FINANCIAL REGULATION: 2014 Q1

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Introduction

This article summarises the new financial legislation adopted in the first quarter of 2014.

The European Central Bank (ECB) adopted various pieces of legislation relating to: amendment of its rules of procedure; the reporting requirements for quarterly financial accounts and government finance statistics; modification of the provisions for the preparation of its annual accounts; management of the foreign reserve assets of the ECB by euro area national central banks (NCBs); the acquisition of euro banknotes; and adjustments to the stakes of the NCBs that make up the European System of Central Banks (ESCB) in the capital of the ECB.

The Banco de España published two circulars. The first implements the rules on supervision and solvency of EU credit institutions making use of some of the regulatory options established therein. The second amends the accounting regulation of credit institutions to specify certain aspects of Law 8/2012 of 30 October 2012 on the write-down and sale of real estate assets of the financial sector.

Four sets of provisions were approved in relation to the securities market: 1) the terms of issuance of State debt for 2014 and January 2015, as usual in this period; 2) an update of the operating conditions of public debt market makers; 3) the designation of Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria (Sareb) as an entity cooperating in State housing plans; and 4) the establishment of accounting rules and financial forms for investment firms and market infrastructure operators.

In the sphere of European Union law, a delegated regulation, which establishes a number of technical standards applicable to the own funds requirements of financial institutions, and a directive on credit agreements for consumers relating to residential immovable property were published.

Finally, there is a discussion of: 1) urgent measures adopted in relation to the refinancing and rescheduling of corporate debt; 2) changes made in relation to the control of trade debt in the public sector, and 3) amendment of the law for the protection of consumers and users.

Table 1 sets out the contents of this article.

The Spanish version of this article discusses the same legislation in greater detail.

European Central Bank: amendment of its rules of procedure

Decision ECB/2014/1 of 22 January 2014 (OJ L of 29 March 2014) amending Decision ECB/2004/2 adopting the Rules of Procedure of the ECB was published and came into force on 24 January 2014. Its purpose was to adjust the internal organisation of the ECB and its decision-making bodies to the new requirements arising from Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB relating to the prudential supervision of credit institutions, to clarify the interaction of the bodies involved in the process of preparing and adopting supervisory decisions.

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The most important changes made by this decision are: 1) the establishment of a code of conduct for the guidance of the members of the Governing Council and their appointed alternates, which will be published on the ECB's website; 2) the establishment of an audit committee, the mandate and composition of which will be laid down by the Governing Council, to strengthen internal and external layers of control and to further enhance the corporate governance of the ECB and the Eurosystem, and 3) the development of the tasks of the Supervisory Board, created by Regulation (EU) No 1024/2013, establishing, in addition to its composition, the way in which its members are appointed, the terms and conditions of employment of the Chair of the Board, and the procedure for voting and for adopting decisions when carrying out the tasks conferred upon it by the above-mentioned Regulation.

European Central Bank: statistical information in relation to quarterly financial accounts

Guideline ECB/2013/24 of 25 July 2013 (OJ L of 7 January 2014) on the statistical reporting requirements of the ECB in the field of quarterly financial accounts was published. This Guideline replaces Guideline ECB/2002/7 of 21 November 2002 , repealing the latter from 1 September 2014, the date on which it takes effect.

This Guideline adapts the ECB's requirements in the field of quarterly financial accounts to the Union's statistical standards laid down by Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (hereinafter the "ESA 2010"), which has replaced the ESA 95. The data specified in the new tables set out in Annex 1, which must comply

with the principles and definitions of ESA 2010, will be reported to the ECB by the NCBS on a calendar quarterly basis.

Finally, the duty to cooperate with the competent national authorities, when these are not the NCBs, is maintained, to ensure an appropriate data transmission complying with the standards and requirements set out in this Guideline.

European Central Bank: statistical information on public finances

Guideline ECB/2013/23 of 25 July 2013 (OJ L of 7 January 2014) on government finance statistics was published. This Guideline replaces Guideline ECB/2009/20 of 31 July 2009,[1] repealing the latter from 1 September 2014, the date on which it takes effect.

This guideline adapts the ECB's requirements in the field of government finance statistics to the EU standards laid down in Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the ESA 2010, which has replaced the ESA 95. The NCBs will continue to report government finance statistics – the new forms for which, duly updated in accordance with the ESA 2010, are set out in Annex I – to the ECB every year.

Also, the data on deficit/surplus, debt, revenue, expenditure and nominal GDP must be accompanied by reasons for revisions when the magnitude of the change to deficit/surplus caused by revisions is at least 0.3% of GDP or the magnitude of the change to debt, revenue, expenditure or nominal GDP caused by revisions is at least 0.5% of GDP.

On the basis of the data reported by the NCBs, the ECB will continue to manage the 'GFS database', which will include euro area and national data. The ECB shall disseminate the GFS database to the ESCB.

The NCBs shall endeavour to establish with competent national authorities, when these are not the NCB, modalities of cooperation to ensure a permanent structure of data transmission to fulfil the standards and requirements of the ESCB, unless the same result is already achieved on the basis of national legislation.

European Central Bank: rules for drawing up its annual accounts

Decision ECB/2013/52 of 27 December 2013 (OJ L of 4 February 2013) amending Decision ECB/2010/21 of 11 November 2010 on the annual accounts of the ECB, in order to adapt it to the revised version of International Accounting Standard 19 "Employee Benefits", was published.

