Financial regulation: 2009 Q4

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Introduction

In 2009 Q4, numerous financial provisions were enacted, as is usual in the last part of the year.

The European Central Bank (ECB) ordered three new measures. First, it renewed for one year the extraordinary measures adopted to improve the provision of liquidity to credit institutions; second, it updated the TARGET2 provisions to adapt them to the new version of the single shared platform; and, finally, it amended the provisions on collection of the statistical information needed for the performance of its functions.

In the credit institutions area, the adaptation of the regime governing qualifying holdings to Community legislation was completed and the law on contributions to the Savings Bank Deposit Guarantee Fund was amended.

The Banco de España promulgated three circulars. The first includes some new developments in the information to be reported by credit institutions on their capital structure, their operational offices and their senior officers. The other two update the information required of appraisal companies and currency-exchange bureaux to make it more consistent with that provided by other supervised institutions.

The payment services law transposing the directive on these services in the internal market to Spanish legislation was enacted.

In the European sphere, five Community provisions were amended. They were as follows: the regulation of electronic money institutions (EMIs), the law on certain undertakings for collective investment in transferable securities (UCITS), legislation on the taking-up and pursuit of the business of insurance and reinsurance, reporting requirements in the case of mergers and divisions, and the EU-wide harmonisation of rules for credit rating agencies.

There were also some changes in the regulation of securities markets. These changes consisted of rules governing listed real estate investment companies ("SOCIMIs" by their Spanish acronym), specific adaptation of provisions on investor compensation schemes, the procedure for notification of significant information by securities issuers, the criteria for preparing the yearly audit report on protection of assets of customers of entities providing investment services and, finally, the organisational requirements for internal control of management companies of collective investment institutions (CIIs) and of investment firms.

This article also analyses the new developments of a monetary, financial and fiscal nature contained in the State budget for 2010 and, finally, reports a specific amendment to the Spanish general chart of accounts.

European Central Bank: temporary changes to provisions on the eligibility of collateral

Guideline ECB/2009/24 of 10 December 2009 (OJ L of 16 December 2009) amending Guideline ECB/2008/18 of 21 November 2008[1] on temporary changes to the rules relating to eligibil-

1. See "Financial Regulation: 2008 Q4", *Economic Bulletin*, January 2009, Banco de España, pp. 119 and 120.

ity of collateral[2] was adopted, and the *Resolution of 23 December 2009* (BOE of 30 December 2009) of the Executive Commission of the Banco de España amending that of 26 November 2008[3] on temporary changes to the rules relating to eligibility of collateral in monetary policy operations was issued to adjust to the new Guideline. In both cases the purpose is to renew for twelve months the application of these temporary extraordinary criteria so as to improve the liquidity of credit institutions.

In the period from 1 December 2009 until 31 December 2010 (or until the maturity date of the last 12-month refinancing operation launched by 31 December 2010),[4] the ECB will continue to accept as collateral in Eurosystem monetary policy operations the following assets:

a) Marketable debt instruments if denominated in US dollars, pounds sterling or Japanese yen, provided that they are issued and held/settled in the euro area and the issuer is established in the European Economic Area. An additional haircut of 8% shall be imposed by the Eurosystem on all such marketable debt instruments.

b) Syndicated loans if they fulfil certain conditions established in Guideline ECB/2000/7.

c) Debt instruments issued by credit institutions, which are traded on certain non-regulated markets as specified by the ECB. An additional haircut of 5% shall be imposed by the Eurosystem on all such marketable debt instruments.

d) Subordinated assets with acceptable guarantees, provided that a financially sound guarantor provides an unconditional and irrevocable guarantee payable on first demand on these assets. An additional haircut of 10% shall be imposed by the Eurosystem on all such assets, with a further 5% valuation markdown in the event of a theoretical valuation.

e) Fixed-term remunerated deposits from eligible counterparties in the national central bank of the Member State in which the counterparty is established.

Also, the Eurosystem's minimum requirement for the assessment of the credit standard of assets eligible as collateral shall remain at a "BBB-" equivalent credit assessment by a specialised credit rating agency. This credit assessment requirement shall apply to both marketable and non-marketable assets, with the exception of asset-backed securities, for which the requirement for high credit standards (above "A") shall remain unchanged. An additional haircut of 5% shall be imposed by the Eurosystem on all eligible assets with a credit assessment below "A-".

The Guideline and the Resolution came into force on 18 December 2009 and 1 January 2009, respectively and will be applied from 1 December 2009 to 31 December 2010.

Update of TARGET2 legislation

Guideline ECB/2009/21 of 17 September 2009 (OJ L of 3 October 2009) amended Guideline ECB/2007/2 of 26 April 2008 on a Trans-European Automated Real-time Gross settlement

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2. See Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem, which established, among other things, the criteria for determining the eligibility of collateral held by counterparties for obtaining Eurosystem liquidity. **3.** See "Financial Regulation: 2009 Q1", *Economic Bulletin*, April 2009, Banco de España, pp. 182 and 183. **4.** In view of the announcement by the ECB that it does not plan to conduct more 12-month tenders, the renewal of the temporary measures will effectively terminate on 31 December 2010, given that the last 12-month tender was conducted on 17 December 2009, with maturity on 23 December 2010.

Express Transfer system (TARGET2),[5] and the *Resolution of 7 October 2009* (BOE of 22 October 2009) of the Executive Commission of the Banco de España, amending that of 20 July 2007,[6] approved the general clauses on the harmonised conditions for participation in TARGET2-Banco de España (TARGET2-BE) in order to adapt them to that Guideline.

The Guideline adapts the TARGET2 rules to the new version of the single shared platform; clarifies the specific oversight location principles that entities offering services in euro are required to comply with; introduces a derogation in relation to bilateral arrangements with ancillary systems[7] which open Payments Module accounts and cannot be subject to pledge or set-off of claims; reflects a number of other technical and editorial improvements and clarifications; and deletes provisions relating to migration to TARGET2 which no longer apply.

The Resolution, in addition to incorporating the new developments of Guideline ECB/2009/21, takes the opportunity to make certain other changes.

The Guideline came into force on 22 September and, as regards the changes introduced by the Resolution, some will apply from 23 October and the remainder from 23 November.

European Central Bank: changes to the rules on collection of statistical information

Council Regulation 951/2009 of 9 October 2009 (OJ L of 14 October 2009) amending Council Regulation 2533/98 of 23 November 1998 concerning the collection of statistical information by the ECB revised the scope of the reporting requirements imposed by Council Regulation 2533/98 of 23 November 1998 in order to enable the ECB to carry out the statistical information collection tasks of the European System of Central Banks (ESCB).

The new Regulation specifies the range of statistical information which the ECB, assisted by the national central banks (NCBs), shall have the right to collect within the limits of the reporting population. Information may be collected in particular in the area of monetary and financial statistics, banknote statistics, payments and payment systems statistics, financial stability statistics, balance of payments statistics and international investment position statistics. When necessary to perform the tasks of the ESCB, additional information may be collected also in other areas in duly justified cases.

The reference reporting population is expanded to include financial corporations, and in particular insurance corporations and pension funds, which represent the second largest subsector of financial corporations in the euro area in terms of financial assets. Also added are legal and natural persons residing in a Member State, to the extent that they hold cross-border positions or have carried out cross-border transactions. In certain cases, such as for financial stability statistics, the ECB shall have the right to collect from legal and natural persons statistical information on a consolidated basis, including information on the entities controlled by such legal and natural persons.

Regarding the confidentiality regime, the Regulation revises the use of confidential statistical information to ensure a high level of protection. To this end, the ECB shall define common rules

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5. The TARGET2 system is a single shared platform used to make and process all payment orders. **6.** See "Financial Regulation: 2007 Q4", *Economic Bulletin*, January 2008, Banco de España, pp. 172 and 173. **7.** An "ancillary system" is a system managed by an entity established in the EEA that is subject to supervision and/or oversight by a competent authority and complies with the oversight requirements for the location of infrastructures offering services in euro, as published on the ECB website, in which payments and/or financial instruments are exchanged and/or cleared while the resulting monetary obligations are settled in TARGET2.

and implement minimum standards to prevent unlawful disclosure and unauthorised use of confidential statistical information. Furthermore, the Regulation provides for closer cooperation between the ESCB and the European Statistical System (ESS) and fosters the exchange of confidential statistical information between the two systems, which should not be used for purposes that are not exclusively statistical, such as for administrative or tax purposes or legal proceedings.

The Regulation came into force on 15 October 2009.

Amendment of the legal regime for qualifying holdings in financial institutions

Law 5/2009 of 29 June 2009[8] amended certain financial legislation[9] so as to reform the legal regime for qualifying holdings[10] in financial institutions. It was enacted to transpose partially to Spanish law Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending certain EU directives[11] as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

Recently various provisions have been promulgated to complete the transposition of the aforementioned directive.

Table 1 is a summary comparison of the new and the previous provisions.

In the credit institutions area, *Royal Decree 1817/2009 of 27 November 2009* (BOE of 7 December 2009), amended Royal Decree 1245/1995 of 14 July 1995[12] on the creation of banks, cross-border activities and other matters related to the legal regime of credit institutions and Royal Decree 692/1996 of 26 April 1996[13] on the legal regime of specialised credit institutions.

In the collective investment institution (CII) area, *Royal Decree 1818/2009 of 27 November 2009* (BOE of 7 December 2009) amended the Regulations of CII Law 35/2003 of 4 November 2003 approved by Royal Decree 1309/2005 of 4 November 2005.[14]

As regards investment firms, *Royal Decree 1820/2009 of 27 November 2009* (BOE of 7 December 2009), amended Royal Decree 361/2007 of 16 March 2007 implementing Securities Market Law 24/1988 of 28 July 1988, in regard to investment in the capital of companies that manage secondary securities markets and companies that administer securities registration, clearing and settlement systems, and Royal Decree 217/2008 of 15 February 2008 on the legal regime of IFs and of other investment institutions, and partially amended the implementing regulations of CII Law 35/2003 of 4 November 2003 enacted by Royal Decree 1309/2005 of 4 November 2005.

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8. See "Financial Regulation: 2009 Q2", *Economic Bulletin*, July 2009, Banco de España, pp. 184-186. **9.** Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, Law 24/1988 on the securities market and the consolidated text of the Private Insurance Law enacted in Legislative Royal Decree 6/2004 of 29 October 2004. **10.** From a quantitative standpoint, a holding is deemed to be significant when it reaches 10% or more of the institution's capital or voting rights (previously this percentage was 5%), although the qualitative criterion, whereby there is deemed to be a qualifying holding if a notable influence can be exercised in the acquired entity, remains in place. **11.** Council Directive 92/49/EEC of 18 June 1992, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005, and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast). **12.** See "Regulación financiera: tercer trimestre de 1995", *Boletín Económico*, October 1995, Banco de España, pp. 83-90. **13.** See "Regulación financiera: segundo trimestre de 1996", *Boletín Económico*, July-August 1996, Banco de España, pp. 64-66. **14.** See "Financial Regulation: 2005 Q4", *Economic Bulletin*, January 2006, Banco de España, pp. 112-116.

