



## NEW REGULATORY DEVELOPMENTS IN SUPERVISORY MATTERS



### 8.1 Banco de España circulars and guidelines

#### 8.1.1 Circular 1/2020

##### **Circular 1/2020 of 28 January 2020 amending Circular 1/2013 of 24 May 2013 on the Central Credit Register.**

The main aim of this Circular is to adapt the CCR to the changes introduced by Law 5/2019 of 15 March 2019 regulating real estate credit agreements to Law 44/2002 of 22 November 2002 on financial system reform measures.

The main change is that all real estate lenders are granted access to the CCR: first, the obligation to report to the CCR is extended to real estate lenders and credit institutions operating under the freedom to provide services. Second, real estate credit intermediaries are granted access, on an equal footing with reporting institutions, to the credit reports of legal entities and individuals registered in the CCR. These amendments increase the information available to institutions for assessing the exposures of their customers, enabling them to improve their decision-making process.

#### 8.1.2 Circular 2/2020

##### **Circular 2/2020 of 11 June 2020 amending Circular 4/2017 of 27 November 2017 to credit institutions on public and confidential financial reporting standards and financial statement formats.**

The main aim of the new Circular, in force since 17 June, is to adapt Circular 4/2017 to the changes in European law on reporting requirements for credit institutions made by Commission Implementing Regulation 2020/429 and Regulation 2020/605 of the European Central Bank. The amendment is aimed at: i) expanding the information to be submitted by institutions on non-performing and forborne exposures and foreclosed collateral; ii) supplementing information on operating and administrative expenses; and iii) incorporating minor changes to the data available on leases, as a result of the entry into force of International Financial Reporting Standard (IFRS-EU) 16 Leases.

The latest developments in IFRS-EU, including most notably the new definition of a business in IFRS-EU 3, are also incorporated. In addition, to comply with the ESRB Recommendation on closing real estate data gaps (ESRB/2016/14), it makes

changes to the information required from credit institutions on (commercial and residential) real estate loans.

With a view to enhancing transparency, the Banco de España has been entrusted with the dissemination of the public financial statements of credit institutions, although they may also be released by associations as has been the case to date. The first information disseminated by the Banco de España was that referring to 2020 Q2.

### 8.1.3 Circular 3/2020

#### **Circular 3/2020 of 11 June 2020 amending Circular 4/2017 of 27 November 2017 to credit institutions on public and confidential financial reporting standards and financial statement formats.**

In view of the economic crisis brought about by COVID-19, banking regulators and supervisors across the world recommended that appropriate use be made of the implicit flexibility of the regulatory framework, without detriment to the suitable identification and coverage of credit risk.

In this context, this Circular, which entered into force on 17 June, aims to change how forbearance is treated for the purposes of its classification by credit risk (to avoid the rule being applied automatically or mechanically) and to allow greater flexibility in the application of expert judgement. In particular, this amendment allows the rebuttal of the presumption that, in all forbore transactions, there is a significant increase in credit risk at the time they are granted. Henceforth, such transactions may be classified as performing provided that the institution can prove that it has not identified a significant increase in credit risk since their initial recognition (to date they could only be classified as non-performing exposures or Stage 2 exposures).

These amendments also affect SLIs, pursuant to the reference to the criteria of Circular 4/2017 made in Circular 4/2019 of 26 November 2019 to specialised lending institutions on public and confidential financial reporting standards and financial statement formats.

### 8.1.4 Circular 4/2020

#### **Circular 4/2020 of 26 June 2020 on the advertising of banking products and services.**

This Circular, which repeals Circular 6/2010 of 28 September 2010, amends some aspects of the previous regulation in order to adapt it to developments in the

advertising sector –mainly as a result of the impact of digital technology– and to ensure more effective supervision.

In particular, the scope is extended to lenders and real estate credit intermediaries and includes both Spanish financial institutions and foreign institutions that advertise banking products and services in Spain through a branch or agent or under the freedom to provide services.

In addition, the principles and general criteria on the content and format of advertising messages are more accurately defined. A new specific regime is introduced for advertising broadcast via audiovisual media or on the radio and for advertising through digital channels and on social media, and the procedures and internal controls required of institutions are detailed with a view to ensuring more effective preventive control of the risks of advertising activity.

Lastly, the new Circular includes additional improvements and guarantees in the administrative procedure through which the Banco de España may request removal or rectification of bank advertising that does not comply with the provisions of the Circular.

#### 8.1.5 Circular 5/2020

**Circular 5/2020 of 25 November 2020 to payment institutions and electronic money institutions on public and confidential financial reporting standards and financial statement formats and amending Circular 6/2001 of 29 October 2001 on owners of currency-exchange bureaux and Circular 4/2017 of 27 November 2017 to credit institutions on public and confidential financial reporting standards and financial statement formats.**

The main aim of this new Circular, which entered into force on 1 January 2021, is to establish the accounting regime – including the reporting regime – of PIs and ELMIs.