Annex I to Decision ECB/2010/21 is amended to provide for the reporting of remeasurement results of the net defined liability (asset) in respect of post-employment benefits on the liability side of the ECB's balance sheet. These results are the net position of the following sub-items: 1) actuarial gains and losses in the present value of the defined benefit obligation; 2) return on plan assets, excluding amounts included in net interest on the net defined benefit liability (asset), and 3) any change in the effect of the asset ceiling, excluding amounts included in net interest on the net defined benefit liability (asset).

This Decision entered into force on 30 December 2013.

European Central Bank: management of foreign reserve assets

Guideline ECB/2013/45 of 28 November 2013 (OJ L of 4 March 2014) amending Guideline ECB/2008/5 of 20 June 2008 on the management of the foreign reserve assets of the ECB by the euro area NCBs and the legal documentation for operations involving such assets was published and entered into force on 4 March 2014.

1 See "Financial regulation: 2009 Q3", *Economic Bulletin,* October 2009, Banco de España, p. 142.

Guideline ECB/2008/5 established that the NCBs were entitled to: 1) participate in the operational management of the foreign reserve assets transferred to the ECB; 2) pool such management with one or more other NCBs, or 3) abstain from such management. In the latter case, the other NCBs will manage the assets that otherwise would have been managed by the abstaining NCB.

It is now possible for a euro area NCB to request the ECB or another euro area NCB to assume certain tasks on its behalf relating to such management, and they will be free to consent to or reject such a request.

Procurement of euro banknotes: amendment of the legislation

Guideline ECB/2013/49 of 18 December 2013 (OJ L of 1 February 2014) amending Guideline ECB/2004/18 of 16 September 2004[2] on the procurement of euro banknotes, in order to give effect to its provisions that require it to be reviewed every two years, was published.

On 10 July 2003 the Governing Council of the ECB decided that the procurement of euro banknotes would be subject to the single Eurosystem tender procedure from 1 January 2012 at the latest. As the assumptions on which the start date was based did not occur, Guideline ECB/2011/3 of 18 March 2011 changed the start date for the single Eurosystem tender procedure from 1 January 2012 to 1 January 2014, with the proviso that the Governing Council could decide on a different start date.

Now, Guideline ECB/2013/49 has provided for a later start date, since the above-mentioned assumptions were still not fulfilled, and gives the Governing Council authority to decide on the start date.

This guideline entered into force on 1 February 2014.

Adjustments to the shares in the capital of the European Central Bank

The Statute of the ESCB and of the ECB requires the capital key weightings to be adjusted every five years, and the new weightings to be applied from the first day of the following year. The last adjustment was made in 2008, by means of Decision ECB/2008/23 of 12 December 2008, which came into effect on 1 January 2009.

On 1 July 2013, on the occasion of Croatia's accession to the European Union, the ECB's subscribed capital increased automatically from €10,760.65 million to €10,825.01 million, which required the establishment of new weightings assigned to each of NCB in the key for subscription to the ECB's capital.

In accordance with Council Decision 2003/517/EC of 15 July 2003, the European Commission provided the ECB with the statistical data to be used in determining the adjusted capital key.

On the basis of that information, the ECB has published various decisions to adjust the shares of the NCBs in the capital of the ECB, which entered into force on 1 January 2014.

The most important changes are indicated below:

Decision ECB/2013/28 of 29 August 2013 (OJ L of 21 January 2014) replaces and repeals Decision ECB/2013/17 of 21 June 2013 on the NCBs' percentage shares in the key for subscription to the ECB's capital. New weightings assigned to each NCB in subscription

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2 See "Financial regulation: 2004 Q4", *Economic Bulletin,* January 2005, Banco de España, pp. 132-133.

to the ECB's capital are established. In the case of the Banco de España, its capital key weighting increases from 8.2533% to 8.8409%.

Decision ECB/2013/30 of 29 August 2013 (OJ L of 21 January 2014) replaces and repeals Decision ECB/2013/19 of 21 June 2013 on the paying-up of the ECB's capital by the NCBs of Member States whose currency is the euro. The ECB's subscribed capital will continue to be €10,825.01 million. The total amount of the subscribed and paid-up capital of each euro area NCB is amended in line with the new capital key weightings established in the previous decision. In the case of the Banco de España, the amount of subscribed and paid-up capital increases from €893.42 million to €957.03 million.

Decision ECB/2013/29 of 29 August 2013 (OJ L of 21 January 2014) replaces and repeals Decision ECB/2013/18 of 21 June 2013 laying down the terms and conditions for transfers of the ECB's capital shares between the NCBs and for adjustment of the paid-up capital.

Given that the euro area NCBs have paid up their shares in the ECB's subscribed capital to 31 December 2013, each of them[3] should either transfer an additional amount to the ECB, or receive an amount back from the ECB, as appropriate, in order to arrive at the new amounts of subscribed capital reflected in Decision ECB/2013/30. In the case of the Banco de España, the amount it must transfer to the ECB is €63.61 million.

Decision ECB/2013/31 of 30 August 2013 (OJ L of 21 January 2014) replaces and repeals Decision ECB/2013/20 of 21 June 2013 on the paying-up of the ECB's capital by the non-euro area national central banks. Each non-euro area NCB will pay up 3.75% of its share in the ECB's subscribed capital, which is the same percentage as established previously.

