
Iberian Financial Newsletter

Banking and Financial Institutions

January – March 2020



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SPAIN

Banking

Legislation

Circular 1/2020, of January 28, of the Bank of Spain, amending the Circular 1/2013, of May 24, of the Bank of Spain, on the Risk Information Centre (*Central de Información de Riesgos*) (only in Spanish). [Access Link](#)

Circular 1/2013 of the Bank of Spain provides the reporting obligations of credit institutions to the Bank of Spain in relation to risk exposures. Such information is provided to the central database managed by the Bank of Spain called Risk Information Centre (*Central de Información de Riesgos*, “CIR”).

This Circular has been recently amended by the new Circular 1/2020 of the Bank of Spain, in January 2020 (the “Circular”).

One of the most important aspects introduced by this new Circular is the inclusion of credit institutions operating under the freedom to provide services (“FPS”) in Spain (i.e., without permanent establishment) within the scope of Circular 1/2013. Therefore, these institutions have become obliged to report their risk exposures vis-à-vis their Spanish clients to the CIR. In this regard:

- > The reporting must be carried out on an individualized basis, i.e. for each particular transaction and, for this purpose, each transaction must be identified by a unique code.
- > The credit institutions under FPS must report:
 - their risk exposures vis-à-vis their Spanish clients arising from certain transactions, such as, loans, credit facilities, leasing, financial guarantees, firm undertakings to grant loans, etc;



- their risk exposures against both the persons primarily obliged to pay (direct risks) and guarantors (indirect risks); and
- the name of debtors and obliged parties (guarantors) of the transactions subject to reporting.

However, there are certain risks exposures that are not subject to individual reporting, such as (i) those arising from consumer credit (provided that the initial principal amount is lower than EUR 3,000 and the initial term is no longer than 24 months), (ii) credit cards, (iii) overdraft facilities, (iv) those against persons whose total risk exposure vis-à-vis the reporting credit institution is lower than EUR 6,000 and do not have other transactions subject to reporting with such institution, etc.

Lower reporting obligations are applicable to risk exposures against persons whose aggregated risk at the reporting institution is lower than EUR 9,000.

The new Circular also allows credit institutions under FPS to access to the information available at the CIR (about the risk exposure of their current and potential clients).

Securities market and collective investment

Supervision criteria

Temporary ban on the creation or increase of net short positions on Spanish listed shares issued by the CNMV. [Access Link](#)

The Spanish Securities and Exchange Commission (“**CNMV**”) has decided to ban during a month the entering into transactions on securities and financial instruments which entail the creation or increase of a net short position on Spanish shares admitted to trading on Spanish trading venues (Stock Exchanges and *Mercado Alternativo Bursátil* –MAB-). The measure has entered into force from March 17 to April 17 of 2020, both inclusive, although it may be extended for additional periods not exceeding 3 months if the circumstances that have motivated the ban persist.



The ban covers any transaction on shares or indexes, including cash transactions, derivatives traded on trading venues or OTC derivatives which create or increase a net short position, even intra-day. Nonetheless, the ban excludes specific transactions, such as transactions undertaken by market makers, or where the short position is hedged by a purchase that is equivalent in terms of proportion on subscription rights, among others.

The ban has been extended, however, up to May 18, 2020 by a new communication of April 15, 2020 [\(link\)](#).

Update of Questions and Answers on the application of MiFID II of the CNMV (only in Spanish). [Access Link](#)

On January 27, 2020 the Spanish Securities and Exchange Commission (“**CNMV**”) has updated the previous version of the Questions and Answers on the application of MiFID II published on October 30, 2017.

In relation to inducements, the following criteria is established:

- › With respect to Royal Decree 217/2008, which requires at least two third-party alternatives to be offered in each category of funds to be distributed, the CNMV considers that it is not necessary to maintain two products for each of the categories identified in the Circular 1/2019 of the CNMV on categories of collective investment funds according to their investment objective, although at least the following categories should be considered: 1) money market, short term fixed income and funds with a specific performance objective (guaranteed or not), 2) fixed income, 3) Spanish equity, 4) international equity, 5) mixed, 6) global, 7) index, 8) alternative investment, 9) real estate and 10) others.
- › In accordance with the provisions of Article 62.2. a) of Royal Decree 2017/2008, when an entity chooses the third scenario of increasing the quality of the service by offering a wide range of financial instruments that includes third party instruments together with the provision of periodic reports on the performance and costs and charges associated with the financial instruments, the CNMV considers that such reports



should include information on performance and the costs and charges associated with the range of financial instruments that the entity is considering in order to comply with the obligation to offer a wide range of financial instruments that includes third party instruments, and not only in relation to the financial instruments in which the client has invested, in order to be a value-added tool.