In this Circular, the Banco de España continues its strategy of adapting the accounting standards of financial institutions to the European accounting framework set out in IFRS-EU, subject to the general principles of the Spanish Commercial Code. This Circular to PIs and ELMIs draws on the accounting circular to credit institutions (Circular 4/2017), either by setting similar criteria or by referring directly to its rules.

Pursuant to the principle of proportionality, it establishes a simplified reporting regime compared with that in force for credit institutions. New financial statement formats have been designed, which include the provision of payment services and the issuance of electronic money.

In addition, the Circular includes improvements and clarifications to Circular 4/2017 on accounting of credit institutions and to Circular 6/2001 on owners of currency-exchange bureaux.

### 8.1.6 Circular 1/2021

**Circular 1/2021 of 28 January 2021 amending Circular 1/2013 of 24 May 2013 on the Central Credit Register and Circular 5/2012 of 27 June 2012 to credit institutions and payment service providers on the transparency of banking services and responsible lending.**

The main aim of this Circular is to adapt Circulars 1/2013 and 5/2012 to the changes introduced in the regulation on the CCR and on official reference interest rates by Ministerial Order ETD/699/2020 of 24 July 2020 on the regulation of revolving credit and amending Ministerial Order ECO/697/2004 of 11 March 2004 on the Central Credit Register, Ministerial Order EHA/1718/2010 of 11 June 2010 on regulation and control of the advertising of banking services and products and Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and customer protection in banking services (hereinafter, Revolving Credit Ministerial Order).

This Revolving Credit Ministerial Order adjusts the functioning of the CCR to provide more comprehensive information to the reporting parties and improve the information available, thereby enabling an increasingly accurate solvency analysis. To this end, the range of institutions that must report their data to the CCR has been extended, the threshold of the data provided by the Banco de España to the reporting institutions and to real estate intermediaries in the exercise of their activity has been lowered, the amount of information that institutions must report to the Banco de España has been increased and the reporting dates have been brought forward. The Ministerial Order sets out a gradual process for adapting the CCR to these changes.

The Revolving Credit Ministerial Order increases the alternative official reference interest rates available to institutions when granting loans and for inclusion as replacement rates in the loan agreements. To this end, the list of interest rates deemed official reference interest rates has been revised, some of the names of the existing rates have been changed and their number has been increased.

### 8.1.7 Circular 2/2021

**Circular 2/2021 of 28 January 2021 amending Circular 8/2015 of 18 December 2015 to institutions and branches belonging to the Deposit Guarantee Scheme**

## **for Credit Institutions (DGSCI) on information for determining the basis of calculation of contributions to the DGSCI.**

In the event of insolvency of a credit institution, Article 30 quater of Royal Decree 217/2008 provides for coverage by the DGSCI of balances held by investment firms in instrumental and cash suspense accounts open in their name on behalf of their clients at the institution for which an insolvency order has been made. Article 43(3) of this Royal Decree adds that, when an investment firm deposits cash on behalf of clients at a credit institution, the balances should be on a client-by-client basis and it should periodically inform the credit institution of the client-by-client balances.

Circular 8/2015 is amended to clarify how the new information should be reported in the return entitled “Information for determining the basis of calculation of contributions to the DGSCI” and the “Breakdown of deposits received”.

## 8.2 Other draft circulars and guidelines in progress

**The *Guidelines on the organisational and operational criteria of the CSDs of institutions supervised by the Banco de España*** are the result of the supervisory experience acquired in this field.<sup>1</sup>

The guidelines are aimed at institutions supervised by the Banco de España and subject to Ministerial Order ECO/734/2004 of 11 March 2004 on the customer service department and ombudsman of financial institutions. They identify basic supervision criteria and include general principles that are applicable to the organisation and functioning of CSDs and considered appropriate for compliance with supervisory regulations.

The principles and criteria of these guidelines take into account the applicable national regulations and draw on the supervisory guidelines adopted by the Banco de España on this matter, in particular the ESAs Joint Committee’s Guidelines on complaints-handling for the securities and banking sectors (JC 2018 35) and the EBA Guidelines on internal governance (EBA/GL/2017/11).

**Also in progress is a circular on the macroprudential tools** provided for in Articles 45(1), 69 bis and 69 ter of Law 10/2014 (as per the wording of Royal Decree-Law 22/2018 of 14 December 2018 establishing macroprudential tools) and in Article 15 of Royal Decree 102/2019 of 1 March 2019 creating AMCESFI, establishing its legal

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<sup>1</sup> These [draft supervisory guidelines](#) were published for public consultation in December 2020.

regime and implementing certain aspects on macroprudential tools.<sup>2</sup> The future circular, which amends Circular 2/2016, will include provisions on:

- The CCyB requirements applicable to exposures of credit institutions or groups thereof to a specific sector.
- Limits on the concentration of exposures of credit institutions or of a subset thereof to a specific economic sector.
- Conditions on lending and purchase of debt securities and derivatives by credit institutions, for operations with the private sector in Spain.