Decision ECB/2013/26 of 29 August 2013 (OJ L of 21 January 2014) replaces and repeals Decision ECB/2013/15 of 21 June 2013 laying down the measures necessary for the contribution to the ECBs accumulated equity value and for adjusting the NCBs claims equivalent to the transferred foreign reserve assets.

The adjustments to the capital key weightings and the resulting changes in the NCBs' shares in the ECB's subscribed capital make it necessary to adjust contributions by euro area NCBs of foreign reserve assets to the ECB. In the case of Spain, as at 31 December 2013 the foreign reserve assets transferred to the ECB amounted to €4,782.87 million and from 1 January must be €5,123.39 million, so that a compensatory transfer to the ECB of €340.52 million must be effected.

Decision ECB/2013/27 of 29 August 2013 (OJ L of 21 January 2014) amends Decision ECB/2010/29 of 13 December 2010 on the issue of euro banknotes. As a consequence of the new weightings in the capital key of the ECB new banknote allocation keys applying from 1 January 2014 are specified. In the case of Spain, the key increases from 10.916% to 11.623%.

Banco de España: supervision and solvency of credit institutions

CBE 2/2014 of 31 January 2014 (BOE of 5 February 2014) on the exercise of various regulatory options contained in Regulation (EU) No 575/2013 of the European Parliament

3 With the exception of Latvijas Banka, the NCB of Latvia, which has been part of the euro area since 1 January 2014. The paying-up of capital, the transfer of foreign reserve assets and the contribution to the reserves and provisions of the ECB by Latvijas Banka will be governed by specific decisions of the Governing Council of the ECB mentioned below.

and of the Council of 26 June 2013[4] on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[5] was published and entered into force on 6 February 2014. This Circular repealed CBE 7/2012 of 30 November 2012 on minimum core capital requirements.

The Banco de España makes use of some of the regulatory options established in the aforementioned Regulation, some of which are permanent while others are temporary. The former allow the treatment that Spanish law had been giving to certain questions before the entry into force of the said Regulation to be continued, this being justified by the business model that Spanish institutions have traditionally followed. The temporary ones will apply, save for the odd exception that will be indicated when appropriate, from 1 January 2014 to 31 December 2017. Note that, in 2014 credit institutions must at all times comply with a Common Equity Tier 1 capital ratio of 4.5% and a Tier 1 capital ratio of 6%.

Also, the treatment that institutions must continue to apply to certain questions until the regulatory technical standards being drawn up by the European Banking Authority enter into force is specified.

Banco de España: accounting rules for credit institutions

CBE 1/2014 of 31 January 2014 (BOE of 5 February 2014) amended CBE 4/2004 of 22 December 2004[6] on public and confidential financial reporting rules and formats.

Law 8/2012 of 30 October 2012 on the write-down and sale of real estate assets of the financial sector stipulated that the Banco de España had determine the assets to which credit institutions were to allocate the unused provisions as at 31 December 2013 (i.e. the unused amount of specific allowances) for real-estate development and construction loans set aside for exposures classified as standard as at 31 December 2011 which had not been subsequently reversed as a result of reclassification as doubtful or sub-standard assets or of foreclosure.

In compliance with this rule, the Circular specifies two categories of assets to which institutions may, if there is evidence of impairment, allocate the aforementioned unused balance. They are as follows:

1) Financial assets classified as doubtful and real estate assets needing coverage above the minimum set in Annex IX of CBE 4/2004, for reasons such as impairment exceeding that estimated in the borrower's ability to pay, impairment exceeding the estimated value of the rights in rem received as security with respect to market, including the cost and time period for the recovery of liquidity, or any other circumstances constituting evidence that, based on the publicly available information as at 31 December 2013, the institution will not recover all the amounts recognised on its balance sheet.

4 See "Financial regulation: 2013 Q2", *Economic Bulletin,* July-August 2013, Banco de España, pp. 53-66.

5 Royal Decree Law 14/2013 of 29 November 2013 on urgent measures to adapt Spanish law to EU law on the supervision and solvency of financial institutions made the most urgent adjustments to the Spanish legal system to comply with the provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms. Also, its fifth final provision authorised the Banco de España to make use of the options attributed by Regulation (EU) No 575/2013 to the competent national authorities, some of which are exercised in this Circular.

6 See "Financial regulation: 2004 Q4", *Economic Bulletin*, January 2005, Banco de España, pp. 3-7.

2) Financial assets linked to investments in equity instruments not traded on active markets of companies the main business of which relates directly or indirectly to the real estate sector and in which the estimates of impairment of their real estate assets may not coincide with market estimates or in which consideration has not been given to the necessary variability or risk that the sale price, costs or construction periods may differ from the expected amount and times, in accordance with the publicly available information as at 31 December 2013.

Prior to the preparation of the 2013 accounts and, in any event, by 28 February 2014, institutions had to submit to the Banco de España a report with a breakdown of the amount provisioned for standard exposures and of the amounts used until 31 December 2013, as well as an analysis substantiating that the unused allowance relates to exposures which at that date meet the requirements to be classified as standard. In the 2013 income statement, the unused balance will be credited as a release of allowances recorded but not used and simultaneously charged for the same amount to provision for or write off the two categories of assets specified above.

The Circular came into force on 6 February 2014.

