of non-legislative measures to guarantee personalized attention in payment services for consumers and users in vulnerable situations who demand it, without discrimination based on the «digital gap».

In particular, the following measures to promote the financial inclusion of vulnerable people should be highlighted:

- > The closure of bank offices should not be accompanied by the closure of their off-site ATMs.
- > Increasing the number of staff to help people with lower digital skills to perform the necessary operations.
- > The installation of signs and indications of priority for the use of ATMs by vulnerable people.
- > Maximum security to protect bank users from online theft, fraud, and scams.
- > Any measures deemed necessary to guarantee face-to-face attention to elderly people and to all those groups for whom access to financial services through new technologies constitutes a reason for financial exclusion.

Law 4/2022 entered into force on March 2, 2022.



Draft regulations

Draft Royal Decree, creating the Register of Beneficial Owners and approving its Regulations.

[Access Link](#)

On March 7, 2022 the Ministry of Justice presented the regulatory impact analysis report on the Royal Decree approving the Regulation which creates the Register of Beneficial Owners and it regulates its functioning in order to develop the third additional provision provided for in Law 10/2010, of 28 April, on the prevention of money laundering and terrorism finance (“**Law 10/2010**”). The Register of Beneficial Owners shall contain beneficial ownership information relating to:

- Spanish legal persons and entities or structures without legal personality that have their effective seat of management or their principal activity in Spain, or that are administered or managed by persons resident or established in Spain.
- Entities or structures without legal personality which, not being managed or administered from Spain or another EU Member State, and not being registered by another EU Member State, intend to establish business relations, undertake occasional transactions, or acquire real estate in Spain.

Through the Draft Royal Decree the following matters are expected to be regulated, among others:

- The creation of the Register of Beneficial Owners as the central and single registry for Spain, that aims to combine the sources of information from institutions already operating at present, such as the Associations of Property, Commercial and Movable Property Registrars and the General Council of Notaries, among others.
- The establishment of the Register of Beneficial Owners organization, which will be administered by the Ministry of Justice, with its head office at the General Directorate of Legal Security and Public Faith.
- The regulation of the processing of information and personal data stored in the Register of Beneficial Owners.
- In the event of contradictory information, preference is given to the most recent data, without prejudice to the possibilities of exceptions being established by resolution of the General Directorate of Legal Security and Public Faith.
- The regulation of the identification data that must be provided to the Register of Beneficial Owners.



- > The regulation of the persons entitled to access the information in the Register of Beneficial Owners.
- > The establishment of the method of access to the information contained in the Register of Beneficial Owners.
- > The need for interconnection with the European central platform is regulated.

Failure to comply with the obligation to identify and report the beneficial owner in the Register of Beneficial Owners shall be considered a serious infringement.

Draft Royal Decree amending the Royal Decree implementing Law 10/2010, of 28 April, on the prevention of money laundering and terrorism finance. [Access Link](#)

The Ministry of Economic Affairs and Digital Transformation initiated on March 30, 2022 the consultation process until April 13, 2022 on the Draft Royal Decree amending Royal Decree 304/2014 of May 5 (the “**Royal Decree**”) implementing Law 10/2010, of 28 April, on the prevention of money laundering and terrorism finance (“**Law 10/2010**”).

The purpose of the consultation process is to obtain the opinion of persons and entities potentially affected by the Royal Decree in order to update the following issues:

- > The amendment of the list of persons subject to the Royal Decree, including (i) intermediaries in leases with monthly rents exceeding €10,000, (ii) persons acting as intermediaries in the trade of art objects or antiques or acting as intermediaries in the trade of such objects when carried out in free ports or virtual currency service providers, (iii) exchange of virtual currency for legal tender currency or vice versa service providers, and (iv) electronic wallet custody or key safekeeping service providers.
- > The reinforcement of the system for the identification of the beneficial owners of legal persons. For this purpose, a single register of beneficial owners is created.
- > The extension of the obligations to declare products to the Financial Owners File, including safe deposit boxes, as well as payment accounts managed by payment institutions and electronic money institutions, which become reporting persons.
- > The incorporation to the Spanish legal system of the list of due diligence measures established for countries listed by the EU that are included in the list of high risk third countries.



- The treatment of Politically Exposed Persons (“PEPs”). This includes as PEPs the directors of all political parties with regional or local representation in provincial capitals and municipalities with more than 50,000 inhabitants.

Finally, in addition to the above, the following are included: (i) new obligations and control processes for commodities used as a high liquidity deposit (such as gold); (ii) obligations for cash movements; (iii) amendments to the declaration forms for entry/exit of means of payment; and (iv) a new complaint system for interested persons if the customs authorities intervene these means of payment.

PORTUGAL

Banking

Rectification Declaration 8/2022 - Official Gazette of the Republic of Portugal 46/2022, Series I of March 7, 2022. [Access Link](#)

Rectifies Decree Law 12/2022, of January 12, amending the Mutual Counter-Guarantee Fund.