**Another circular in progress is that addressed to payment service providers on operational and security risk management relating to payment services, reporting of serious operational and security incidents and communication of data on fraud relating to means of payment.** This circular will implement the obligations of payment service providers deriving from Articles 66 and 67 of Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures, specifically the requirements to:

- Establish sufficient palliative measures and control mechanisms to manage operational and security risks relating to payment services provided by payment service providers.
- Provide, at least once a year, an assessment of these risks and of the sufficiency of the above-mentioned palliative measures and control mechanisms.
- Immediately report to the Banco de España any serious operational and security incidents.
- Submit to the Banco de España, at least once a year, statistical data on fraud related to means of payment.

**A circular to SLIs on liquidity, prudential regulations and reporting requirements is also under preparation.**<sup>3</sup> This circular completes the regulatory framework for these institutions. It implements provisions of Law 5/2015 of 27 April 2015 on the promotion of business financing and of Royal Decree 309/2020 of 11 February 2020 on the legal regime of SLIs.

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<sup>2</sup> The [draft circular](#) aimed at including the rules on macroprudential tools was published for public consultation in February 2021.

<sup>3</sup> The [public consultation](#) of the draft circular to SLIs was published in February 2021.



Specifically, the circular aims to regulate the liquidity buffer and the funding source and maturity structure of SLIs and their solvency reporting requirements. To this end, the circular will be based on the requirements applicable to credit institutions, with appropriate adaptations. The circular also aims to establish: i) the guarantees that the Banco de España may require when control of an SLI is to be exercised by persons residing or authorised in a non-EU country; ii) the reporting requirements as regards the shareholder structure; and iii) the specific cases in which SLIs must draw up the internal capital adequacy assessment report and the Banco de España must conduct the SREP.

**In addition, a circular is being prepared on confidential conduct-related information.**<sup>4</sup> The circular will include both the formats for the financial statements to be prepared by the supervised institutions and the information to be made available to the Banco de España. The information will refer to financial activity with individuals (residents and non-residents) and microfirms conducted in Spain on an individual basis by institutions within the scope of the circular.

Specifically, it envisages requesting a series of statements, divided into three distinct blocks by: i) type of banking products and services, including payment services, marketed by institutions; ii) sources of interest and fee income; and iii) claims filed with the institution. The circular will also require institutions to keep a claims register with predefined content, at the disposal of the Banco de España. Pursuant to the principle of proportionality, it will recognise a simplified reporting requirements regime, depending on the type and size of the institution and the type of customers to whom they provide services.

### 8.3 Other new regulatory developments

**Although this was not regulation issued by the Banco de España, of particular importance is Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic, known as the “quick fix”.** The changes stemming from this Regulation aim chiefly to maximise the capacity of credit institutions to lend and to absorb losses related to the pandemic, while still ensuring the continued resilience of such institutions. The main changes introduced in the regulations are listed below (for further details, see Figure 8.1):

- The prudential transitional arrangements for expected loss provisions have been extended.

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<sup>4</sup> The [public consultation](#) of the draft circular on confidential conduct-related information was published in July 2020.

- A prudential filter has been introduced for changes in the value of sovereign debt instruments at fair value through other comprehensive income.
- The prudential backstop has been adjusted for exposures with State guarantees granted in the context of the COVID-19 crisis.
- Central bank reserves may be temporarily excluded from the leverage ratio denominator.
- Supervisors have been granted some discretion to adjust capital requirements for market risk, so as not to take into account potential deviations occurred during the pandemic.
- The date of entry into force of certain measures already included in European regulations has been changed.

**Of particular note is Law 7/2020 of 13 November 2020 on the digital transformation of the financial system, which includes a raft of measures to promote the digital transformation of the sector** and has fed expectations among many financial sector players.

The main part of the law regulates the so-called “regulatory sandbox” and provides for projects which may result in a technology-based innovation applicable to the financial system to be tested in a closed and controlled environment.

Applications will be submitted to the virtual office of the General Secretariat of the Treasury and International Financing, which will be tasked with forwarding them to the supervisors (the Banco de España, the CNMV or the DGSFP), depending on the nature of the application. The law provides for calls for applications to be published every six months.

After the submission deadline has expired, the applications will be assessed by the supervisors, which will draw up a reasoned report on their acceptance or rejection. When a project qualifies for admission to the sandbox, the applicant and the supervisor will have a period of three months to sign a protocol defining the rules and conditions for conducting the tests, which will be monitored by one or more supervisors.