State debt: issue conditions in 2014 and January 2015

Law 22/2013 of 23 December 2013[7] on the State Budget for 2014 authorised the Minister for Economic Affairs and Competitiveness to increase State debt this year with the limitation that the outstanding balance at the end of the year may not exceed that on 1 January 2014 by more than €73 billion.

Following the usual practice in January each year, an order providing for the creation of State debt over the coming year was published, namely *Ministerial Order ECC/1/2014 of 2 January 2014* (BOE of 10 January 2014) covering 2014 and January 2015. It includes standard collective action clauses and the *Resolutions of 20 and 23 January 2014* (BOE of 21 and 24 January 2014, respectively) of the General Secretariat for the Treasury and Financial Policy (the Treasury) providing for certain issues of Treasury bills and for medium- and long-term government bonds and setting out the schedule of auctions for this year and January of next year.

The Ministerial Order came into force on 10 January 2014 and the resolutions on 21 and 24 January 2014, respectively.

Similarly to Ministerial Order ECC/1/2013 of 2 January 2013[8] providing for the creation of State debt in 2013 and January 2014, the current Ministerial Order includes the collective action clauses applying from 1 January 2013 to all issues of State debt with a maturity of more than one year.

The current issue instruments and mechanisms largely remain in place.[9] A new issuance procedure introduced is that of outright sale (direct placement of Treasury securities with one or more counterparties). Also permitted are the sale, either outright or under repo agreements, of new issues, new tranches of existing issues or securities that the Treasury might have in its securities account.

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7 See “Financial regulation: 2013 Q4”, *Economic Bulletin*, January 2014, Banco de España, pp. 95 and 96.

8 See “Financial regulation: 2013 Q1”, *Economic Bulletin*, April 2013, Banco de España, pp. 74-77.

9 That is to say, by tender or any other technique considered appropriate, depending on the type of operation in question. In particular, issues may be assigned in whole or in part, at an agreed price, to one or more financial institutions which underwrite their placement.

As regards tenders, issuance continues to be through ordinary and special tenders (competitive and non-competitive bids) and by other procedures. In particular, issues may be assigned, in whole or in part, to one or more financial institutions which underwrite their placement.

In competitive bids, bidders shall state the nominal amount and the interest rate requested by them. The minimum nominal amount continues to be €1,000 and bids above that amount shall be expressed in whole-number multiples thereof and the bids accepted shall be allotted in each case at the price equivalent to the requested interest rate or at the weighted average interest rate, as applicable on the basis of the result of the tender.[10]

The minimum nominal amount for non-competitive bids is also unchanged at €1,000 and larger bids must be integer multiples of this amount. The maximum total nominal amount of non-competitive bids submitted by any individual bidder in each auction may not exceed €5 million. As an exception, certain institutions[11] are allowed to submit non-competitive bids for a maximum nominal value of €500 million. In all cases, the accepted bids will be allotted at the price equivalent to the weighted average interest rate.

Provision is again made to exclude, for the purpose of calculating weighted average price and interest rate, any competitive bids for Treasury bills and medium- and long-term government bonds not considered to be representative of the market situation, so as not distort the result of the tenders.

Lastly, as in previous years, tenders will be followed by a second round reserved for those financial institutions that have acquired market-maker status which will be conducted in accordance with the regulations governing market makers.

TREASURY BILLS

As in previous years, the Resolution sets out the schedule of auctions to be held in 2014 and January 2015. This gives the dates of ordinary Treasury bill auctions and their maturities, setting the issues and the auction notices simultaneously with the publication of the schedule. Nevertheless, for reasons of demand or issuance policy, the Treasury may hold additional auctions.

To avoid the CACs affecting Treasury bills, as in the previous year eighteen-month bills will not be issued. Thus in 2014 three-, six-, nine- and twelve-month Treasury bills will be issued.

Auctions of six- and twelve-month bills will be held on the third Tuesday of each month and those of three- and nine-month bills the following Tuesday. Maturities may differ from the foregoing by the number of days necessary to group issues together in a single monthly maturity so that, with some exceptions, they coincide with the date of issue of six- and twelve-month bills so as to make it easier to reinvest.

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10 The competitive bids accepted are used to calculate the weighted average price of the tender, expressed as a percentage of the nominal value and rounded up to three decimal places. The allotment price is determined as follows: bids made at the minimum price are allotted at that price; bids between the minimum price and the weighted average price are allotted at the bid price; and bids above the weighted average price, along with non-competitive bids, shall pay the weighted average price.

11 The Wage Guarantee Fund, the Credit Institution Deposit Guarantee Fund, the Social Security reserve fund, the Investment guarantee fund, the Sociedad Estatal de Correos y Telégrafos S. A., the Sociedad Estatal de Participaciones Industriales (SEPI), the Spanish data protection agency, the Social Security Prevention and Rehabilitation Fund, the FROB (which has now been expressly included in the regulations), or any other public entity or State-owned company determined by the Treasury.

In all other respects auction procedures and awards will be the same as in 2013, including the submission of bids in terms of the interest rate quoted on secondary markets, so as to simplify bidding for subscribers. Thus, in competitive auctions, bidders will indicate the interest rate desired. The accepted bids will be allotted, in each case, at the price equivalent to the interest rate tendered or the weighted average, as applicable based on the outcome of the auction.