AMENDMENT OF THE LEGAL REGIME FOR QUALIFYING HOLDINGS IN FINANCIAL INSTITUTIONS (a) TABLE 1

PREVIOUS LEGAL REGIME (b)	CURRENT LEGAL REGIME (c)
Determination of qualitative limit of qualifying holding	
Except for credit institutions, in other financial institutions no provision was made for determining such limit, which had yet to be defined by law.	A qualifying holding is deemed to exist when, although it does not reach 10%, it makes it possible to exercise a significant influence over the institution, significant influence being defined as being able to appoint or dismiss any member of the board or similar body.
Calculation of holdings for the purpose of determining what is considered a qualifying holding	
a) Those acquired directly by a natural or legal person. b) Those acquired by controlled companies of a natural person or by his investees. c) Those acquired by companies in the same group as a legal person or by investees of group companies. d) Those acquired by other persons acting on their own behalf or in concert with the acquirer or with companies of the acquirer's group.	In addition, the following new cases are added: e) Those held by the proposed acquirer attaching to shares acquired through an interposed person. f) Voting rights which can be controlled, with an express declaration of the intention to exercise them, as a result of lodgement of the related shares as collateral. g) Those exercisable under agreements creating a right of usufruct of shares. h) Those attaching to shares deposited with the proposed acquirer, provided that the latter can exercise them at its discretion in the absence of specific instructions from the shareholders. i) Voting rights which the proposed acquirer may exercise as a proxy at its discretion in the absence of specific instructions from the shareholders
Not envisaged.	The following cases, among others, shall not be included in the calculation of a holding: a) Shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle. b) Shares held to provide the underwriting or placing of financial instruments on the basis of a firm commitment, provided that the related voting rights are not exercised and are disposed of within one year of acquisition.
Not envisaged.	The supervisory authorities have to formulate and publish a list specifying the information to be provided by the proposed acquirer so the supervisor can evaluate the acquisition of a qualifying holding.

SOURCES: BEO and Banco de España.

a. Completion of the transposition of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 by Law 5/2009 of 29 June 2009.
b. Royal Decree 1245/1995 of 14 July 1995 (credit institutions); Royal Decree 1309/2005 of 4 November 2005 (CIIs); Royal Decree 361/2007 of 16 March 2007 (investment firms); and Royal Decree 2486/1998 of 20 November 1998 (insurance companies)..
c. Royal Decree 1817/2009 of 27 November 2009 (credit institutions); Royal Decree 1818/2009 of 27 November 2009 (CIIs); Royal Decree 1820/2009 of 27 November 2009 (investment firms); and Royal Decree 1821/2009 of 27 November 2009 (insurance companies).

In the insurance company area, Royal Decree 1821/2009 of 27 November 2009 (BOE of 7 December 2009) amended the Regulation on the Ordering and Supervision of Private Insurance approved by Royal Decree 2486/1998 of 20 November 1998,[15] with regard to qualifying holdings.

All these royal decrees introduce similar new developments. Thus, for the purpose of determining whether there is a qualifying holding, the legal provisions establish that significant influence can be exercised over an institution when any member of its board or similar body can be appointed or dismissed.[16]

15. See "Financial Regulation: 1998 Q4", *Economic Bulletin*, January 1999, Banco de España, pp. 102-105. **16.** This same provision can be found in Royal Decree 1245/1995 of 14 July 1995 on the creation of banks, cross-border activities and other matters related to the legal regime of credit institutions.

The range of cases for the calculation of holdings (shares, contributions or voting rights) in an institution for the purposes of determining what is considered a qualifying holding is broadened. Thus, to the cases established in previous legislation (see Table 1), other new ones are added, as follows: voting rights held by the proposed acquirer attaching to shares acquired through an interposed person; those which can be controlled, with an express declaration of the intention to exercise them, as a result of lodgement of the related shares as collateral; those exercisable under agreements creating a right of usufruct of shares; those attaching to shares deposited with the proposed acquirer, provided that the latter can exercise them at its discretion in the absence of specific instructions from the shareholders; those which the proposed acquirer may exercise as a proxy at its discretion in the absence of specific instructions from the shareholders, etc.

Also described are the cases not to be included in the calculation of a holding, most notably as follows: shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, and those held to provide the underwriting or placing of financial instruments, provided that the related voting rights are not exercised to intervene in the management of the credit institution and are disposed of within one year of acquisition.

Further, the royal decrees envisage the formulation and publication of a list by the respective supervisory authorities.[17] The list will specify the information to be provided by the proposed acquirer so the supervisor can evaluate the acquisition of a qualifying holding and set out the basic points which have to be included, namely: the professional and commercial integrity of the proposed acquirer and, where appropriate, the shareholder structure, the composition of the board of directors or equivalent body and the financial position of the proposed acquirer; the purpose and amount of the acquisition; and the existence of any concerted action with third parties or with other shareholders of the acquiree.

If the qualifying holdings produce changes in the control of the institution, a description shall also be given, among other things, of the business plan and of the impact that the acquisition will have on corporate governance, on the structure and the available resources, on the internal control bodies and on the anti-money laundering procedures, including information about the strategic development of the acquisition, the financial statements and other similar data.

If there are no changes in the control of the institution, the proposed acquirer's policy on the acquisition and its intentions regarding the acquired institution, particularly as to its participation in governance of the institution, shall be reported.

Additionally, Royal Decree 1817/2009 makes changes to the legal regime of credit institutions established in Royal Decree 1245/1995 to bring it into line with Directive 2006/48/EC of 14 June 2006 of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast).

The royal decrees came into force on 8 December 2009.

Savings bank Deposit Guarantee Fund: change in contributions

Ministerial Order EHA/3515/2009 of 29 December 2009 (BOE of 31 December 2009) amending contributions to the Savings Bank Deposit Guarantee Fund in application of the powers

17. The Banco de España for credit institutions; the CNMV for CIIs, investment firms, stock exchange operators and the companies operating the securities registration, clearing and settlement systems; and the Ministry of Economy and Finance, acting through the Directorate General of Insurance and Pension Funds, for insurance companies.

granted by Royal Decree 2606/1996 of 20 December 1996[18] to the Minister of Economy and Finance was promulgated.[19]

In view of the financial position of the Fund and the outlook for the sector, the calculation basis established in the aforementioned Royal Decree was reduced from 2 per mille to 1 per mille. The Ministerial Order came into force on 31 December 2009 and will apply to contributions made from that date.

Credit institutions: disclosures on capital structure, offices and senior officers

The Banco de España issued *Circular CBE 1/2009 of 18 December 2009* (BOE of 31 December 2009) on disclosure of the capital and of non-voting equity units of credit institutions, on their offices and on their senior officers to update its rules and harmonise the compulsory disclosures in order to facilitate computerised processing and management.[20]

DISCLOSURES ON CAPITAL STRUCTURE

Banks, credit cooperatives, specialised credit institutions (SCIs) and, for the first time, electronic money institutions (ELMIs)[21] will notify to the Banco de España the share purchases and disposals or contributions which cause the percentage of holdings or voting rights of a natural or physical person to reach, exceed or fall below the qualifying holdings set in Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, amended by Law 5/2009 of 29 June 2009,[22] as soon as that percentage becomes known to them and, at a maximum, within ten working days from when the entry is made in the register of shares or other equity contributions. Such qualifying holdings are 10%, 20%, 30% or 50% and those which, while not reaching 10%, enable a significant influence to be exercised over the institution.[23]

In addition, they have to continue notifying of increases or decreases in shares or contributions involving the acquisition by a natural or legal person, at one or more times, of 1% or more of the capital of the institution.

Further, they have to keep sending a quarterly list of all the holders of shares or other equity contributions deemed to be financial institutions[24] and of those which, although not financial institutions, are the registered holders of shares or equity contributions representing a percentage of the institution's capital equal to or exceeding 0.25% in the case of banks, 1% in the case of credit cooperatives or 2.5% in that of SCIs and ELMIs.

DISCLOSURES ON THE STRUCTURE OF EQUITY UNITS

The Circular regulates for the first time the disclosures which savings banks issuing equity units have to make pursuant to Royal Decree 302/2004 of 20 February 2004.[25] Thus, each quarter they have to send to the Banco de España a list of all unitholders deemed to be financial institutions and of those which, although not financial institutions, are the registered holders of equity units representing 0.5% or more of the total outstanding volume.

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18. See "Regulación financiera: cuarto trimestre de 1996", *Boletín Económico*, January 1997, Banco de España, pp. 106-109.. **19.** The Ministry of Economy and Finance was empowered to reduce these contributions when the Fund reached a sufficient amount to achieve its purpose. **20.** Previously they were regulated, respectively, in CBE 6/1995 of 31 October 1995 on capital structure disclosures by credit insittutions; in CBE 13/1988 of 27 October 1988 on senior officers of credit institutions, now repealed; and, with regard to credit institution offices, in CBE 8/1990 of 7 September 1990 on transaction transparency and customer protection, partly repealed. **21.** The requirements for savings banks are described below in the following section. **22.** See "Financial Regulation: 2009 Q2", *Economic Bulletin*, July 2009, Banco de España, pp. 184-186. **23.** A "qualifying holding" means any holding which represents 10 % or more of the capital or of the voting rights of the institution, or which, while not reaching that percentage, makes it possible to exercise a significant influence over the institution, significant influence being defined as being able to appoint or dismiss any member of the board or similar body. **24.** Financial institutions comprise the following: credit institutions, investment firms, open-end investment companies, CII investment companies, securitisation SPE management companies, venture capital entities, insurance and re-insurance companies, and entities engaging primarily in the holding of shares or other equity, except mixed financial holding companies subject to supervision at the financial conglomerate level. **25.** See "Financial Regulation: 2004 Q1", *Economic Bulletin*, April 2004, Banco de España, p. 94.

DISCLOSURES ON CREDIT INSTITUTION OFFICES

Credit institutions have to continue notifying the Banco de España of the opening, assignment, transfer or closure of their offices in Spain, as soon as it takes place and within a maximum of fifteen calendar days.[26] The Circular provided for the first time that they must also inform of the operational offices in countries which have authorised the opening of any branch and the representative offices. The branches in Spain of foreign credit institutions are excluded from the latter two requirements. In accordance with the Circular, the list of offices open as at 30 June must be sent by 16 July.

DISCLOSURES ON SENIOR OFFICERS

The Circular extends the required disclosures on senior officers since, in addition to those on members of the board or equivalent body, general mangers or similar officers, and managers of the branches of foreign credit institutions in Spain,[27] such disclosures now have to be made, merely for information purposes, on those persons who, while meeting the general power-of-attorney and reporting requirements legally established for general managers and the like, limit their senior management functions to a specific area of activity, provided that they form part of a management structure entrusted at the highest level with the day-to-day operation of the institution. Should any of the directors be a legal person, the obligations set in place shall refer equally to the natural person acting as its representative.

Another new development introduced by the Circular is the modification of the submission rules for all the information, which, save in exceptional, duly justified cases, shall be lodged by electronic means.

Lastly, various clarifications are made on the regulation of electronic signatures in CBE 4/2004 of 22 December 2004 on public and confidential financial reporting rules and formats and in CBE 3/2008 of 22 May 2008 on determination and control of minimum own funds.

The Circular came into force on 20 January 2010, except Chapter III on senior officers which came into force on 30 June 2010.

Licensed appraisal companies and services: reporting to the Banco de España

CBE 2/2009 of 18 December 2009 (BOE of 31 December 2009) amending CBE 3/1998 of 27 January 1998[28] on the information to be sent to the Banco de España by licensed appraisal companies and services was issued to update and harmonise this information with that of other supervised institutions.

The confidential balance sheet and income statement formats are adapted to the accounting changes derived from Royal Decree 1514/2007 of 16 November 2007 approving the Spanish general chart of accounts or, where applicable, from Royal Decree 1515/2007[29] of 16 November 2007 approving the Spanish general chart of accounts for SMEs and the specific accounting criteria for microenterprises. These statements have to be sent each year to the Banco de España by 28 February (previously the deadline was 31 March).

Certain adjustments were made to the information required on shareholders. Thus, as soon as they become known and, at a maximum, within ten working days from when the entry is made in the share register, any share transfers (acquisitions and disposals) must be notified to the Banco de España if, as a result, the percentage of the holding or voting rights held by a natural or legal person or a group reaches or exceeds, either directly or indirectly, the threshold of

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26. Previously regulated in Rule 29 of CBE 8/1990 **27.** Pursuant to Article 1 of Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions. **28.** See "Financial Regulation: 1998 Q1", *Economic Bulletin*, April 1998, Banco de España, p. 107. **29.** See "Financial Regulation: 2007 Q4", *Economic Bulletin*, January 2008, Banco de España, pp. 196-199.

10% (previously 20%) or, although that percentage is not reached, they enable a significant influence to be exercised over the appraisal company. This information must be updated each time the net changes in the holding represent at least 5% (previously there was no such threshold).