- For entities providing portfolio management and independent advice services, the entity must acquire or recommend the share class to which each client is objectively eligible to and which, considered as a whole, have the best economic conditions (that is, after considering the possible retrocessions that the entity can obtain and transfer to the client, as well as its possible tax impact calculated according to prudent and general criteria), regardless of whether there is a class (the so-called clean class) that is, in principle, addressed for this type of client.

The CNMV also clarifies a number of questions raised with respect to ex-ante and ex-post reporting obligations on costs and expenses of the discretionary management service, as well as the classification and illustrative description of such costs.

Insurance

Legislation

Royal Decree-Law 3/2020, of February 4, on urgent measures transposing into Spanish law various European Union directives in the field of public procurement in certain sectors; private insurance; pension plans and funds; taxation and tax litigation (only in Spanish).

[Access Link](#)

On February 5, 2020, the Royal Decree-Law 3/2020 was published in the Official State Gazette of Spain and came into force the day after its publication (February 6, 2020). This Royal Decree-Law aims to transpose into Spanish law a set of European Directives in the field of public procurement in certain sectors, private insurance, pension plans and funds, taxation and tax litigation.



In relation to insurance distribution, Royal Decree-Law 3/2020 transposes EU Directive 2016/97 on insurance distribution. Among the main developments, it is worth mentioning the extension of the objective scope of application regarding the provision of information, new obligations of insurance entities, the reinforcement of the duties of transparency in pre-contractual information and the introduction of additional requirements for the distribution of insurance-based investment products.

Common

Legislation

Royal Decree-Law 6/2020, of March 10, adopting certain urgent measures in the economic field and for the protection of public health (only in Spanish). [Access Link](#)

In the context of the public health crisis caused by COVID-19, the Royal Decree-Law 6/2020 has implemented a wide range measures, among which the following measures analysed below may stand out.

On one hand, the amendment of Law 1/2013, of May 14, on measures to strengthen the protection of mortgage debtors, debt restructuring and social rent, extending the suspension of evictions for four more years, until May 2024. It also extends the definition of the “vulnerable group” eligible for the measures of that Law.

On the other hand, the fourth Additional Provision of Royal Decree 84/2015 is amended to extend the type of financial entities already incorporated that may apply for its conversion into banks. Such entities may be credit unions, specialized credit institutions, broker-dealers, payment entities and e-money entities. In relation to the minimum share capital requirements for these purposes, they will be deemed to have been met provided that the sum of the net assets resulting from the audited balance sheet for the year prior to the application for conversion and the cash contributions reaches EUR 18 million.



Royal Decree-Law 11/2020, of March 31, adopting a new set of additional emergency measures to tackle the social and economic impact of COVID-19 (only in Spanish). [Access Link](#)

With the enactment of this Royal Decree-Law, additional measures in the context of the sanitary crisis derived from COVID-19 are adopted.

The Royal Decree-Law 8/2020 (“**RDL 8/2020**”) established a moratorium period for the mortgage debt from loan or credit agreements of debtors undergoing any so-called “circumstances of economic vulnerability”. With the enactment of this new Royal Decree-Law 11/2020 (“**RDL 11/2020**”), this important measure has been revised, extending its scope of application and implementing several technical adjustments for its implementation. Below is an updated summary of the most important developments.

Under RDL 8/2020, the measure only applied to mortgage loans taken out to purchase a main residence. However, since April 2, 2020, this measure now also covers:

- > Mortgage loans taken out to purchase a main residence.
- > Mortgage loans taken out to purchase property used to carry out the activity of individuals considered entrepreneurs or professional and that are undergoing circumstances of economic vulnerability.
- > Mortgage loans taken out to purchase rented residences where the owner and mortgage debtor has not been paid rent since the state of emergency was declared and up to a month after it is lifted.
- > Debt arising from loans and credits not secured by a mortgage taken out by individuals undergoing any circumstances of economic vulnerability provided under the regulation.