MEDIUM- AND LONG-TERM GOVERNMENT BONDS

The Resolution sets out the schedule of auctions to be held in 2014 and January 2015, indicating the dates and maturities of ordinary auctions, setting the issues and the auction notices simultaneously with the publication of the schedule.

As in 2013, the securities offered will be announced on the Friday prior to each auction, following consultation with market-makers in order to match the issue to market preferences. Nevertheless, if the market conditions or financing requirements make it advisable, the Treasury may add new security types to the resolution setting out the issues of medium- and long-term bonds to be offered for sale, or it may choose to omit any of the maturities included, for guidance, in the aforementioned resolution. Also, auctions additional to the ordinary ones scheduled may be held to provide liquidity to certain securities and improve secondary market functioning.

With some exceptions, bond auctions continue to be held on the first and third Thursday of each month and both medium- and long-term government bonds may be offered. The way in which auctions will be run and awarded remains unchanged, including the possibility that competitive bids considered clearly unrepresentative of the market situation may be of excluded from the price and weighted average interest rate calculations so as not to distort the results of the auction.

Three-, five-, ten-, fifteen- and thirty-year government bonds will continue to be offered during auctions. New tranches will be issued or previously issued securities will be reopened to ensure their liquidity and meet investor demand in the various segments in which this arises, thus increasing the average volume of outstanding bond classes. The newly issued securities will accrue nominal interest at the same rate as the original issue.

Finally, provision is again made for the issuance of index-linked medium- and long-term bonds, in which case the index and the adjustment method will be indicated. If the issue is linked to a price index,[12] the real annual interest rate will be published in place of the nominal interest rate. Also published will be the applicable value of the multiplier index or of the indexation coefficient on the issue date, for the purpose of valuing coupons, any accrued coupon and the principal in nominal terms.

Government debt market-makers: amendments to the regulations

Treasury Resolution of 14 January 2014 (BOE of 18 January 2014) amended the resolution of 20 July 2012[13] setting the conditions under which Spanish government debt market-makers operate. Its purpose is to enable market-makers to carry out the outright sale

12 Inflation index-linked bonds are securities in which the fixed coupon accrued and the principal of the investment are updated in accordance with a price index, thus affording investors protection from inflation. They have the following features: the accrued coupon may never be negative and the investment principal upon redemption may never be less than its nominal value, even though there has been negative inflation. These bonds will be duly launched through the related issuance order setting out all the characteristics for their trading and functioning on the public debt book-entry market.

13 See “Financial regulation: 2012 Q3,” *Economic Bulletin*, October 2012, Banco de España, p. 24.

transactions in government debt introduced as a new issuance procedure by Ministerial Order ECC/1/2014 of 2 January 2014, as noted in the preceding section.

The Resolution came into force on 18 January 2014.

Sareb: designation as entity cooperating in State housing plans

Law 1/2014 of 28 February 2014 (BOE of 1 March 2014) on the protection of part-time workers and other urgent economic and social measures came into force on 2 March 2014.

Notable from the financial standpoint is the first additional provision which designates Sareb as an entity cooperating with the Ministry of Infrastructure and Transport in the financing of protected actions taking place under State housing plans. Accordingly, the loans qualifying for this assistance which are transferred to Sareb will not lose this status as a result of the segregation and transfer of assets, and will retain it even if they are assigned or transferred by Sareb to a cooperating financial institution, regardless of the State Housing Plan applicable to them.

Accounting rules and financial reporting formats of investment firms and market infrastructure operators

Ministerial Order ECC/2515/2013 of 26 December 2013 (BOE of 10 January 2013) implemented Article 86.2 of Law 24/1988 of 28 July 1988[14] on the securities market. Specifically, this article empowers the Minister of Economic Affairs and Competitiveness and, with the latter's express authorisation, the CNMV, to set and change accounting rules and compulsory financial statement formats for market infrastructure operators and investment firms. It also empowers him to regulate the registers, internal databases or statistics and documents which have to be kept by the aforementioned entities and, in relation to securities market transactions, by credit institutions.

The aforementioned authorisation granted to the CNMV is to enable it to regulate and implement the accounting statements and information referred to above, which may be: of a public nature, such as information for third parties on the net worth, financial and economic position of the respective entities; or of a confidential nature, such as information reported solely to the CNMV to enable it to carry out its functions of supervising and inspecting the markets and the legal or natural persons concerned with the activities of those markets.

Also, the CNMV is empowered to establish: 1) the form, breakdown, frequency and submission deadline of both public and confidential financial statements, without prejudice to its entitlement to require individual entities to provide any additional information it may need to carry out its functions; 2) correlations between public and confidential financial statements, and 3) rules on time limits for submitting and for disseminating and making public the audits of annual accounts and the related management report.

Further, the CNMV may determine the form and minimum content of the registers, internal databases, statistics and documents which, as a minimum, have to be kept by the aforementioned entities, setting out the data characteristics, formats, frequencies, time limits and systems for data transfer or submission to it.

European Union: technical rules applicable to the own funds of financial institutions

Various European Union regulations have been promulgated to implement Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on

14 See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 61 and 62.

prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

The main changes introduced by these regulations are as follows:

Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 (OJ L of 14 March 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, which came into force on 3 April 2014.

The Delegated Regulation implements certain sections of Regulation (EU) No 575/2013 in relation to:

1) The meaning of "foreseeable" when determining whether foreseeable charges or dividends have been deducted from own funds according to Article 26(4) of Regulation (EU) No 575/2013, for which purpose the methods used to evaluate the deduction are classified by order of priority: first, a distribution decision by the relevant body; second, the dividend policy; and third, the historical dividend pay-out ratio.

2) Conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution, according to Article 27(2) of Regulation (EU) No 575/2013.

3) The applicable forms and nature of indirect funding of capital instruments, according to Article 28(5) of Regulation (EU) No 575/2013.

4) The nature of limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law, according to Article 29(6) of Regulation (EU) No 575/2013.

5) The further specification of the concept of gain on sale according to Article 32(2) of Regulation (EU) No 575/2013.

6) The application of the deductions from Common Equity Tier 1 items and other deductions for Common Equity Tier 1, Additional Tier 1 and Tier 2 items according to Article 36(2) of Regulation (EU) No 575/2013.

7) The criteria according to which competent authorities shall permit institutions to reduce the amount of assets in the defined benefit pension fund, according to Article 41(2) of Regulation (EU) No 575/2013.

8) The form and nature of incentives to redeem, the nature of a write-up of an Additional Tier 1 instrument following a write-down of the principal amount on a temporary basis and the procedures and timing surrounding trigger events, features of instruments that could hinder recapitalisation and use of special purpose entities, according to Article 52(2) of Regulation (EU) No 575/2013.

9) The extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings, according to Article 76(4) of Regulation (EU) No 575/2013.

10) Certain detailed conditions that need to be met before a supervisory permission for reducing own funds can be given, and the relevant process, according to Article 78(5) of Regulation (EU) No 575/2013.

11) The conditions for a temporary waiver for deduction from own funds to be provided, according to Article 79(2) of Regulation (EU) No 575/2013.

12) The types of assets that can relate to the operations of a special purpose entity and the concepts of minimal and insignificant for the purposes of determining Qualifying Additional Tier 1 and Tier 2 capital issued by a special purpose entity according to Article 83(2) of Regulation (EU) No 575/2013.

13) The detailed conditions for adjustments to own funds under the transitional provisions, according to Article 481(6) of Regulation (EU) No 575/2013.

14) The conditions for items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds, according to Article 487(3) of Regulation (EU) No 575/2013.

Commission Implementing Regulation (EU) No 1423/2013 of 20 December 2013 (OJ L 31 December 2013) laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013, which entered into force on 20 January 2014.

Its objective is to ensure the uniform application of Regulation (EU) No 575/2013 in relation to the disclosure of certain information, for which purpose a number of templates are provided in the annexes to the Implementing Regulation, which institutions must complete and publish, with the following information: 1) description of the main features of Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments issued by financial institutions, in accordance with the template provided in Annex II; 2) disclosure of nature and amounts of specific items on own funds, in accordance with the template provided in Annex IV, and 3) disclosure of nature and amounts of specific items on own funds during the transitional period (2014-2017), in accordance with the template provided in Annex VI.

In addition, institutions must apply the methodology established in Annex I in order to comply with the requirements for disclosure of a full reconciliation of own funds items to audited financial statements, as indicated in Article 437 of Regulation (UE) No 575/2013.

Finally, *Commission Delegated Regulation (EU) No 183/2014* of 20 December 2013 (OJ L 27 February 2014) supplementing Regulation (EU) No 575/2013, with regard to regulatory technical standards for specifying the calculation of specific and general credit risk adjustments, which entered into force on 19 March 2014.

The Regulation lays down the criteria for identifying general and specific credit risk adjustments, in accordance with Regulation (EU) No 575/2013. The amounts financial institutions must include in such adjustments are all amounts by which an institution's Common Equity Tier 1 capital has been reduced in order to reflect losses exclusively

related to credit risk according to the applicable accounting framework and recognised as such in the profit or loss account, irrespective of whether they result from impairments, value adjustments or provisions for off-balance sheet items.

Institutions must document the identification and calculation of General Credit Risk Adjustments and Specific Credit Risk Adjustments.

European Union: credit agreements for consumers relating to residential immovable property

Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 (OJ L of 28 February 2014) on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC[15] and 2013/36/EU[16] and Regulation (EU) No 1093/2010[17] was published.

The Directive, which entered into force on 20 March 2014, lays down a common framework for agreements covering credit secured by a mortgage or otherwise relating to residential immovable property. With the aim of creating an internal market with a high and equivalent level of consumer protection, the Directive lays down certain provisions that are subject to maximum harmonisation in the Member States, so that the latter may not maintain or introduce in their national law legal provisions diverging from the ones laid down in such Directive. This is specifically the case in relation to the provision of pre-contractual information for credit agreements through the "European standardised Information Sheet" (ESIS), and with respect to the common base that has been established to calculate the annual percentage rate of charge (APRC).

However, outside these areas subject to maximum harmonisation Member States may maintain or introduce more stringent provisions in order to protect consumers, provided that such provisions are compatible with their obligations under Union law.

Other relevant questions addressed by the Directive include: 1) the admission regime for creditors, credit intermediaries and their representatives, other than credit institutions or other similar financial institutions, to be able to carry out this type of activity, including cross-border activity; 2) the establishment of quality standards for certain services, in particular with regard to the distribution and provision of credit; 3) the personalised pre-contractual information that must be provided to consumers, including adequate specific risk warnings, for instance about the potential impact of exchange rate fluctuations on what the consumer has to repay; 4) the assessment of consumers' creditworthiness, and 5) the promotion of measures to support the education of consumers in relation to responsible borrowing and debt management.