The Circular retains the requirement of annual remittance of a list of the registered shareholders with holdings of 5% or more of capital (previously 10%). This remittance must now be within the first month of the year (previously the deadline was 31 March).

Also, the Circular updates the submission rules for the information which, save in exceptional, duly justified cases, shall be lodged by electronic means.

Lastly, appraisal companies have until 16 July to submit the confidential balance sheets and income statements for 2008 and 2009, prepared according to the formats and criteria set out in the Circular, and a list of the qualifying holdings as at 30 June.

The Circular came into force on 20 January 2010.

Amendment of the legal provisions governing currency-exchange bureaux

CBE 3/2009 of 18 December 2009 (BOE of 31 December 2009) amending CBE 6/2001 of 29 October 2001[30] on owners of currency-exchange bureaux was issued. As with the previous circular, its purpose is to simplify and incorporate various technical improvements in the information required of currency-exchange bureaux and to endow it with a certain uniformity with that required of other supervised institutions.

The confidential balance sheet and income statement formats are adapted to the accounting changes derived from Royal Decree 1514/2007 of 16 November 2007 approving the Spanish general chart of accounts or, where applicable, from Royal Decree 1515/2007 of 16 November 2007[31] approving the Spanish general chart of accounts for SMEs and specific accounting criteria for microenterprises. These financial statements have to be sent to the Banco de España by those bureaux engaging in the purchase and sale of foreign banknotes or traveller's cheques and/or cross-border money transfers by 28 February each year (previously the deadline was 31 March).

There were some new developments regarding their capital structure. As soon as they become known and, at a maximum, within ten working days from when the entry is made in the share register, the owners of currency-exchange bureaux must notify to the Banco de España any share transfers (acquisitions and disposals) if, as a result, the percentage of the holding or voting rights held by a natural or legal person or a group reaches or exceeds, either directly or indirectly, the threshold of 10% or, although that percentage is not reached, they enable a significant influence to be exercised over the currency-exchange bureau (previously, whenever any of the following percentages was reached: 10%, 25% or 50%) . This information must be updated each time the net changes in the holding represent at least 5% (previously there was no such threshold).

The Circular retains the requirement of annual remittance of a list of the registered shareholders with holdings of 5% or more of capital (previously 10%). This remittance must now be within the first month of the year (previously the deadline was 31 March).

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30. See "Financial Regulation: 2001 Q4", *Economic Bulletin*, January 2002, Banco de España, pp. 90-93. **31.** See footnote 29.

Also, the Circular updates the submission rules for the information which, save in exceptional, duly justified cases, shall be lodged by electronic means and provides that the receipt of any information relating to currency-exchange bureau owners is to be centralised in the bureau's central offices.

Lastly, currency-exchange bureaux have until 16 July to submit the confidential balance sheets and income statements for 2008 and 2009, prepared according to the formats and criteria set out in the Circular, a summary statement of the transactions carried out by the bureau owner in all his bureaux, the offices open as at 30 June, and a list of the qualifying holdings as at 30 June.

The Circular came into force on 20 January 2010.

New legislation on payment services

Law 16/2009 of 13 November 2009 (BOE of 14 November 2009) on payment services incorporated into Spanish law Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market.[32] Also, Law 9/1999 of 12 April 1999 regulating the legal regime for transfers between EU Member States was repealed.

Table 2 summarises the main new developments of the Law.

SCOPE OF APPLICATION AND PURPOSE

The purpose of the Law is to regulate payment services provided in Spain and, in particular, the legal regime for the newly created "payment institutions" category. When the user is not a consumer or the instruments are for a small amount, the parties may agree not to apply certain aspects of the Law, as and when legally permitted.

Payment services are exhaustively enumerated in the Law. Among others, the following may be mentioned: a) services enabling cash to be placed on or withdrawn from a payment account as well as all the operations required for operating a payment account; b) execution of payment transactions such as direct debits, payment transactions through a payment card or a similar device, credit transfers, including standing orders; c) issuing and/or acquiring of payment instruments; and d) money remittance.

Also included are other ancillary activities linked to these services, such as ensuring the execution of payment transactions, foreign exchange services, safekeeping activities, the storage and processing of data, and the operation of payment systems. Furthermore, the activities falling outside the scope of application of the Law are listed.

The Law establishes that payment service providers may be credit institutions, ELMIs, the new payment institutions and Correos y Telégrafos (the Spanish State-owned postal company), as well as the Banco de España, central government, regional (autonomous) government and local government when not acting in their capacity as public authorities.

TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS

The payment service provider shall furnish to the user, at no charge and in easily accessible form, all the information and conditions relating to the provision of such services that may be set in the Law and its subsequent implementing regulations, both for single payment transactions and for payment transactions governed by framework contracts.[33]

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32. The aim of Directive 2007/64/EC is to ensure that payments at EU level can be made as easily, efficiently and safely as domestic payments in Member States, and to strengthen and protect the rights of the users of payment services. **33.** A framework contract is a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.

SUMMARY OF PAYMENT SERVICES

TABLE 2

Regulated by Law 16/2009 of 13 November 2009 (BOE of 14 November 2009). Entry into force on 4 December 2009	
Scope and purpose of the Law	The regulation of payment services provided in Spain and, in particular, of the newly created "payment institutions" category. The purpose is to set uniform rules on the conditions and on the reporting requirements of payment services and to establish a common system of rights and obligations for payment service providers and users.
Provision and execution of payment services	
Payment services	Placement of cash on or withdrawn from a payment account; direct debits, payment transactions through a payment card, credit transfers, issuing and/or acquiring of payment instruments; and money remittance, among others.
Payment service providers	Credit institutions, ELMIs, payment institutions and Correos y Telégrafos, as well as the Banco de España and general government when not acting in their capacity as public authorities.
Transparency of conditions and information requirements	Applicable to single payment transactions, framework contracts and payment transactions affected by those contracts.
	The payment service provider shall furnish to the user all the information and conditions relating to such payment services at no charge and in easily accessible form. In some cases charges may be made, although they shall be in line with costs.
	The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice, which may not exceed one month.
Rights and obligations	In the provision of payment services, the payee shall pay the costs charged by his payment service supplier and the payer shall pay those charged by his payment service supplier. Where a payment transaction involves a currency conversion, this manner of allocating costs shall also apply, unless agreed otherwise.
	Obligations of the payment service user: to employ the payment instrument in accordance with the terms governing its issue and use, and to notify the payment service provider without delay in the event of loss or unauthorised use of the payment instrument.
	Obligations of the payment service provider: Among others, to make sure that the security features of the payment instrument are only accessible to the payment service user, and to ensure that appropriate means are available free of charge to enable the payment service user to make the required notification in the event of loss or unauthorised use of the payment instrument.
Execution of payment orders	The point in time of receipt of a payment order shall be the time when it is received by the payer's payment service provider. The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.
	In payment transactions denominated in euro within the EU, the payer's payment service provider shall ensure that the funds are credited to the payee's payment service provider's account at the latest by the end of the next business day. The payment service provider of the payee shall ensure that the funds are at the payee's disposal immediately. The credit value date shall be the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account
	The payment service providers and any intermediaries of the payment service providers must transfer the full amount of the payment transaction and not deduct charges from the amount transferred unless there is an express agreement to do so.
	In other payment transactions, the payment service user and his payment service provider may agree on a longer period, which, in the case of intra-Community payment transactions denominated in a currency other than the euro, shall not exceed four business days following the point in time of receipt of the order.
Legal regime for payment institutions	
Authorisation	The formation of payment institutions and the establishment in Spain of branches of payment institutions not authorised in an EU Member State shall require the authorisation of the Ministry for Economic Affairs and Finance.
Safeguarding requirements	Payment institutions have to safeguard funds which have been received from the payment service users or as a result of the execution of payment transactions. For this purpose, they shall be deposited in a separate account in a credit institution, invested in secure, liquid assets or covered by an insurance policy or some other comparable guarantee.
Capital and own funds	Payment institutions shall hold the minimum required capital and a sufficient volume of own funds in proportion to business indicators. A payment institution may, based on an assessment of its risk management processes and internal control mechanisms, be required to hold an amount of own funds which is up to 20% higher or lower than the minimum required capital.
Exercise of the right of establishment and freedom to provide services	Spanish payment institutions may operate in another EU Member State through the establishment of a branch or in exercise of the freedom to provide services, subject to prior notification to the Banco de España. Their activity in third countries is subject to authorisation by the Banco de España. Payment institutions authorised in another EU Member State may provide the same services in Spain either through the establishment of a branch or in exercise of the freedom to provide services, unless upon formation they availed themselves of any of the exceptions envisaged in Directive 2007/64/EC.
Supervision and sanctions	The control and inspection of payment institutions shall be the responsibility of the Banco de España. They shall be subject to the penalty regime established by Law 26/1988 of 29 July 1998 on the discipline and intervention of credit institutions, as adapted in accordance with law.

SOURCES: BOE and Banco de España.

The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice, which may not exceed one month. Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be appropriate and in line with costs.

Any changes in the contractual conditions shall be proposed by the payment service provider on an individual basis and no later than two months before their proposed date of application. However, they may be applied immediately if the changes are more favourable for the user.

RIGHTS AND OBLIGATIONS IN RELATION TO THE PROVISION AND USE OF PAYMENT SERVICES

A new development under this Law is that, as a general rule, the payer and the payee of the transaction each have to bear the cost corresponding to them, which will be charged by their payment service providers (previously, unless otherwise provided, the transaction was free of charge for the payee). Where a payment transaction involves a currency conversion, this manner of allocating costs shall also apply, unless agreed otherwise. Conversion expenses will be paid by whoever requests the service, unless otherwise indicated by the parties.

The payment service user undertakes to employ the payment instrument in accordance with the terms governing the issue and use of the payment instrument, and to notify the payment service provider, or the entity specified by the latter, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

The payment service provider, undertakes, among other things, to make sure that the personalised security features of the payment instrument are only accessible to the payment service user entitled to use the payment instrument, and to ensure that appropriate means are available at all times and free of charge to enable the payment service user to make the aforementioned notification in the event of loss, theft or misappropriation of the payment instrument or its unauthorised use.

It should be noted that, in the case of an unauthorised payment transaction, the payer's payment service provider must refund to the payer immediately the amount of the transaction. However, the payer shall bear the losses relating to any unauthorised payment transactions, up to a maximum of €150, resulting from the use of a lost or stolen payment instrument and shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil his obligations with intent or gross negligence.

EXECUTION OF PAYMENT ORDERS

The point in time of receipt of a payment order shall be the time when the payment order transmitted directly by the payer or indirectly by or through a payee is received by the payer's payment service provider. If the point in time of receipt is not on a business day for the payment service provider, the payment order shall be deemed to have been received on the following business day. The debit value date for the payer's payment account shall be no earlier than the point in time at which the amount of the payment transaction is debited to that payment account.

In payment transactions denominated in euro within the EU, the payer's payment service provider shall ensure that the amount of the payment transaction is credited to the payee's payment service provider's account at the latest by the end of the next business day.[34] This period

34. Nevertheless, until 1 January 2012, a payer and his payment service provider may agree on a period no longer than three business days and, in the case of transactions in which the funds are paid and received in Spain, no longer than two business days. These periods may be extended by a further business day for paper-initiated payment transactions.

may be extended by a further business day for paper-initiated payment transactions. The payment service provider of the payee shall ensure that the funds are at the payee's disposal immediately after they are credited to the payee's payment service provider's account. The credit value date shall be the business day on which the amount of the payment transaction is credited to the payee's payment service provider's account.[35]

As a general requirement, the payment service provider of the payer, the payment service provider of the payee and any intermediaries of the payment service providers must transfer the full amount of the payment transaction and refrain from deducting charges from the amount transferred. However, the payee and his payment service provider may agree that the payment service provider deduct its charges from the amount transferred before crediting it to the payee. Payment orders are generally irrevocable, except for certain exceptions provided by law.