The **cases of economic vulnerability** covered by this regulation are the cases summarized as follows that, as clarified by the new regulation, must be met jointly:

- > Unemployment or, in the case of business owners or professionals, a substantial loss of income or drop by at least 40% of sales. To be considered an entrepreneur or



professional, individuals must meet the requirements set out under Article 5 of the Spanish Law 37/1992, of December 28, on VAT.

- Maximum limit of family revenues in the month prior to the application for the moratorium of three times the multi-purpose public income index (“**IPREM**”) on a general basis. This limit will be increased on the basis of dependent children (0.1 times the IPREM per child, or 0.15 times the IPREM per child in single-parent families); family members older than 65 (by 0.1 times the IPREM); family members with disability, and those that are dependent or have a permanent disability preventing them from performing a work activity (by four times the IPREM, without prejudice to cumulative increases for children). If the mortgage debtor has a certain illness or a certain degree of disability, and in the case of a serious disease preventing debtors or their carers from performing a work activity, the maximum limit will be five times the IPREM.
- Amount of the mortgage payment, plus expenses and basic utilities equal to or higher than 35% of the family’s net income. One new feature of RDL 11/2020 is that it clarifies that these expenses and basic utilities include costs associated with the supply of electricity, gas, furnace oil, and water; fixed-line and mobile telecommunications services; and condominium expenses attributable to the main residence.
- Significant change in the family’s economic circumstances when the burden of all mortgage charges covered by this measure on the family income has multiplied by at least 1.3.

The measure covers the guarantors of mortgage debtors and debtors in respect of a loan not secured with a mortgage, applying the same terms as those established for the main debtor.

The debtor must apply to the creditor to request the moratorium to pay the mortgage debt, attaching the documents specified in the regulation. As a new feature, while the state of emergency is in force, the required document can be replaced by a sworn statement of the individual concerned. In this case, this individual must submit the documents within one month following the end of the state of emergency.



The creditor must implement the moratorium period requested within 15 days and report to the Bank of Spain for accounting purposes and for non-attribution in the calculation of risk provisions.

the application of the moratorium period will not require an agreement between the parties or a contractual novation for it to apply, although mortgage debts must be formalized in a public deed and registered with the land registry.

Exemptions and allowances. It is provided that any deeds for the novation of mortgage loans and credit for the purchase of the main residence formalized within the framework of implement the moratorium period for payment of the mortgage debt may be exempt from the gradual payment of notarial documents under the documented legal acts category of transfer tax and stamp duty established under Final Provision 1 of RDL 8/2020, by adding a new number 28 to Article 45.I.B) of the consolidated text of the Spanish Transfer Tax and Stamp Duty Law (Royal Legislative Decree 1/1993, of September 24). This new exemption would be supplementary to the one already established for certain novations of mortgage loans and credits under the terms of Law 2/1994, of March 30, on the subrogation and modification of mortgage loans.

In addition, RDL 11/2020 provides for allowances for notary public fees and registration fees to formalize the novation of mortgage loans and credit.

Term of the moratorium and effects. As a new feature, RDL 11/2020 provides that this measure will be in place for three months, which may be extended by resolution of the Council of Ministers.

During the moratorium period, the creditor cannot demand payment of any instalments or interest, no remuneration or default interest will accrue, and the maturity date will be extended for the same time as the moratorium period (no remaining contractual conditions can be amended).

Damages. It is also established that any debtor that unduly or fraudulently benefits from the moratorium period will be liable for any damages and expenses caused.



Other measures adopted by RDL 8/2020 are as follow:

- > A new exceptional measure is introduced allowing for the early entitlement to vested rights in pension schemes, insured pension schemes, corporate social welfare schemes, and mutual insurance companies. The beneficiaries of this measure are listed below, along with the limits applied to maximum early entitlement:

Individuals entitled to early withdrawal	Maximum available amount
Employees that are legally unemployed due to a temporary redundancy plan (“ERTE”) implemented due to the public health crisis caused by COVID-19	Any salary that was not paid while the ERTE was in force
Entrepreneurs that own establishments that are not allowed to open to the public under Royal Decree 463/2020, of March 14, declaring the state of emergency	The estimated net income they did not receive while the establishment was allowed to not open to the public
Self-employed workers that were previously under a social security regime in this category and have ceased in their activity due to the public health crisis caused by COVID-19	The estimated net income they did not receive during the public health crisis

Early entitlement to vested rights can be claimed within six months from March 14, 2020 (the date on which the state of emergency came into force), although this period may be extended in the case of pension schemes. Applicants must prove the amount of these limits and make the request in accordance with the terms and conditions provided in future implementing regulations. Requests must be addressed with seven business days from the date on which the corresponding supporting documents are submitted.