Urgent measures relating to the refinancing and rescheduling of corporate debt

Royal Decree-Law 4/2014 of 7 March 2014 (BOE of 8 March 2014), adopting urgent measures relating to the refinancing and rescheduling of corporate debt ("the Royal Decree-Law") in order to speed up these processes and make them more flexible, was published. It entered into force on 9 March 2104 and was validated by the Spanish Congress on 20 March 2014.

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15 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

16 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

17 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

The main purpose of the Royal Decree-Law is to increase the effectiveness of pre-insolvency refinancing so that firms can reschedule their debt more flexibly without having to apply for insolvency proceedings. For this purpose various aspects of Insolvency Law 22/2003 of 9 July 2003[18] are amended, as discussed below.

STAY AND HALTING OF THE EXECUTION OF JUDGMENTS IN RELATION TO ASSETS REQUIRED FOR THE CONTINUITY OF A PROFESSIONAL OR BUSINESS ACTIVITY

As a result of the amendment of Article 5 bis of Law 22/2003, notification to the court by the debtor that it has commenced negotiations to reach a refinancing agreement is sufficient to stay, for the envisaged duration of the negotiations,[19] the execution of judgments in relation to assets required for the continuity of the debtor's professional or business activity, including execution actions before the courts (previously, refinancing agreements only halted executions if such agreements had been judicially approved). The proceedings arising from public-law claims are excluded, in any event, from this stay.

Article 56 of Law 22/2003 is amended to limit the cases where the execution of judgments in relation to secured assets is stayed to those in which the assets are required for the continuity of a professional or business activity; and those assets not considered necessary for the continuity of such activity are specified, such as shares or investments of companies engaging exclusively in holding an asset and the liability required to finance it.

AMENDMENT OF THE CONDITIONS TO PREVENT THE TERMINATION OF REFINANCING AGREEMENTS

The cases where the refinancing agreements reached with the debtor cannot be terminated remain the same, although their content is clarified, which covers businesses, acts and payments (irrespective of their nature). These permit the credit to be increased significantly or modify or terminate the related obligations.

As was already established, so that the agreement cannot be terminated, it must be signed by creditors with claims representing at least 60% of the debtor's liabilities. Nevertheless, now the need for a report issued by an independent expert has been dispensed with and the report has been replaced by the certificate of an auditor evidencing compliance with the majorities required for the adoption of the agreement.

The Royal Decree-Law specifically clarifies that judicially approved refinancing agreements, which are discussed below, may not be terminated either. Thus, the problem existing in the previous legislation was resolved in relation to the possible termination of agreements that, having been judicially approved with the necessary agreement of 55% of the financial liabilities (currently reduced to 51%), did not comply with the requirement of attaining the support of 60% of the debtor's total liabilities.

Also, a new category of refinancing agreements is introduced which cannot be terminated and do not need certain majorities of liabilities. They are agreements reached between the debtor and one or more creditors provided that they signify a clear improvement in the debtor's financial position and, at the same time, do not entail a reduction in the rights of the other creditors which do not participate.

INCENTIVES FOR EXTENDING FRESH FINANCING

The second additional provision of the Royal Decree-Law envisaged extraordinary temporary arrangements for fresh cash revenue, with a duration of two years from the

18 See "Financial Regulation: 2003 Q3", *Economic Bulletin,* October 2003, Banco de España, pp. 97-98.

19 As was already established, after three months have elapsed from the notification to the court, the debtor, whether or not it has reached a refinancing agreement, an out-of-court agreement for payment or the necessary support for the opening of proceedings in relation to an anticipatory proposal for an agreement, must petition for a declaration of insolvency within the following business month, unless the insolvency mediator had already petitioned for it or the debtor was not insolvent.

entry into force of said Royal Decree-Law (9 March 2014). Under these arrangements, 100% of the credit entailing fresh cash revenue which has been extended in the framework of a refinancing agreement, as well as credit extended by the debtor or specially related persons[20] also representing fresh cash revenue, are considered claims against the debtor's estate. Cash revenue arising from a capital increase is not deemed claims against the debtor's estate.

After two years have elapsed from the date when the credit described in the previous paragraph was extended, the ordinary arrangements will apply again; namely, only 50% of the credit entailing fresh cash revenue will be considered claims against the debtor's estate, the other 50% will have the status of general preferred claims.

NEW CONDITIONS FOR JUDICIALLY APPROVED REFINANCING AGREEMENTS

The Royal Decree-Law revises the judicial approval system for refinancing agreements included in the fourth additional provision of Law 22/2003. Specifically, as mentioned above, the percentage of creditors which must sign the refinancing agreement so that it can be judicially approved decreased from 55% to 51%.

The calculation of the percentage of financial creditors was restricted previously to creditors that were financial institutions. Now it has been extended to holders of any financial debt, whether or not they are subject to financial supervision, albeit with certain limitations. For instance, this percentage will not incorporate: 1) creditors which are persons specially related to the debtor, although they may be affected by the approval of the agreements; 2) public-law claims, and 3) trade creditors.

As is the case for refinancing agreements which are not judicially approved, the need for a report issued by an independent expert is replaced by the certification of an auditor that the majorities required were complied with (51% of financial liabilities).