In other payment transactions, the payment service user and his payment service provider may agree on a longer period, which, in the case of intra-Community payment transactions denominated in a currency other than the euro, shall not exceed four business days following the point in time of receipt of the order.

The Law covers numerous cases of non-execution or defective execution of payment transactions, and sets out the related indemnities.

OUT-OF-COURT COMPLAINT AND REDRESS PROCEDURES FOR THE SETTLEMENT OF DISPUTES

Payment service providers shall be subject to the mechanisms envisaged in the legislation on financial service customer protection and, specifically, in Law 44/2002 of 22 November 2002 on financial system reform measures. In this respect, payment service providers must have a customer service department to receive and resolve claims and complaints. In those cases in which the payment service users are consumers,[36] the parties may, when they so agree, take their dispute to consumer arbitration.

LEGAL REGIME FOR PAYMENT INSTITUTIONS

Payment institutions are legal persons that have been granted authorisation to provide and execute all or some of the aforementioned payment services throughout the Community. The name "entidad de pago" (payment institution) and its (Spanish) acronym "EP" are reserved to these institutions as may be provided by law.

The creation of payment institutions and the establishment in Spain of branches of payment institutions not authorised in an EU Member State shall be the responsibility of the Ministry for Economic Affairs and Finance, upon a report from the Banco de España and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences on such matters as fall within their competence. Payment institutions must meet certain requirements, such as sound administrative and accounting procedures, adequate internal control mechanisms, the suitability of the shareholders or members that have qualifying holdings, the professional and commercial integrity of its managers, and the regulatory minimum capital requirements.

Payment institutions shall not conduct the business of taking deposits or other repayable funds nor issue electronic money, and must provide payment services through certain ac-

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35. This same period shall apply for the payment service provider to place the funds at the disposal of the payee when the latter does not have a payment account with the payment service provider. **36.** Within the meaning of the consolidated text of the General Consumer and User Protection Law and other supplementary laws, enacted by Legislative Royal Decree 1/2007 of 16 November 2007.

counts, termed payment accounts, subject to restrictive conditions regulated by law. However, they may engage in economic activities other than the provision of payment services. They may also grant credit related to payment services if certain conditions are met, e.g. it must be granted from funds other than those received for other payment transactions, and they must be repaid within a short period which shall in no case exceed twelve months

SAFEGUARDING REQUIREMENTS

Payment institutions have to safeguard funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions. For this purpose, they shall be deposited in a separate account in a credit institution, invested in secure, liquid assets or covered by an insurance policy or some other comparable guarantee.

CAPITAL AND OWN FUNDS

Payment institutions shall hold at all times, in addition to the minimum required capital, a sufficient volume of own funds in proportion to certain business indicators, as provided by law. The Banco de España may, based on its assessment of the payment institution's risk management processes and internal control mechanisms, require a payment institution to hold an amount of own funds which is up to 20% higher or lower than the minimum required capital.

If the payment institution does not reach the required minimum levels of own funds, it must allocate to reserves such percentages of its net profit or surplus as may be provided by law; for this purpose, it must subject its profit distribution to prior authorisation by the Banco de España.

EXERCISE OF THE RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Spanish payment institutions may operate in another EU Member State through the establishment of a branch or in exercise of the freedom to provide services, subject to prior notification to the Banco de España, accompanied by the documentation specified in the Law.[37] However, their activity in third countries, including through the formation or acquisition of subsidiaries, shall be subject to authorisation by the Banco de España as provided by law.

Payment institutions authorised in another EU Member State may operate in Spain either through the establishment of a branch or in exercise of the freedom to provide services, unless upon inception they availed themselves of any of the exceptions envisaged in Directive 2007/64/EC.

SUPERVISION AND SANCTIONS

The control and inspection of payment institutions shall be the responsibility of the Banco de España, within the framework established by Law 26/1988 of 29 July 1998 on the discipline and intervention of credit institutions, as adapted in accordance with law. The scope of this legal regime shall also include any natural and legal persons with a qualifying holding in a payment institution. Supervision may also cover the Spanish persons controlling payment institutions of other EU Member States, within the framework of cooperation with the authorities responsible for the supervision of these institutions.

The Banco de España will cooperate with, and may enter into cooperation agreements with, the authorities entrusted with similar functions in other Member States. If they do not belong to the EU, it will insist on reciprocity and on the competent authorities being bound by an obligation of professional secrecy the conditions of which are at least equivalent to those set by Spanish law.

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37. Including a programme of activities, the names of those reponsible for management of the branch, its organisational structure and planned address, and the type of payment services it is intended to provide.

TRANSITIONAL REGIME FOR PAYMENT SERVICES

The Law establishes a transitional regime for authorised currency-exchange bureaux, at the end of which they must have converted themselves into a payment institution or have ceased to provide payment services.

Further, the contracts which credit institutions operating in Spain have with their customers must be adapted to the provisions of the Law within twelve months, or within eighteen months for those relating to credit or debit cards, from the date it came into force, which was 4 December. This is without prejudice to the immediate application to natural persons of any more advantageous conditions which may derive from the Law.

Electronic money institutions: new directive

Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ L of 10 October 2009), which updates and replaces Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000,[38] relates to the taking up, pursuit and prudential supervision of the business of electronic money institutions (hereinafter, the Directive). It also amends Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006[39] on the taking up and pursuit of the business of credit institutions (recast).

The Directive reviews the regulations governing electronic money institutions (ELMIs),[40] with a view to removing barriers to market entry and facilitating the taking up and pursuit of the business of electronic money issuance,[41] and to ensuring equal treatment for all payment service providers, consistent with the provisions of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market,[42] many of whose articles apply.

Table 3 presents a summary of the key elements of the Directive as compared with the provisions of the one it replaces.

SCOPE OF APPLICATION

The Directive applies to payment service providers that issue electronic money, that is: electronic money institutions (ELMIs); credit institutions; post office giro institutions that are authorised to issue electronic money; the ECB; national central banks; and other public authorities when not acting in their capacity of public authorities.

The Directive shall not apply to monetary value stored on specific prepaid instruments, designed to meet specific needs and with limited use, either because the holder may only acquire goods or services in the premises of the issuer of these instruments, or because the instruments may only be used to acquire a limited range of goods or services within a limited network of service providers that have a direct commercial agreement with the respective issuer.

The Directive excludes ELMIs from the definition of credit institution set out in Directive 2006/48/EC, as they can neither receive deposits from the public nor grant credit from funds received from the public, including them, henceforth, in the group of financial institutions.

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38. See "Financial Regulation: 2000 Q4", *Economic Bulletin*, January 2001, Banco de España, pp. 73-74. **39.** See "Financial Regulation: 2006 Q2", *Economic Bulletin*, July 2006, Banco de España, pp. 142-144. **40.** Legal persons granted authorisation to issue electronic money. **41.** The Directive defines electronic money as all electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by a natural or legal person other than the electronic money issuer. **42.** Directive 2007/64/EC creates a modern and coherent legal framework for payment services, including the coordination of national provisions on prudential requirements for a new category of payment service providers, namely payment institutions. As indicated above, the Directive was transposed into Spanish law by Law 16/2009 of 13 November 2009 on payment services.

AMENDED RULES ON ELECTRONIC MONEY INSTITUTIONS (ELMIs)

TABLE 3

DIRECTIVE 2000/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 18 SEPTEMBER 2000	DIRECTIVE 2009/110/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 SEPTEMBER 2009
Scope of application	
ELMIs and credit institutions that issue electronic money.	Plus post office giro institutions that are authorised to issue electronic money, the ECB and national central banks, and other public authorities when not acting in their capacity of public authorities.
Conditions for the taking up, pursuit and prudential supervision of the business of ELMIs	
Existence of business management methods and internal control mechanisms proportional to the operational and financial risks.	Plus a description of their structural organisation, together with the identity of persons with qualifying holdings and of those responsible for management of the ELMI.
Initial capital no less than €1,000,000.	Initial capital no less than €350,000.
Own funds representing no less than 2% of their outstanding financial liabilities deriving from the electronic money in circulation, or of the average of the overall amount of said liabilities in the previous six months, whichever is higher.	In addition, the funds required for provision of payment services, calculated in accordance with the rules established for payment institutions in Directive 2007/64/EC. Moreover, based on assessment of the risk management and internal control processes, the competent authorities may require that an ELMI's own funds amount to up to 20% more than the minimum figure.
Not envisaged.	The competent authorities must be informed in the event of any decision to acquire or sell, whether directly or indirectly, a qualifying holding, or to continue raising or reducing, whether directly or indirectly, any such qualifying holding to 20%, 30% or 50%, or in the event that the ELMI becomes or ceases to be a branch thereof.
Not envisaged.	Distribution and redemption of electronic money through natural or legal persons. Issue of electronic money through agents.
Not envisaged.	In addition to electronic money issuance, ELMIs shall be entitled to carry out other business activities, such as providing payment services, granting credit in connection with these payment services, providing operational and auxiliary services, and payment systems management.
Safeguarding requirements	
Not envisaged.	ELMIs shall safeguard funds received in exchange for electronic money issued, together with funds received from payment service users or from the performance of payment services, as envisaged for payment institutions in Directive 2007/64/EC. Nevertheless, regarding safeguarding of funds received for electronic money issuance, the Directive establishes the assets to be considered secure, low-risk assets.
Relations with third countries	
Not envisaged.	The rules applicable to branches of ELMIs that have their registered office outside the EU may not be more favourable than those envisaged for Community-based institutions. The EU may enter into agreements with third countries providing for application of rules granting branches of ELMIs in these countries the same treatment throughout the EU.
Issue and redemption of electronic money	
Holders of electronic money may, during the period of validity, ask the issuer to redeem it at par value, in coins and banknotes or by transfer to an account, free of charges other than those strictly necessary to carry out the transaction.	Electronic money shall be redeemed to the holder, whenever so requested by the holder, at par value. Redemption may be subject to a fee only in certain cases, and only if stated in the contract; moreover, any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer.
Not envisaged.	The granting of interest or any other benefit related to the length of time during which the electronic money is held is prohibited. Holders of electronic money shall have access to out-of-court complaint and redress procedures for the settlement of disputes on the same terms as envisaged in Directive 2007/64/EC.

SOURCES: BOE and Banco de España.

CONDITIONS FOR THE TAKING UP, PURSUIT AND PRUDENTIAL SUPERVISION OF THE BUSINESS OF ELMIS

The procedures and requirements for application for, and granting of, authorisation are identical to those established in Directive 2007/64/EC for payment institutions. The conditions for being granted, and maintaining, authorisation as an electronic money institution include, therefore, having business management methods and internal control mechanisms proportional to the operational and financial risks assumed by institutions of this kind in the exercise of their business. They must also provide a description of their structural organisation, and the identity of persons with qualifying holdings and of the persons responsible for management of the ELMI.

Member States shall require ELMIs to hold, at the time of authorisation, initial capital of no less than €350,000 (previously €1,000,000). Moreover, the competent authorities must receive advance notice in the event that any natural or legal person decides to acquire or sell, whether directly or indirectly, a qualifying holding[43] in an ELMI, or to continue raising or reducing, whether directly or indirectly, a qualifying holding to 20%, 30% or 50%, or in the event that the ELMI becomes or ceases to be a branch thereof.

If the influence exerted by any persons that have acquired qualifying holdings is likely to be detrimental to the sound and prudent management of the institution, the competent authorities shall declare their objection or shall take other appropriate measures to terminate this situation.

Own funds are calculated as the sum required for electronic money issuance, representing no less than 2% of the average amount of electronic money in circulation in the previous six months, plus the funds required for provision of payment services, calculated in accordance with the rules established for payment institutions in Directive 2007/64/EC. Moreover, based on assessment of the risk management and internal control processes, the competent authorities may require that an ELMI have own funds of up to 20% more than the minimum figure.

In addition to electronic money issuance, ELMIs shall be entitled to carry out other business activities, including providing payment services (listed at Annex to Directive 2007/64/EC)[44] and granting credit in connection with the aforesaid services (provided this credit is not granted from funds received in exchange for electronic money).