The law also provides for the creation of specific channels for communicating directly with the supervisory authorities and a channel for written queries on the regime, classification or application of the sectoral financial regulations relating to the use of technology in the financial sector.

**Also published was Royal Decree 309/2020 of 11 February 2020 on the legal regime of specialised lending institutions** and amending the Mercantile

Registry Regulation, approved by Royal Decree 1784/1996 of 19 July 1996, and Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions. This Royal Decree, which repeals the previous regulation on SLIs, implements Title II of Law 5/2015 of 27 April 2015 on the promotion of business financing. Consequently, it details the legal regime of SLIs and of consolidated groups or sub-groups of SLIs whose parent is in Spain, in terms of access to activity, solvency requirements and supervisory arrangements.

**Also noteworthy for its importance in endeavouring to mitigate the increase in litigation associated with certain financial products is Ministerial Order ETD/699/2020 of 24 July 2020 on the regulation of revolving credit**, mentioned in the previous section. The main aims of this regulation are to reduce the risk of debt overhang and excessive loan duration and to strengthen pre-contractual and contractual information requirements, so that the borrower adequately understands the economic burden of the service to be taken out and has accurate information at all times on the debt owed to the institution.

**Lastly, the Technical Auditing Standard on the preparation of the new report complementing the audit report on the annual accounts of credit institutions and specialised lending institutions was approved by the ICAC Resolution of 27 October 2020 and published.** This report is one of the systems established by law for coordinating public institutions, such as the Banco de España, that are legally entrusted with control and supervisory powers over institutions that submit their annual accounts for statutory audit, and the statutory auditors of these institutions. Since the latest version of this complementary report was approved in 2007, relevant changes have been made to the accounting policies of credit institutions and SLIs (such as the transition to an expected loss impairment model) and the International Standards of Auditing have been adopted in Spain. Consequently, it was deemed advisable to draw up a new technical standard on this matter to improve the information that auditors provide to the Banco de España in this report.

Figure 8.1

**MAIN ADAPTATIONS TO BANKING REGULATIONS MADE IN RESPONSE TO THE COVID-19 PANDEMIC (QUICK FIX)**

ADAPTATIONS	DESCRIPTION	TIME FRAME
Transitional prudential treatment applicable to accounting impairment arising from expected losses	The transitional period is extended and the CET1 add-back percentage in the dynamic component of the transitional prudential treatment of expected loss provisions is raised	The term and percentages of the phase-in schedule for these provisions are increased to 2024 and the reference date for the calculation is changed to 1 January 2020
Prudential filter	Institutions are allowed to apply a prudential filter that would temporarily neutralise the impact on CET1 of changes in the value of sovereign debt instruments at fair value through other comprehensive income	The filter will be applied for three years to cumulative unrealised gains and losses from 31 December 2019. 100% of the impact is neutralised in 2020, 70% in 2021 and 40% in 2022
Prudential backstop	The prudential backstop for NPLs is adjusted by introducing a favourable treatment for exposures with State guarantees granted in the context of the COVID-19 crisis	This treatment is applicable for the first seven years from the classification of the exposure as non-performing
Adjustments to the leverage ratio	Central bank reserves may be temporarily excluded from the leverage ratio denominator when the NCA, in consultation with the relevant central bank, determines that exceptional circumstances so warrant, to facilitate implementation of monetary policy. This was determined by the ECB and the Banco de España in their decisions of 27 September 2020 (a) and 2 October 2020 (b), respectively	From 28 June 2021 for requirement purposes. From 28 June 2020 for reporting purposes
Adjustments to the capital requirements for market risk	Supervisors are granted some discretion to adjust capital requirements for market risk, so as not to take into account potential deviations occurred during the period from 1 January 2020 to 31 December 2021	Up to 31 December 2021
Changes in the entry into force of measures scheduled for 2021	The date of entry into force of certain measures already included in European regulations is changed. This includes bringing forward the entry into force of the SME and infrastructure supporting factors and the new prudential treatment of software assets and postponing the date of entry into force of the new leverage ratio buffer requirement for G-SIIs	The entry into force of the SME and infrastructure supporting factors was 28 June 2020  The new prudential treatment of software assets will apply from the entry into force of the EBA's RTS implementing it  The leverage ratio buffer requirement for G-SIIs will enter into force on 1 January 2023

SOURCE: Banco de España.

a See press release "ECB's Governing Council says that exceptional circumstances justify leverage ratio relief", of 17 September 2020.

b See press release "El Banco de España determina que se dan circunstancias excepcionales para la exclusión temporal de determinadas exposiciones en la ratio de apalancamiento", of 5 October 2020.