Another of the changes refers to dissident creditors, defined as the creditors of financial liabilities which have not signed the refinancing agreement or have stated their dissent. Previously, judicially approved refinancing agreements could be extended to the dissident creditors of financial liabilities with unsecured claims. The Royal Decree-Law introduces certain significant modifications, differentiates between secured and unsecured claims and, if appropriate, whether the guarantee covers all of the principal claim or not.

The following effects agreed in judicially approved refinancing agreements will be extended to dissident creditors whose claims are unsecured or for the portion of their claims which exceeds the value of the security:

1) For agreements signed by creditors representing at least 60% of the financial liabilities: payment periods (either of principal, interest or any other amount owed) of no more than five years and conversion of debt into equity loans with the same maturity.

20 Persons specially related to the insolvent legal person are considered to be: 1) partners who by law have unlimited personal liability for the company's debts and shareholders who, at the time the credit claim originated, held at least 5% of the share capital, if the company declared insolvent had securities admitted to trading on an official securities market, or 10%, if it did not; 2) de facto or de jure directors, the liquidators of the insolvent party and the company's attorneys with general powers as well as those attorneys during the two years prior to the announcement of insolvency, and 3) the companies which are part of the same group as the company placed in bankruptcy and the shareholders they have in common, provided that the latter meet the same conditions as under point one.

2) For agreements signed by creditors representing at least 75% of the financial liabilities: payment periods of five years or more, but in no case more than ten; debt reductions; conversion of debt into equity loans with a term of five years or more, but in no case more than ten; transfer of assets or claims to creditors in payment of all of a portion of the debt; and, lastly, conversion of debt into shares or participating interests in the debtor company. Where debt is converted into shares or participating interests, dissident creditors may opt for a debt reduction equivalent to the face value of the shares or participating interests which they would subscribe or assume and, if any, the corresponding unpaid face value and share premium.

The same effects as those indicated in the case above will be extended to dissident creditors with security for the portion of the credit covered by the value of the guarantee, provided that one or more of these effects have been agreed, albeit with more qualified majorities, which increase from 60% to 65% of financial liabilities in the first case and from 75% to 80% in the second case.

Finally, the approval process is simplified and expedited: the judge will be restricted to verifying the existence of the percentages required and assessing whether or not the sacrifice demanded is disproportionate. In the execution of the judgment in relation to the approved refinancing agreement, the judge may order that any seizures made be cancelled.

BANCO DE ESPAÑA: THE TREATMENT OF RESTRUCTURED OPERATIONS ARISING FROM REFINANCING AGREEMENTS

Under the Royal Decree-Law the Banco de España is empowered to set and publicise within one month uniform criteria to classify restructured operations arising from judicially approved refinancing agreements as standard exposure. In the exercise of this empowerment, on 18 March 2014 the Executive Commission of the Banco de España approved a letter to be sent to credit institutions detailing these criteria.

Control of trade debt in the public sector

Organic Law 9/2013 of 20 December 2013 (BOE of 21 December 2013) on the Control of Trade Debt in the Public Sector amending, inter alia, Organic Law 2/2012 of 27 April 2012 on Budgetary Stability and Financial Sustainability and Organic Law 8/1980 of 22 September 1980 on the Financing of the Regional Governments, was published. Barring certain exceptions, the Organic Law came into force on 22 December 2013.

The most significant changes were to introduce in Organic Law 2/2012 two fundamental aspects: on one hand, that the control of public-sector debt should not be limited only to the volume of its financial debt but also to its trade debt; and, on the other, the obligation to pay these debts to suppliers within 30 days, which is the deadline established in legislation on bad debts. Other notable changes in the Organic Law are as follows: 1) general government must publicise its average payment period of suppliers (PMP, by its Spanish abbreviation) and have a cash plan which will include, at least, information on the projected payment of suppliers so as to ensure compliance with the deadline set by the legislation on bad debts; 2) the automatic prevention measures were updated, especially where the volume of public debt exceeds 95% of the limits set; and 3) the automatic corrective measures are reviewed when a regional government's PMP exceeds the deadline by more than 30 days for two consecutive months from when its cash plan was updated.

Amendment of legislation on general consumer and user protection

Law 3/2014 of 27 March 2014 (BOE of 28 March 2014) was published which amends 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,

with the aim of transposing into Spanish law Directive 2011/83/EU of the European Parliament and of the Council, of 25 October 2011 on consumer rights.

The Law increases the information which must be provided to consumers and users by enlarging pre-contractual information requirements. For instance, the new obligations include informing consumers and users, where applicable, of the existence and the conditions of deposits or other financial guarantees to be paid or provided by them at the request of the trader, including an arrangement whereby an amount is blocked on the consumer's credit or debit card. A new feature envisaged in distance contracts is the requirement that trading websites clearly and legibly indicate, before the ordering process whether any delivery restrictions apply and which means of payment are accepted. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract.

The ruling by the Court of Justice of the European Union on unfair terms in consumer contracts is implemented. Under the previous arrangements, the Judge had the power to modify the content of the unfair terms in contracts in accordance with the provisions of Article 1258 of the Civil Code and the principle of objective good faith. Under the current regime, the judge, after hearing the parties, shall declare void the unfair terms included in the contract, which will continue to be binding for the parties upon those terms, provided that it is capable of continuing in existence without the unfair terms.

The law came into force on 29 March 2014.

4.4.2014.