Member States shall allow ELMIs to distribute and redeem electronic money through natural or legal persons acting on their behalf. Should they wish to distribute electronic money in another Member State by engaging a natural or legal person,[45] or through agents,[46] ELMIs shall follow the procedures established in Directive 2007/64/EC.

SAFEGUARDING REQUIREMENTS

ELMIs shall safeguard funds received in exchange for electronic money issued, together with funds received from payment service users or from the performance of payment services, as envisaged for payment institutions in Directive 2007/64/EC. Nevertheless,

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43. A qualifying holding means a direct or indirect holding in an ELMI representing 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the institution. **44.** Including, in particular: services enabling cash deposits in and cash withdrawals from payment accounts, and all the operations required for operating a payment account; execution of payment transactions, including transfers of funds; execution of payment transactions where the funds are covered by a credit line for a payment service user; and money remittance. **45.** Specifically, they shall inform the competent authorities in their home Member State, which shall inform the competent authorities of the host Member State, indicating the name and address of the institution, the names of those responsible for management of the branch and details of its organisational structure and of the kind of payment services to be provided in the territory of the host Member State. **46.** They shall inform the competent authorities in their home Member State of the agent's details, including, inter alia, a description of the internal control mechanisms to be used relating to money laundering and terrorist financing, and the identity of those responsible for management. Once they have received this information, the competent authorities may then include the agent in a public register, as envisaged in Directive 2007/64/EC.

regarding safeguarding of funds received for electronic money issuance, the Directive establishes which assets are to be considered secure, low-risk assets, although it does not envisage the possibility of applying certain exemptions or discretion as is envisaged in Directive 2007/64/EC for funds received in connection with the provision of payment services.

RELATIONS WITH THIRD COUNTRIES

The rules applicable to branches of ELMIs that have their registered office outside the EU may not be more favourable than those envisaged for Community-based institutions. The EU may enter into agreements with third countries under which the branches of ELMIs from these countries receive the same treatment in the EU.

ISSUE AND REDEMPTION OF ELECTRONIC MONEY

Member States shall ensure that electronic money is issued at par value upon the receipt of funds and that it is redeemed, at the request of the holder, also at par value. Redemption may be subject to a fee only in certain cases, and only if stated in the contract; moreover, any such fee shall be proportionate and commensurate with the actual costs incurred by the electronic money issuer. Holders of electronic money shall have access to out-of-court complaint and redress procedures for the settlement of disputes on the same terms as envisaged in Directive 2007/64/EC.[47]

Member States shall adopt and apply the Directive by 30 April 2011, or by 30 October 2011 in the case of ELMIs that were operating before said date under the previous legislation.

Undertakings for collective investment in transferable securities (UCITS): new directive

*Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 (*OJ L of 17 November 2009) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)[48] replaces Council Directive 85/611/EEC of 20 December 1985 and its subsequent amendments.[49]

In general, the Directive follows the regulatory structure of its predecessor. The key changes include: the introduction of the master-feeder structure, both where the master and feeder are established in the same Member State and where they are established in different Member States; mergers of UCITS; and the introduction of new rules of conduct and of increased reporting requirements for UCITS, designed to enhance investor protection.

Table 4 presents a summary of the key elements of the Directive as compared with its predecessor.

OBJECT AND SCOPE OF APPLICATION

Similarly to its predecessor, the Directive applies to UCITS[50] established in the Member States, aiming to provide a set of common minimum rules for the authorisation, supervision, structure and activities of these undertakings and the information they are required to publish. UCITS may be organised as investment funds managed by a management company or as investment companies.

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47. Member States shall ensure that procedures are set up to enable complaints to be submitted to the competent authorities with regard to alleged infringements by ELMIs, together with the corresponding penalties. **48.** Similar to Spain's "instituciones de inversión colectiva". **49.** Directive 85/611/EEC was amended by Directive 88/20/EEC of 22 March 1988, Directive 95/26/EC of 29 June 1995, Directive 2000/12/EC of 20 March 2000, Directive 2001/107/EC of 21 January 2002, Directive 2001/108/EC of 21 January 2002, Directive 2004/39/EC of 21 April 2004, Directive 2005/1/EC of 9 March 2005 and Directive 2008/18/EC of 11 March 2008. **50.** UCITS have, as their sole object, the collective investment of capital raised from the public in transferable securities or in other liquid financial assets. They operate on the principle of risk-spreading and their units are repurchased or redeemed, directly or indirectly, at the request of the unit holders, out of the undertakings' assets. UCITS shall be required to act so as to ensure that the stock exchange value of their units does not significantly vary from their net asset value.

UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS)

TABLE 4

COUNCIL DIRECTIVE 85/611/EEC OF 20 DECEMBER 1985 (a)	DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 JULY 2009
Object and scope of application	
Applicable to UCITS established in Member States, whose sole object consists of collective investment of capital raised from the public in transferable securities or in other liquid financial assets.	No significant changes.
Authorisation of UCITS	
Minimum initial capital: €125,000 (management companies) or €300,000 (investment companies), plus an additional amount according to the value of the portfolios held, up to a maximum of initial plus additional capital of €10 million.	No significant changes.
Programme of activity; identity of shareholders or members with qualifying holdings; good organisation and internal control procedures; management led by persons of sufficiently good repute and sufficiently experienced.	In addition, the conduct of the business must be managed by at least two persons.
Freedom of establishment and freedom to provide services	
UCITS authorised in their home Member States may conduct their business throughout the EU, by the establishment of branches or under the freedom to provide services.	No significant changes.
Investment policy	
UCITS may invest in: transferable securities and money market instruments admitted to or dealt in on a regulated market; units of UCITS; deposits with credit institutions payable on demand or maturing in no more than 12 months; financial derivative instruments; and OTC derivatives that meet certain conditions, inter alia.	No significant changes.
Limits on UCITS investments. UCITS shall invest no more than: a) 5% of their assets in transferable securities and money market instruments issued by the same body, save in the case of assets issued or guaranteed by a Member State or public body, in which case they may invest up to 100%; b) 20% of their assets in deposits made with the same body; c) The risk exposure to a UCITS counterparty in an OTC derivative transaction may not exceed certain percentage limits. d) 10% of their assets in units of other UCITS or other collective investment undertakings, save in certain cases when this limit may be raised to a maximum of 20%. Investments in collective investment undertakings other than UCITS may not exceed, on aggregate, 30% of UCITS assets.	No significant changes.
Master-feeder structure	
Not envisaged.	Master-feeder structures shall be authorised, both where the master and feeder are established in the same Member State and where they are established in different Member States.
	Feeder UCITS are UCITS (or investment compartments thereof) authorised to invest at least 85% of their assets in units of another UCITS, namely the master UCITS (or an investment compartment thereof). No feeder UCITS should be authorised to invest in more than one master UCITS.
Mergers	
Not envisaged.	Member States shall require merged UCITS to provide their respective unit-holders with appropriate and accurate information on the merger, to enable them to make an informed judgement of the impact of the merger on their investment and to exercise their rights.
Rules of conduct	
These include defending the interests managed and avoiding conflicts of interest.	In addition, where a UCITS is managed by a management company authorised in a Member State other than the UCITS home Member State, the management company shall adopt appropriate procedures and measures to deal with investor complaints.
Investor information	
UCITS shall publish a single prospectus, an annual report for each financial year and a half-yearly report covering the first six months of the financial year. These documents shall be provided free of charge to investors on request.	No significant changes (the distinction between a simplified and a complete prospectus disappears).
Not envisaged.	In addition, UCITS shall draw up "key investor information", as a specific document to be provided to investors, in good time before the subscription of the UCITS, with information on the key features of the UCITS.
Supervision of UCITS	
Member States shall determine the system of penalties applicable to infringements of the national provisions adopted pursuant to the Directive.	In addition, it is specified that the system of penalties shall include a series of effective, proportionate and dissuasive measures.
The competent authorities shall cooperate with each other, and may request the cooperation of the competent authorities of another Member State, in supervisory activities or for the purpose of on-site monitoring or investigation in the territory of said other Member	No significant changes.

SOURCES: OJ L and Banco de España.

a. Consolidated version including subsequent amendments.

AUTHORISATION OF UCITS

The conditions of authorisation remain the same, with the addition that the conduct of the business must be managed by at least two persons who are of sufficiently good repute and sufficiently experienced. By virtue of the mutual recognition principle, the authorisation shall be valid for all the Member States.

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Member States shall ensure that UCITS authorised in their home Member State may conduct their business throughout the EU, either by the establishment of a branch or under the freedom to provide services. The establishment of a branch or the provision of services may not be made subject to any authorisation requirement or to any requirement to provide capital.

UCITS shall be free to designate a management company authorised in a Member State other than their home Member State, provided that said management company complies with the provisions of the Directive.

OBLIGATIONS OF THE DEPOSITARY

As under the previous regulations, the assets of UCITS (investment funds or companies) shall be entrusted to a depositary for safekeeping. Said depositary must have its registered office in the UCITS home Member State. No company shall act as both management company, or investment company, as appropriate, and depositary. The depositary shall act solely in the interest of the unit-holders.

As a new provision, where the management company's home Member State is not the UCITS home Member State, the depositary shall sign a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform the functions entrusted to it in the Directive.

INVESTMENT POLICY

The Directive introduces no significant changes regarding investment policy and investment limits for UCITS (see Table 4).

MASTER-FEEDER STRUCTURES

To facilitate the effective operation of the internal market and to ensure an equal level of investor protection throughout the EU, the Directive introduces the master-feeder structure, meaning that Member States shall authorise UCITS both where the master and feeder are established in the same Member State and where they are established in different Member States.

Feeder UCITS are UCITS (or investment compartments thereof) that have been authorised to invest at least 85% of their assets in units of another UCITS, namely the master UCITS (or an investment compartment thereof). They may also hold up to 15% of their assets in instruments such as: a) ancillary liquid assets; b) financial derivative instruments for hedging purposes; and c) in the case of investment companies, movable and immovable property that is essential for the direct pursuit of their business. No feeder UCITS should be authorised to invest in more than one master UCITS.

Master UCITS are characterised by having, among their unit-holders, at least one feeder UCITS and by having no investment in any feeder UCITS. In cases in which master UCITS have at least two feeder UCITS, certain investment limits applicable to UCITS shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors.

A feeder and a master UCITS should enter into a binding and legally enforceable agreement. However, if both UCITS are managed by the same management company, it will be sufficient for internal conduct of business rules to be established.

Lastly, the Directive lays down the rules permitting conversion of existing UCITS into feeder UCITS, together with details of the information and marketing communications of feeder UCITS, with a view to ensuring a high level of investor protection.

MERGERS OF UCITS

The Directive also includes, as a new feature, rules on mergers of UCITS (and investment compartments thereof), including cross-border mergers between all kinds of UCITS, with no need for Member States to provide for new legal forms of UCITS in their national law, for improved functioning of the internal market.

Member States shall require merged UCITS to provide their respective unit-holders with appropriate and accurate information on the merger, to enable them to make an informed judgement of the impact of the merger on their investment and to exercise their rights. This information shall be provided to unit-holders only after the competent authorities of the merged UCITS home Member State have authorised the operation.

Where the national laws of Member States require unit-holders to approve mergers between UCITS, Member States shall ensure that such approval does not require more than 75% of the votes cast by unit-holders present or represented at the general meeting.

The laws of Member States shall provide that unit-holders have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, their conversion into units in another UCITS with similar investment policies and managed by the same management company or by any other company with which the management company is linked.

RULES OF CONDUCT

Management companies and, where appropriate, investment companies shall observe, at all times, a set of rules of conduct designed to ensure that said companies act in the best interest of the UCITS managed and of market integrity, and to avoid conflicts of interest and, when they cannot be avoided, to ensure that the UCITS managed receive fair treatment.