It is explicitly provided that any amounts obtained as a result of this early withdrawal will be subject to the tax regime applicable to pension scheme benefits, which means the taxation of such amounts under personal income tax as employment income, and companies paying the amounts would have the levy the corresponding withholding tax on account.



- › In view of the situation that the financial markets are facing and to anticipate the potential massive refunds from investment undertakings, RDL 11/2020 has amended section seven of Article 71 *septies* of Law 35/2003 and now enables the Spanish Securities and Exchange Commission (“**CNMV**”) to authorize collective investment undertaking management companies to set notice periods for reimbursements from the collective investment undertakings they manage, without being subject to the restriction provided in their management regulations in terms of fixed periods and minimum amounts. Moreover, CNMV is given the option to set these notice periods.
- › A two-year extension is granted to banking foundations that had a disinvestment plan already approved by the Bank of Spain. If a foundation applies for this extension, it must set up a reserve fund with an annual amount equal to at least 50% of the dividends it receives from the credit institution its holds shares in.

Proposals

Bill for the digital transformation of the financial sector. [Access Link](#)

This Bill aims to promote the digital transformation of the financial sector by creating a controlled environment for testing that will allow the implementation of technological innovation projects in the sector (sandbox). The Explanatory Memorandum acknowledges that the changes being experienced by the financial sector represent a challenge for the public authorities to adapt, and which it intends to address through this regulatory framework.

The projects that may participate in this controlled space must provide technology-based financial innovation applicable to the financial sector, understood as new business models, applications, processes or products with an impact on financial markets, or the performance of public functions in the financial sphere.

During the development of the pilot projects and the proposed tests in the controlled space, the specific legislation applicable to the provision of financial services will not be applied. However, the controlled space must be safe for the participants. In this sense, a series of safeguards are established, such as the informed consent of the participating users, their right of withdrawal,



the possibility of interrupting the tests in cases of bad practice or non-compliance with the legislation or the protocol, etc.

For the submission of projects, a one-stop-shop system will be established with the financial authorities. For each project, a test protocol will be defined with the specific arrangements for each test, signed by the authorities responsible for monitoring the tests.

Upon completion of the tests, the examination of the results will be forwarded by the test promoter to the authorities. It is possible to use a "gateway to the activity", through a lightening of the legal procedures to obtain the necessary authorization to develop the activity.

In addition to the controlled space for testing, a channel is established for written consultations that may be sent to the authorities on certain aspects of the regulation that may involve barriers to entry or generate uncertainty.

PORTUGAL

Banking

Legislation

Decree-Law 10-J/2020, of March 26, 2020

In response to the COVID-19 pandemic, Decree-Law 10-J/2020 establishes exceptional measures relating to credits for families, companies, private social solidarity institutions and other entities in the social economy. The measures comprise three channels of support: (i) a moratorium until September 30, 2020; (ii) the granting of personal State guarantees; and (iii) expediting the granting of guarantees by mutual guarantee schemes.

To learn more about the Decree-Law 10-J/2020, consult our Newsletter of March 30, 2020 [here](#).



Notice 1568/2020, of January 30, 2020

General Directorate of Treasury and Finance: Publication of the subsidiary rates of default interest in effect in the first semester of 2020: (i) under article 102.3 of the Commercial Code, the default interest subsidiary rate for credits held by commercial companies or individual or legal persons is 7%; and (ii) under article 102.5 of the Commercial Code and Decree-Law 62/2013, of May 10, 2013, the default interest subsidiary rate for credits held by commercial companies or individual or legal persons is 8%.

Instruction of Bank of Portugal 7/2020, of March 31, 2020

Discloses the maximum rates to be applied to consumer credit agreements in the second quarter of 2020.

Instruction of Bank of Portugal 6/2020, of March 6, 2020

Promotes the amendment of Instruction 5/2019 to include, in the Report on the Prevention of money laundering and terrorist financing, information referring to the specific procedures to comply with Regulation (EU) 2015/847, on information accompanying transfers of funds.