Instruction 4/2022 - Official Bulletin 2/2022, 2nd Supplement, of February 28, 2022. [Access Link](#)

Repeals Bank of Portugal's Instructions 18/97, of February 17, 1997, and 14/2006, of October 20, 2006, to simplify and eliminate duplication of reporting and, consequently, reduce associated costs for the entities covered.

Letter CC/2022/00000001 – Official Bulletin 2/2022, Supplement, of February 15, 2022. [Access Link](#)

Establishes, under paragraph 9 of Instruction 18/2015, of January 15, 2016, the reporting models for the Financing and Capital Plans, the description of the macroeconomic and financial scenario and other guidelines necessary for institutions to complete the exercise and provide information with a reference date of December 31, 2021.

Instruction 3/2022 - Official Bulletin 2/2022, Supplement, of February 17, 2022. [Access Link](#)

Amends Instruction 8/2018, of March 22, which regulates the Interbank Clearing System.



Ordinance 53-A/2022 - Official Gazette of the Republic of Portugal 16/2022, Series I of January 24, 2022. [Access Link](#)

Amends Ordinance 193/2021, of September 15, establishing specific guidelines regarding the financial circuit applicable to the Recovery and Resilience Plan.

Decree Law 12/2022 - Official Gazette of the Republic of Portugal 8/2022, Series I of January 12, 2022. [Access Link](#)

Amends the Mutual Counter-Guarantee Fund, particularly aiming to modernize a series of aspects of the fund's governance, in addition to including the mid cap and the small caps as potential recipients of individual guarantees provided by the fund.

Decree Law 11/2022 - Official Gazette of the Republic of Portugal 8/2022, Series I of January 12, 2022. [Access Link](#)

Establishes the legal framework for equity loans, aiming to provide companies with an additional and flexible capitalization tool, in addition to the traditional instruments offered by the banking system.

Instruction 2/2022 - Official Bulletin 12/2021, 3rd Supplement, of January 10, 2022. [Access Link](#)

Amends Instruction 3/2015, of May 20, 2015, establishing uniform rules for the Eurosystem's implementation of the single monetary policy.

Instruction 1/2022 - Official Bulletin 12/2021, 3rd Supplement, of January 10, 2022. [Access Link](#)

Amends Instruction 7/2012, of February 15, 2012, establishing temporary measures relating to the criteria for the eligibility of collateral for Eurosystem credit operations.



Capital Markets

Legislation

Circular of February 25, 2022. [Access Link](#)

This annual circular addressed to financial intermediaries presents the CMVM's strategic plan for the three-year period 2022-2024 and identifies the main regulatory changes and the CMVM's approach to supervision.

Circular of February 25, 2022. [Access Link](#)

This annual circular addressed to asset management entities presents the CMVM's strategic plan for the three-year period 2022-2024 and identifies the main regulatory changes and the CMVM's approach to supervision.

Circular of February 25, 2022. [Access Link](#)

This annual circular addressed to issuers presents the CMVM's strategic plan for the three-year period 2022-2024 and identifies the main regulatory changes and the CMVM's approach to supervision.

Circular on costs and charges applicable to undertakings for collective investment in transferable securities, of February 15, 2022. [Access Link](#)

This circular reinforces the need to ensure full compliance with the current regulatory framework, particularly Directive 2009/65/EC of the European Parliament and of the Council, of July 13, 2009, coordinating laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“UCITS Directive”), the transposition of which is included in the current General Regime for Collective Investment Undertakings (“RGOIC”). It further aims at coordinating related regulations and respective guidelines on costs and charges applicable to undertakings for collective investment in transferable securities (“UCITS”), particularly regarding disclosing costs and charges to investors, complying with the duty not to allocate undue costs to investors and promoting behavior with a high degree of care, diligence, loyalty, competence and in the best interest of the participants.

Circular on product governance duties, of February 3, 2022. [Access Link](#)



This circular reinforces the need to ensure full compliance with the current regulatory framework, resulting from the transposition of MiFID II and the implementation of the respective delegated acts and guidelines, relating to product governance and particularly to identifying the target market and distribution strategy, cost and charge structure analysis and product review.

Ordinance 60/2022 - Official Gazette of the Republic of Portugal 21/2022, Series I of January 31, 2022. [Access Link](#)

Amends Ordinance 913-I/2003, of August 30, adapting the continuous supervision fees due to the Securities Market Commission (CMVM) to the new Investment Companies Regime.

Regulation 2/2022 - Official Gazette of the Republic of Portugal 21/2022, Series II, Part E, of January 31, 2022. [Access Link](#)

Defines the form and content of the duties of securities centers to communicate to the CMVM information on settlement failures, under article 7, no. 1 of Regulation (EU) 909/ 2014 of the European Parliament and of the Council of July 23, 2014, and article 14(1) and (2) of Commission Delegated Regulation (EU) 2018/1229 of May 25, 2018.

Regulation 1/2022 - Official Gazette of the Republic of Portugal 13/2022, Series II, Part E, of January 19, 2022. [Access Link](#)

Establishes the format for reporting duties to the CMVM by issuers of securities admitted to trading on a regulated market.

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

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