As a new feature, the Directive establishes that where a UCITS is managed by a management company authorised in a Member State other than the UCITS home Member State, the management company shall adopt and establish appropriate procedures and measures to deal with investor complaints. The management company shall also make available to the public or the competent authorities of the UCITS home Member State, inter alia and at their request, the designation of a contact person from among its employees to deal with information requests.

INVESTOR INFORMATION

UCITS shall publish: a single prospectus (the distinction between a simplified and a complete prospectus disappears); an annual report for each financial year and a half-yearly report covering the first six months of the financial year. These documents shall be provided free of charge to investors on request.

The prospectus shall contain the information necessary for investors to make an informed judgement on the proposed investment and, in particular, on the fund's risk profile. The prospectus may be provided in a durable medium or by means of a website.

As a new feature, UCITS shall draw up "key investor information", as a specific document to be provided to investors free of charge, in good time before the subscription of the UCITS, in a durable medium or by means of a website. This document shall provide information on the key features of the UCITS, as envisaged in the Directive.

SUPERVISION OF UCITS

The competent authorities of UCITS home Member States shall be responsible for their prudential supervision, irrespective of whether or not the company has branches or provides services in another Member State, without prejudice to the provisions of this Directive that assign this responsibility to the competent authorities of a management company's host Member State.

Member States shall lay down the rules on measures and penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all effective, proportionate and dissuasive measures necessary to ensure said rules are enforced.

The competent authorities of the Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive or under national law.

Lastly, the Directive includes a series of special provisions applicable to UCITS that market their units in Member States other than those in which they are established.

Member States shall adopt and apply this Directive from 1 July 2011.

Directive on the taking-up and pursuit of the business of insurance and reinsurance

Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 (OJ L of 17 December 2009) on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) has been published.

OBJECTIVES AND AREA OF APPLICATION

The Directive establishes a single legal framework for insurance and reinsurance firms (hereinafter, insurance undertakings) to conduct their business throughout the European Union, representing an essential element for achievement of the internal market in this sector.

It also incorporates, in a single text, the regulations on the taking-up of the business of insurance[51] and reinsurance, together with the rules on the supervision of insurance groups and the procedures for reorganisation and winding-up of insurance firms, inter alia, repealing a wide range of Directives that previously regulated this sector.[52]

Moreover, the Directive follows the rationale of its predecessors, in line with other financial sector regulations, establishing such harmonisation as is necessary and sufficient to achieve the mutual recognition of authorisations and supervisory systems, and thus a single authorisation valid throughout the EU and which allows undertakings to be supervised by their home Member State and enables them to pursue any or all of their activities by establishing branches or by providing services.

The Directive also brings to insurance the new supervisory approach contained in Basel II[53] applicable to credit institutions, with a view to ensuring that undertakings' own funds levels are

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51. Life and non-life. **52.** Including Directive 64/225 of 25 February 1964; Directive 73/239 of 24 July 1973 (first directive relating to direct insurance other than life assurance); Directive 73/240 of 24 July 1973; Directive 78/473 of 30 May 1978; Directive 87/344 of 22 June 1987; Directive 88/357 of 22 June 1988 (second directive relating to direct insurance other than life assurance); Directive 92/49 of 18 June 1992 (third directive relating to direct insurance other than life assurance); Directive 98/78 of 27 October 1998; Directive 2001/17 of 19 March 2001; and Directive 2002/83 of 5 November 2002. **53.** The 2004 Basel Capital Accord (Basel II), formalised by the Basel Committee on Banking Supervision on 26 June 2004, established a set of structured measures built on three mutually reinforcing pillars: the adoption of uniform rules for determining minimum capital requirements based on the risks assumed (Pillar 1); supervisory review, with a view to promoting enhanced internal risk management at institutions (Pillar 2); and market disclosures on key aspects relating to business profile, risk exposure and risk management methods (Pillar 3).

consistent with their overall risk profile. In effect, the backbone of the Directive aims to establish an appropriate solvency and supervision regime for undertakings, to enhance protection both for policy holders and beneficiaries.

SOLVENCY REGIME

A new solvency regime is established similar to that applicable to other financial institutions, adopting an economic risk-based approach that permits correct assessment and management of risk. The Directive also introduces specific rules for the valuation of assets and liabilities, including technical provisions.

Three tiers of own funds are established, according to whether they are basic or ancillary own funds and to whether they are available, or can be called up on demand, to absorb losses, on a going-concern basis as well as in the case of wind-ups.

The Directive defines the Solvency Capital Requirement, which should reflect a level of own funds that enables undertakings to absorb significant losses and gives reasonable assurance to policy holders and beneficiaries that payments will be made as they become due. This should be determined as the economic capital to be held by undertakings to ensure they will be in a position, with a probability of at least 99.5%, to meet their obligations to policy holders and beneficiaries over the following 12 months. Said economic capital should be calculated, at least once a year, on the basis of the undertakings' risk profile, or in all cases in which the risk profile is substantially altered.[54]

A standard formula is established for calculation of the Solvency Capital Requirement,[55] although, in specific circumstances, partial or full internal models may be used for this purpose, subject to prior supervisory approval on the basis of harmonised processes and standards.

The Directive also establishes a Minimum Capital Requirement, representing the minimum level of security below which the amount of financial resources should not fall, such that, in the event that undertakings are unable to re-establish the aforesaid amount within a short period of time, their authorisation should be withdrawn. Said Minimum Capital Requirement shall be determined on the basis of the value-at-risk of undertakings' basic own funds, subject to a confidence level of 85%, over a one-year period. Moreover, it shall neither fall below 25% nor exceed 45% of their Solvency Capital Requirement.

Furthermore, undertakings should include, as an integral part of their business strategy, a regular practice of assessing their overall solvency needs with a view to their specific risk profile (hereinafter, "own-risk and solvency assessment"). Said assessment neither requires the development of an internal model nor serves to calculate a capital requirement other than the Solvency or Minimum Capital Requirements. The results of each assessment should be reported to the supervisory authorities as part of the information to be provided for supervisory purposes.

To strengthen the solvency regime, undertakings shall have an efficient risk management and internal control system which shall include, at least, administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels and a compliance function.

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54. Following the supervisory review process, supervisory authorities may raise the Solvency Capital Requirement, setting a capital add-on, in the cases envisaged in the Directive. **55.** Simplified approaches to the calculation of the Solvency Capital Requirement in accordance with the standard formula are established for small and medium-sized undertakings.

Insurance undertakings shall also provide for an internal audit function to verify the adequacy and effectiveness of the internal control system and of other elements of the system of governance.

SUPERVISION OF UNDERTAKINGS AND GROUPS

The Directive establishes supervisory convergence in the Member States, in respect both of supervisory tools and practices, by application of the laws, regulations and administrative provisions adopted pursuant to the Directive. Where undertakings form part of a group, group solvency shall be assessed; in this case, the Solvency Capital Requirement shall be calculated taking into account the global diversification of risks that exist across all the undertakings in the group.

It also reflects an innovative supervisory model in which a key role is assigned to a group supervisor appointed from among the supervisory authorities involved, providing for the exchange of information between the supervisory authorities of the Member States and for cooperation agreements with third countries.

Lastly, rules are established on qualifying holdings[56] similar to those applicable to other financial institutions, and reorganisation measures and winding-up proceedings for undertakings are laid down, similar to those envisaged in Directive 2001/17/EC of 19 March 2001.

The Directive, which came into force on 6 January 2010, should be transposed into Member States' national law by 31 October 2012.

Mergers and divisions: amendment of reporting requirements

Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 (OJ L of 2 October 2009) amends Council Directive 77/91/EEC of 13 December 1976, Council Directive 78/855/EEC of 9 October 1978, Council Directive 82/891/EEC of 17 December 1982 and Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005, as regards reporting and documentation requirements in the case of mergers and divisions.

The Directive reviews the reporting requirements and reduces the administrative burden in the formation of new companies via merger or division. Specifically, companies may be released from the need to present an independent expert's report on the draft terms of merger or division. It also envisages that the merger or division report and the expert's report may be drawn up by the same expert, and dispenses with the need for presentation of detailed reports and information on mergers and divisions of companies where all the shareholders of the firms involved agree that these requirements be dispensed with.

Merging companies shall be exempt from the publication requirement if they make the draft terms of the merger available on their website, free of charge, for the public, for at least one month before the date set for the general meeting called to that effect. However, Member States may require that such publication be made through the central electronic platform, or on any other website designated by them for that purpose. Said reference shall include the date of publication of the draft terms of merger on the website and shall be accessible to the public free of charge.

Lastly, reporting requirements are reduced in the case of cross-border mergers by absorption where the parent company's holding in the subsidiary amounts to 90% or more of the shares

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56. In line with other Community legislation, the Directive defines qualifying holdings as direct or indirect holdings representing 10% or more of the capital or of the voting rights, or which permit exercise of a significant influence over the management of the undertaking.

and other securities conferring voting rights. Likewise in the case of certain divisions, especially where companies are split into new companies that are owned by the shareholders in proportion to their rights in the company being divided.

The Directive came into force on 23 October 2009 and shall be applied by Member States by 30 June 2011.

Credit rating agencies: new EU regulations

Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L of 17 November 2009) on credit rating agencies aims to establish a set of minimum common rules for credit rating agencies established and registered in the EU.

The Regulation shall apply to credit ratings issued by agencies registered in the EU, with a view to enhancing the integrity, transparency and reliability of credit rating activities. Credit institutions, investment firms, etc. that use credit ratings for regulatory purposes may only do so if these ratings have been issued by agencies established in the EU and registered in accordance with the provisions of this Regulation.[57] Certain types of credit ratings, such as those produced pursuant to an individual order and not intended for public disclosure, as well as research reports, investment recommendations and other opinions on the value or price of financial instruments or obligations, fall beyond the scope of application of this Regulation.

Where a prospectus contains a reference to a credit rating, the issuer shall ensure that the prospectus also includes clear and prominent information stating whether or not such credit ratings are issued by a credit rating agency established and registered in the EU.

REGISTRATION OF CREDIT RATING AGENCIES

Credit rating agencies established in the EU that wish to register in a Member State shall submit application for registration to the Committee of European Securities Regulators (CESR).[58] These applications must contain certain information, described at annex to the Regulation, including, inter alia, details of their organisational structure, financial resources, staffing and the level of staff expertise, a programme of operations indicating where the business activities are to be carried out and branches to be established and the type of business envisaged.

They shall also ensure that the senior management are of good repute and are sufficiently skilled and experienced, to facilitate the sound and prudent management of the credit rating agency. Moreover, at least one third – but no less than two – of the members of the board of directors or supervisory board must be independent members who are not involved in credit rating activities.

Credit rating agencies shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective safeguard arrangements for data processing systems, together with the appropriate means to ensure that any conflicts of interest are identified, eliminated and disclosed.

Credit rating agencies registered by the competent authority of a Member State shall be given a European passport to operate throughout the EU.

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57. Credit rating agencies established in the EU and registered in accordance with the provisions of this Regulation may, under a series of conditions, "endorse" ratings issued by other credit agencies belonging to the same group in non-EU countries. Said credit ratings shall be treated as if they had been issued by the registered credit rating agencies endorsing them. **58.** Created by virtue of Commission Decision 2009/77/EC of 23 January 2009.

CREDIT RATING REGIME

Credit rating agencies shall take all necessary measures to safeguard their credit ratings from any conflicts of interest, and to ensure at all times the quality, integrity and thoroughness of the credit rating and review process. Furthermore, they shall disclose the methodologies, models and key assumptions used in their credit rating business, and shall take all necessary measures to ensure that the information used in assigning credit ratings is of sufficient quality and from reliable sources.

Credit rating agencies shall review their credit ratings and methodologies on an ongoing basis, and at least once a year or when material changes occur that could have an impact on the ratings. They shall also establish internal arrangements to monitor the impact on credit ratings of changes in macroeconomic and financial market conditions.

When agencies issue credit ratings for structured finance instruments, they shall ensure that rating categories attributed to these instruments are clearly differentiated from those used for any other entities, instruments or obligations.

Credit rating agencies shall report information on their historical performance data to a central repository established by the CESR, including the ratings transition frequency and information on credit ratings issued in the past and on changes therein.