Instruction of Bank of Portugal 3/2020, of February 14, 2020

Amends Instruction 34/2018, which established the reporting of interest rate risk exposure of activities not included in the negotiation portfolio, as well as the results of the standard shock evaluated by the supervisor. This amendment updates the standardized reporting of interest rate risk exposure resulting from these activities, as well as the impact on the variation of the economic value and the financial margin of a rapid and unexpected change in the interest rates of 200 basis points in the yield curve.

Instruction of Bank of Portugal 1/2020, of January 15, 2020

Amends Instruction 7/2019, incorporating the most recent EBA Guidelines (EBA/GL/2018/08 and EBA/GL/2018/09) on the STS criteria (simple, transparent and standardized) applicable to ABCP (asset-backed commercial paper) securitization and non-ABCP (i.e., securitization backed by assets other than commercial paper).

Bank of Portugal Circular Letter CC/2020/0000013, of March 16, 2020

Recommends that, when granting and restructuring credits of debtors or groups of debtors with increased risk, the risk increase should be subject to the approval of the institution's



management body, which should hold a plenary session. It also recommends that (i) the supervisory body be immediately informed of the transactions the management body analyzes, regardless of whether it approves or denies the increased risk of the debtors or groups of debtors; and (ii) institutions send to the Bank of Portugal, by June 30, 2020, the internal policies approved following the previous recommendations.

Capital Markets

Legislation

Portuguese Securities Market Commission Regulation 4/2020, of March 19, 2020

Regulates Decree-Law 453/99, of November 5, 1999, regarding the functioning of securitization funds and managing companies of securitization funds. It also amends (i) Portuguese Securities Market Commission Regulation 2/2002, of February 1, 2002, on securitization funds, and (ii) Portuguese Securities Market Commission Regulation 12/2002, of August 24, 2002, on managing companies of securitization funds.

Portuguese Securities Market Commission Regulation 3/2020, of March 23, 2020

Establishes the third amendment to Portuguese Securities Market Commission Regulation 2/2015 (“**Regulation 2/2015**”), on the management of collective investment undertakings. The amendment of Regulation 2/2015 reflects the recent review of the Legal Framework on Collective Investment Undertakings, approved by Law 16/2015, of February 24, 2015, and republished by Decree-Law 144/2019, of September 23, 2019. One of the main purposes of this legislative amendment was to transfer, from Bank of Portugal to Portuguese Securities Market Commission, the prudential supervision of collective investment undertakings (“**SGOIC**”). Following this transfer, Portuguese Securities Market Commission is the entity responsible for the prudential and behavioral supervision of SGOICs.

Regulation 2/2015 (as amend) now regulates the procedural elements related to the SGOIC authorization procedure, particularly the documentation and information that must complement the program of activity or organizational structure, as well as the human, technical and material means. Regarding internal policies and procedures, Regulation 2/2015 now lists the documents that must be submitted to Portuguese Securities Market Commission, namely



those relating to compliance, risk management, internal audit, conflicts of interest, or prevention of money laundering and terrorist financing.

Portuguese Securities Market Commission Regulation 2/2020, of March 17, 2020

Establishes the regulation on the prevention of anti-money laundering and terrorist financing (“**AML Law**”) obligations of (i) financial entities subject to the supervision of the Portuguese Securities and Exchange Commission; and (ii) auditors (“**Obligated Entities**”). It also establishes their reporting duties toward Portuguese Securities Market Commission.

Under the AML Law, Obligated Entities must have policies, procedures and controls in place to manage money laundering and terrorist financing risks effectively and to comply with the legal and regulatory provisions on this matter. Furthermore, the compliance function regarding anti-money laundering matters may be cumulated with the compliance officer role. Moreover, the compliance officer may be a third-party if comply with several requirements.

We highlight the main additions of the AML Regulation:

- Obligated Entities may use videoconference mechanisms or trust services providers, provided a copy of the identification document is previously obtained.
- Customer identification verification, as established in article 26(3) of the AML Law, can now be carried out within 60 days from the date the information was collected.
- In circumstances involving low money laundering and terrorist financing risks, information on beneficial owners may be proven in a statement issued by the customer or its representative.
- The range of factors allowing entities to adopt simplified or enhanced measures has been widened.



Portuguese Securities Market Commission Regulation 1/2020, of February 25, 2020

Establishes the reporting obligations toward Portuguese Securities Market Commission for prudential supervision purposes.

Portuguese Securities Market Commission Circular of February 11, 2020

Establishes the accounting regime applicable to SGOIC and to managing companies of securitization funds as of January 1, 2020.

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

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