EQUIVALENCE REGIME FOR CREDIT RATING AGENCIES ESTABLISHED IN THIRD COUNTRIES

Under this regime, certain credit ratings issued by credit rating agencies established in a third country may be used for regulatory purposes, provided said credit ratings refer to financial instruments issued, or to institutions established, in the country in which the credit rating agency is established. However, a series of conditions must also be met; inter alia, the credit rating agency must have verified and demonstrated that the credit rating business of the third-country agency meets a series of minimum requisites which are, in the view of the European Commission, as thorough as those established in this Regulation, and there must be an appropriate cooperation agreement between the competent authorities of the two countries concerned.

SUPERVISION OF CREDIT RATING AGENCIES

Credit rating agencies shall be supervised by the competent authorities of their home Member State, in cooperation with the competent authorities of the other Member States.[59] In this respect, Member States shall designate the competent authorities for supervision of credit rating agencies by 7 June 2010.

The Regulation lays down a series of supervisory measures for the competent authorities. Any breach of said measures may lead to a temporary ban on the issue of credit ratings, and even to withdrawal of registration. The Regulation also establishes the supervisory measures for competent authorities other than the competent authority of a credit rating agency's home Member State.

Member States may enter into cooperation agreements for exchange of information with the competent authorities of third countries, provided the information disclosed is subject to guarantees of professional secrecy.

The Regulation came into force on 7 December 2009.

Collective investment institutions: SOCIMIs

Law 11/2009 of 26 October 2009 (BOE of 27 October 2009) regulates listed real estate investment companies (*sociedades anónimas cotizadas de inversión en el mercado inmobiliario* or SOCIMIs). Table 5 presents the key new features introduced in the Law in summary form.

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59. To facilitate the exchange of information, upon receipt of an application for registration from a credit rating agency, the Member States shall establish colleges of competent authorities.

LISTED REAL ESTATE INVESTMENT COMPANIES (SOCIMIs): SUMMARY TABLE 5

Regulated by Law 11/2009 of 26 October 2009 (BOE of 27 October 2009) which came into force on 28 October 2009	
Corporate purpose	Acquisition and development of urban real estate for rental, and acquisition of other holdings.
Investment conditions	Balance sheet (asset side): at least 80% of their asset value in urban real estate for rental or holdings of assets constituting their main activity. Profit and loss account: at least 80% of their income from real estate rentals and holdings of assets constituting their main activity.
Share capital	Minimum capital: €15 million. The legal reserve may not exceed 20% of share capital. The shares must be admitted to listing on a regulated Spanish market or on a regulated market in any other EU or EEA Member State, throughout the tax period.
Distribution of dividends	a) At least 90% of the income from rentals; b) at least 50% of the income from the sale of real estate and shares and stakes held in other entities assigned to their main corporate purpose; and c) 100% of the income from dividends and shares in profit distributed by entities that constitute their corporate purpose.
Tax regime	
SOCIMIs	Corporate income tax rate: 19%. If the conditions established are not met, income shall be taxed at the general rate of corporate income tax (currently 30%). The dividends distributed by SOCIMIs shall not be subject to withholdings or prepayments, irrespective of the status of the shareholder receiving them.
Shareholders	- *Dividends distributed against profit or reserves under the special tax regime.* If the recipient is subject to personal income tax or to income tax on non-residents without a permanent establishment, they shall be considered tax-free income. If the recipient is subject to corporate income tax or to income tax on non-residents with a permanent establishment, the dividend income booked shall be multiplied by 100/81 to obtain the income to be included in the tax base. The double taxation tax credit is not applicable to this income. - *Dividends distributed against income obtained from the sale of holdings:* capital gains or losses shall be determined in line with the rules applicable to the taxpayers' respective taxes, with the specific features envisaged in the Law.

SOURCES: BOE and Banco de España.

SOCIMIs are public limited companies[60] whose main activities are: a) acquisition and development of urban real estate for rental;[61] b) holding of stakes in the capital of other SOCIMIs or other entities, whether or not resident in Spain, whose main corporate purpose is the acquisition of urban real estate for rental and which are subject to the same regime as the SOCIMIs; and c) holding of shares or stakes in real estate collective investment institutions, regulated in Law 35/2003 of 4 November 2003 on collective investment institutions.

In addition to this main corporate purpose, SOCIMIs may undertake other ancillary activities, provided the overall income from such activities represents less than 20% of their income in each tax period.

INVESTMENT CONDITIONS

SOCIMIs must have at least 80% of their asset value invested in urban real estate for rental, or in holdings (shares or stakes) constituting their main activity. Moreover, at least 80% of their income in any tax year must come from real estate rentals and from dividends or shares in profit deriving from said holdings.

60. These companies shall be governed by the provisions of this Law and, secondarily, by the provisions of the consolidated text of the Spanish Companies Law, approved by Legislative Royal Decree 1564/1989 of 22 December 1989, and by Law 24/1988 of 28 July 1988 on the securities market. **61.** Including residential and commercial property, student residences and residential homes, hotels, car parks and offices, inter alia. Development includes the refurbishment of buildings.

The real estate must be leased out for at least three years, or seven years in the case of property developed by the SOCIMI. Moreover, to ensure sufficient diversification of the real estate investment, SOCIMIs must have at least three properties in portfolio, none of which may represent more than 40% of their assets at the time of acquisition.

SHARE CAPITAL

SOCIMIs shall have minimum share capital of €15 million. Their legal reserves may not exceed 20% of their share capital. SOCIMIs' shares must be admitted to listing on a regulated Spanish market or on a regulated market in any other EU or EEA Member State, uninterruptedly throughout the whole tax period. This condition also extends to any holdings by SOCIMIs in the capital of non-resident entities subject to a similar regime.

DISTRIBUTION OF DIVIDENDS

SOCIMIs must distribute the profit obtained in the financial year in the first six months after year-end, as follows: a) at least 90% of the income from rentals, and the income from their ancillary activities; b) at least 50% of the income obtained from the sale of real estate and shares and stakes held in other entities assigned to their main corporate purpose (the remainder must be reinvested in other real estate or holdings assigned to said corporate purpose within a period of three years after the date of sale; failing this, such income must be distributed in its entirety together with any income from the financial year in which the reinvestment deadline falls); and c) 100% of the income from dividends and shares in profit distributed by entities the holding of which constitutes their corporate purpose.

BORROWED FUNDS

Borrowed funds may not exceed 70% of a SOCIMI's assets. Any funds obtained under the regulations governing the government-subsidised housing regime shall not be included in the calculation of this limit.

REPORTING REQUIREMENTS

SOCIMIs that have elected to apply the special tax regime shall include, in the notes to their financial statements, a section entitled "Reporting requirements deriving from SOCIMI status, Law 11/2009", in which they shall record the comprehensive information envisaged in the Law, including, inter alia, details on allocation of profit to reserves and distribution of dividends out of profit, specifying, where appropriate, the part deriving from income taxed at the standard rate.

SPECIAL TAX REGIME

SOCIMIs may choose to apply the special tax regime envisaged in the Law, which shall also apply to their shareholders, provided certain conditions are met, especially those on investment, distribution of dividends and reporting requirements, described above.[62]

The special tax regime is based on a corporate income tax rate of 19%.[63] However, if the income is obtained from the sale of real estate or holdings that fail to comply with the minimum time established, or if the acquirer is a related company belonging to the same group as the SOCIMI, or if the real estate is leased to an entity belonging to the same group, said income shall be taxed at the standard rate of corporate income tax (currently 30%).

Moreover, if residential property makes up more than 50% of a SOCIMI's assets, 20% of the income from residential property rentals shall be exempt.

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62. The tax regime established has economic effects similar to those applicable to conventional real estate investment trusts (REITs) in other countries which effectively tax shareholders rather than the residential investment entity. **63.** Initially 18%, subsequently raised to 19% in Law 26/2009 of 23 December 2009 on the State Budget for 2010.

The dividends distributed by SOCIMIs shall not be subject to withholdings or prepayments, irrespective of the status of the shareholder receiving them.

Regarding the special tax regime applicable to shareholders, the Law establishes as follows:

If the recipient of dividends distributed out of profit or reserves corresponding to financial years in which the special tax regime is applicable is subject to personal income tax or to income tax on non-residents without a permanent establishment, the dividends shall be deemed to be income exempt from those taxes. If the recipient is subject to corporate income tax or to income tax on non-residents with a permanent establishment, the dividend income booked shall be multiplied by 100/81[64] to obtain the income to be included in the tax base. The double taxation tax credit is not applicable to this income. In this case, a credit for 19%[65] (or for the rate applicable to the taxpayer, if lower) of the income included in the tax base may be taken from the gross tax payable.

In the case of dividends distributed out of income from the sale of holdings in the capital of SOCIMIs, capital gains or losses shall be determined in line with the rules applicable to the taxpayers' respective taxes, with the specific features envisaged in the Law.

A series of circumstances, such as exclusion from listing on regulated markets, substantial breach of the reporting requirements or failure to resolve to distribute and pay dividends, whether in full or in part, on the terms and within the periods established, shall lead to forfeiture of the special tax regime, following which the SOCIMI shall be taxed under the general corporate income tax regime.

Lastly, a series of special rules are established on the entry to and exit from the special regime, to ensure correct taxation of the income obtained, especially that from the sale of real estate owned by SOCIMIs during tax periods in which they have been taxed under the special regime or under another regime.

The Law came into force on 28 October 2009 and is applicable to tax periods commencing as from 1 January 2010.

Amendment of regulations on investor compensation schemes

Royal Decree 1819/2009 of 27 November 2009 (BOE of 28 November 2009) amended Royal Decree 948/2001 of 3 August 2001[66] on investor compensation schemes so as to make a specific adjustment to its provisions, derived from the increase in guaranteed amounts from €20,000 to €100,000 per holder and institution introduced by Royal Decree 1642/2008 of 10 October 2008.

This increase substantially changed the annual contributions by the institutions belonging to the Investment Guarantee Fund, since, in setting those contributions, Article 8.2.c) of the aforementioned Royal Decree 948/2001 used for calculation purposes an item which was defined as a percentage of the guaranteed amount.[67] The present change consists of modify-

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64. Initially 100/82, subsequently raised to 100/81 in the State Budget Law for 2010. **65.** See footnote 63. **66.** See "Financial regulation: 2001 Q3", *Economic Bulletin*, Banco de España, October 2001, pp. 89-93. **67.** Article 8.2 of Royal Decree 948/2001 (amended by Law 53/ 2002 of 30 December 2002 on fiscal, administrative and social measures) sets the annual contribution to be made by member institutions as the sum of the following amounts: a) a fixed amount, according to the following scale: €20,000 for investment firms whose gross fee revenue is less than €5 million; €30,000, when such revenue is between €5 million and €20 million, and €40,000 when it exceeds €20 million; b) 0.2% of the money, plus 0.005% of the effective value of the securities and financial instruments deposited with them or managed by them that belong to customers covered by the guarantee; and c) the product of multiplying the number of customers covered by the guarantee by 0.015% of the minimum amount guaranteed.

ing Article 8.2.c) such that the calculation is the result of multiplying the number of customers covered by the guarantee by €3.

The new amount established will be applied to the budgets approved from the entry into force of the Royal Decree, which was on 29 November 2009. Also, the management company may make the technical adjustments needed to recalculate the contributions, considering the guaranteed amounts in 2008.

Securities market: notification of significant events

CNMV Circular 4/2009 of 4 November 2009 (BOE of 12 November 2009), on notification of significant events to be disclosed by securities issuers to the market and to the CNMV, was released. This Circular, in accordance with the powers granted to the CNMV by Ministerial Order EHA/1421/2009 of 1 June 2009,[68] specifies how such notifications must be made to the CNMV.

The Circular introduces for the first time an "interlocutor" to act as a direct communication channel between issuers and the CNMV. Also, it includes an annex containing an indicative list of cases[69] considered to be significant events, with a view to making it easier for issuers to identify and subsequently assess them. When using the list, regard must be had to the type of financial instrument issued by each issuer, distinguishing, among other things, between debt and equity securities.

The content of the notifications and the criteria for making them are described. Thus, for example, when various significant events are included, the summary shall give priority to that which stands out over the others due to its likely impact on the market. Should the notification have to be rectified, a new notification shall be made in which the original notification being rectified is clearly identified along with the matters remedied. The new notification in no case replaces the original one.

Lastly, notifications of significant events and persons designated as authorised interlocutors have to be sent electronically[70] to the CNMV by the issuers of securities admitted to trading.

The Circular came into force on 2 December 2009.

Investment services: yearly audit report on customer asset protection

CNMV Circular 5/2009 of 25 November 2009 (BOE of 8 December 2009) regulates the yearly audit report on customer asset protection,[71] in accordance with Royal Decree 217/2008 of 15 February 2008 on the legal regime of investment firms and of other entities providing investment services ("investment firms and similar entities").[72]

The Circular sets out the content of the audit report and the criteria to be followed by external auditors in preparing their report. In particular, it specifies the scope of these professionals' work, identifying the areas to be reviewed by them. The scope of their review is determined by the size and scale of the activities of the investment firms and similar entities, based on criteria

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68. Ministerial Order EHA/1421/2009 of 1 June 2009 established, inter alia, general rules for identifying significant events, subject parties, the content of notifications and criteria for making the notifications. **69.** Some cases which can be considered significant events are: strategic agreements; transformations, mergers or spin-offs; application for insolvency proceedings; takeover bids; shareholders' agreements or arrangements involving changes in control; and purchases or sales of holdings in other firms. **70.** It can only be submitted by other means on an exceptional basis or when lodged by natural or legal persons other than the issuers. **71.** The yearly audit report on customer asset protection sets out the opinion of an external auditor on the suitability of the control procedures and systems implemented by investment firms and similar entities with regard to the safekeeping of financial instruments and customer fund deposits. **72.** The entities which may provide investment services are: investment firms, credit institutions and CII management companies. Investment firms include securities brokers and dealers, portfolio management companies and financial advice firms.

of proportionality. In most cases the auditors have to use statistical sampling techniques which enable them to reasonably support their opinion. The methodology used must be at the disposal of the CNMV. In the case of credit institutions, the audit opinion shall refer only to the suitability of the systems and controls set in place by them to comply with the rules on safekeeping and administration of financial instruments.

In addition, the Circular includes various annexes. Annex 1 defines the structure of the audit report, which consists of a main part setting out the opinion and of four sections. The opinion part shall include the audit opinion on the existence and suitability of the systems and controls set in place by investment firms and similar entities to comply with the rules on asset protection. The first and second sections summarise, respectively, the tests performed on financial instruments and customer funds; the third states the significant weaknesses and exceptions identified, as well as any scope limitations encountered; and the fourth contains the auditor's recommendations. Annexes II and III specify the areas that the external auditor has to review to check compliance with the requirements of the Circular in relation to the protection of financial instruments and customer funds, respectively.[73]

Lastly, the auditor has to send the audit report to the CNMV electronically in the first five months of the financial year. In the first yearly audit report on customer asset protection, which is for the year ended 31 December 2009, the review period is lengthened to 30 April and the remittance deadline is extended to 30 June.

The Circular came into force on 9 December 2009.

Internal control of collective investment institution management companies and of investment firms

CNMV Circular 6/2009 of 9 December 2009 (BOE of 21 December 2009) on internal control of collective investment institution (CII) management companies and investment firms[74] was released.

The Circular sets out in detail the organisational requirements and internal control obligations that have to be applied by CII management companies and by self-managed investment firms (hereafter "the companies") in the conduct of CII management activities, in accordance with Law 35/2003 of 4 November 2003[75] on CIIs and with the implementing regulations enacted by Royal Decree 1309/2005 of 4 November 2005.[76]

The Circular addresses the responsibility of the board of directors of the companies in the implementation and maintenance of internal control procedures and policies and of an internal structure and organisation which ensure the proper working of risk management functions. Also, the content of the internal control policies and procedures manuals of the companies is specified.

Further, the Circular requires the creation and maintenance of three internal control units which function independently of each other: one devoted to risk management,[77] another to regulatory compliance[78] and a third to internal audit.[79] In addition, the Circular sets out exhaustively the internal organisation requirements, the functions to be performed by each of the aforementioned units and the requirements which may be applicable to the delegation of their respective

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73. The audit opinion on credit institutions shall refer only to the suitability of the systems and controls set in place by them to comply with the rules on safekeeping and administration of financial instruments, so only the review areas included in Annex II apply to them. **74.** Refers to those investment firms which have not entrusted their mangement, administration and representation to a CII management company. **75.** See "Financial regulation: 2003 Q4", *Economic Bulletin*, Banco de España, January 2004, pp. 84-87. **76.** See "Financial regulation: 2005 Q4", *Economic Bulletin*, Banco de España, January 2006, pp. 112-116. **77.** It has to ensure appropriate management of the commitments entered into by CIIs under management in the course of their business, of the risks derived from the assets comprising their investments and of the risks associated with the activities of the CII management company or, where applicable, of the investment firm.

functions.

The Circular provides that, when investment firms entrust the management of their assets to any of the entities authorised to provide investment services consisting of individual portfolio management (including credit institutions), the internal control requirements shall be those established in their specific regulations.

Additionally, the Circular provides that the CNMV may require the companies to remedy deficiencies in administrative and accounting organisation and in internal control procedures, and to provide appropriate resources for the exercise of their activities.

Lastly, a final rule establishes a deadline of 31 December 2010 for the companies to adapt their control systems to the requirements set by the Circular, and a repeal clause is included.[80]

The Circular came into force on 22 December 2009.

State budget for 2010

Following the usual practice in December, Law 26/2009 of 23 December 2009 (BOE of 24 December 2009) on the State budget for 2010 was published. Notable from the standpoint of financial regulation were the following.

AUTONOMY OF THE BANCO DE ESPAÑA

Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España was amended[81] with regard to the legal regime applicable to collateral pledged to the Banco de España, the ECB or other NCBs of the EU in the exercise of their monetary policy functions.

Specifically, under the Law, collateral consisting of marketable assets can be realised through the related stock exchange operator or, where appropriate, through an auction organised by the Banco de España. As a new development, the realisation can also take place through appropriation by the Banco de España, the ECB or the EU NCB relating to the collateral and set-off of its value or application of its value to satisfy the collateralised obligations, provided that this has been agreed with the entity providing the collateral and the parties have arranged the collateral valuation method.

STATE DEBT

The government is authorised to increase the outstanding State debt in 2010, subject to the condition that it shall not exceed the level at the beginning of the year by more than €78,136 million (the limit for last year's budget was €50,247 million). This limit may be exceeded during the course of the year with prior authorisation of the Ministry of Economy and Finance, and those cases in which it shall be automatically revised are laid down.

In relation to State guarantees, mention should be made of the authorisation of public guarantees to back fixed-income securities issued by securitisation special purpose vehicles, aimed at improving the financing of corporate productive activity, for which an amount of €3 billion (the same as in the previous budget) has been established.

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78. It has to ensure the proper working of the regulatory compliance function according to the principle of separation from the areas or units whose activities are being assessed for compliance. **79.** his has to support the board of directors of the CII management company or of the investment firm in its responsibility for supervision of the risk management systems and procedures, regulatory compliance and corporate governance. **80.** Specifically, Rule 6 and Annex 3 of CNMV Circular 3/1997 of 29 July 1997 and Rule 11 of CNMV Circular 4/1997 of 26 November 1997 are repealed. **81.** See "Regulación financiera: segundo trimestre de 1994", *Boletín Económico*, July-August 1994, Banco de España, pp. 86-92.

TAXES

With regard to personal income tax, the tax rebate of €400 on income from work or from economic activities above €12,000 per year was abolished. Below that amount the following scale is established: if the tax base is less than or equal to €8,000 per year, the rebate remains in place; if the tax base is between €8,001 and €12,000 per year, the rebate is calculated by subtracting from €400 the result of multiplying by 0.1 the difference between the tax base and €8,000 per year.

Further, the portion of net taxable income from saving above the personal and household minimum shall be taxed at 19% up to a net taxable income of €6,000 and at 21% from €6,000 onwards (previously, the tax rate was 18% regardless of the tax base). Similarly, mention should be made of the increase in the percentage of withholding tax and of tax prepayments on certain income, particularly income from capital, which is up from 18% to 19%.

The rebates to compensate for the loss of tax benefits affecting certain taxpayers under the current personal income tax legislation, regulated by Law 35/2006 of 28 November 2006, remain in place. The first establishes for 2009 a tax deduction for purchase of principal residence for taxpayers who purchased their principal residence before 20 January 2006. The amount is equal to the difference between the deduction resulting from the application of the previous personal income tax legislation (in Legislative Royal Decree 3/2004 of 5 March 2004[82]), in force until end-2006, and that obtained under Law 35/2006.[83]

The second rebate will affect those receiving certain income from capital with a generation period exceeding two years in 2009. On one hand, income from capital obtained in relation to the transfer of capital to third persons from financial instruments taken out prior to 20 January 2006 shall qualify for a reduction of 40%, as was the case under the previous personal income tax law. On the other, income received in the form of deferred capital arising from life and disability insurance policies taken out prior to 20 January 2006 shall qualify for a 40% or 75% reduction, as envisaged under the previous personal income tax law.

For transfers of real estate not used in business activities, a rise of 1% (previously 2%) in the acquisition cost adjustment coefficient is included.

Concerning corporate income tax, one of the main new developments is the reduction of the tax rate applicable to SMEs for maintaining or creating jobs. Specifically, for each of the 2009, 2010 and 2011 tax periods, taxpayers engaging in economic activities the overall net turnover of which is less than €5 million and which have an average workforce of fewer than 25 employees shall be taxed at 20% up to a tax base of €120,202.41 and at 25% above that.[84]

This measure is extended under personal income tax to sole proprietors and professionals meeting the same requirements, since they reduce by 20% the positive net income declared if they maintain or create jobs.

A noteworthy development in indirect taxes was that the standard and reduced VAT rates were raised from 16% and 7% to 18% and 8%, respectively. The new rates will apply from the sec-

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82. See "Financial regulation: 2004 Q1", *Economic Bulletin*, April 2004, pp.99-100. **83.** During 2009 a deduction may be taken, in general, for 15% of the amounts paid for the purchase or renovation of the principal residence, with a maximum of €9,015.18 per annum. In 2006, although the same deduction was available, in general, when the purchase was made using borrowed funds, in the two years following the purchase the deduction was for 25% of the first €4,507.59 and for 15% of the remainder up to €9,015.18. Subsequently, these percentages were 20% and 15%, respectively. **84.** The standard rate is 30%.

ond half of 2010. In relation to local taxes, the rateable values of properties are updated by 1%.

Other financial measures relate to the legal interest rate and the late-payment interest rate. The first is unchanged at 4% and the second is reduced from 7% to 5%.

Amendment of Spanish general chart of accounts

The reform of Spanish accounting legislation within the process of convergence with IFRS-EU[85] deemed the capital of cooperatives (consisting of members' contributions) to be a liability if its board of directors does not have the unconditional right to prevent its repayment. To make the necessary adjustments to State and regional legislation on cooperatives regarding the competence of their boards of directors, a transitional period until 31 December 2009 was established in order to continue applying the criteria for distinguishing between equity and liabilities in Ministerial Order ECO/3614/2003 of 16 December 2003 enacting accounting rules for cooperatives.

Since so far these adjustments have not been made, *Royal Decree 2003/2009 of 23 December 2009* (BOE of 29 December 2009) amends Royal Decree 1514/2007 of 16 November 2007 enacting the Spanish General Chart of Accounts so as to extend to 31 December 2010 the duration of the criteria for distinguishing between equity and liabilities.

The Royal Decree came into force on 1 January 2010.

85. International financial reporting standards adapted by the EU.