FINANCIAL REGULATION: 2015 Q2

The author of this article is Juan Carlos Casado Cubillas, of the Directorate General Economics, Statistics and Research.

Introduction

The second quarter of 2015 saw the publication of several financial regulations, which are summarised below.

Of particular note is the Law on the recovery and resolution of credit institutions and investment firms (IFs), which completes the adaptation of Spanish law to European Union regulations in respect of the recovery and resolution mechanisms for these institutions. This Law also amends the Securities Market Law, marking a significant step forward in the ongoing reform of the Spanish securities clearing, settlement and registration system to adapt it to the new European setting. These amendments complete those already undertaken under Law 32/2011 of 4 October 2011.

With regard to the activity of the European Central Bank (ECB), several provisions have been promulgated in relation to: 1) the changes in the Eurosystem monetary policy framework; 2) the conditions for including specific items in the calculation of credit institutions' own funds; 3) the characteristics of a public securities asset purchase programme on secondary markets for Eurosystem national central banks (NCBs); 4) the updating of the regulations governing the Trans-European Automated Real-Time Gross Settlement Express Transfer system (TARGET2); 5) the total amount of annual supervisory charges applicable to credit institutions for the year 2015; 6) certain changes in the preparation of securities portfolio statistics, and 7) the updating of the Eurosystem's ethics framework when conducting monetary policy operations and foreign exchange operations, and its extension to the members of the bodies and staff members of the ECB and of the national competent authorities (NCAs) of the Member States participating in the Single Supervisory Mechanism (SSM).

As regards European Union regulations, two provisions of substantial financial scope were published relating to: 1) the regulation of European long-term investment funds, and 2) the regulation governing interchange fees for card-based payment transactions.

The Banco de España, for its part, has set in place a series of rules for the transmission of payment and payment systems statistics by payment services providers and payment system operators. Moreover, it has made changes to its internal structure as a consequence of the start-up of the SSM.

In the securities market field, the legal regime for IFs has been amended in order to complete the transposition to Spanish law of European Union regulations, in line with the requirements already established for credit institutions. Further, regulations have been laid down for the statistical information to be compiled by institutions that manage, administer or control market infrastructures.

Finally, the most relevant aspects of the following are discussed: 1) the legislation to foment business financing; 2) new measures in respect of insolvency proceedings, and 3) the tax treatment of subordinated debt and of preference debt instruments.

The Spanish version of this article analyses and discusses these regulations in greater depth and detail.

Table 1 sets out the content of this article.

Recovery and resolution of credit institutions and investment firms

Law 11/2015 of 18 June 2015 (Official State Gazette of 19 June) (hereafter, the Law) on the recovery and resolution of credit institutions and of IFs (hereafter, the institutions) has been published, entering into force on 20 June 2015.

OBJECTIVES OF THE LAW

The Law transposes a very important part of European Union law[1] into Spanish law in respect of the recovery and resolution mechanisms for credit institutions and IFs. It further assumes many of the provisions of Law 9/2012 of 14 November 2012[2] on the restructuring and resolution of credit institutions, which it partially repeals.

The regime set in place constitutes a special and full administrative procedure that seeks to ensure maximum speed in the intervention of the institution so as to provide for the continuity of its core functions, while minimising the impact of its non-viability on the economic system and on public resources.

MAIN CHANGES IN THE LAW

Unlike the previous regulations affecting credit institutions, the scope of the Law is broadened to take in IFs established in Spain[3], in line with the European regulations being transposed.

Supervisory[4] and resolution-related functions are separated, such that supervision and resolution functions in the pre-emptive phase are entrusted to the Banco de España for credit institutions and to the Spanish National Securities Market Commission (CNMV) for IFs. Functions shall be exercised by each of these authorities through internal operationally independent bodies. Resolution functions in the enforcement phase are assigned to the Fund for the Orderly Restructuring of the Banking Sector (FROB).

The early intervention phase is reinforced and the pre-emptive resolution phase is developed, given that all institutions, and not only non-viable ones, must have recovery and resolution plans.

One new aspect involves the regulation of internal recapitalisation as a resolution instrument conceived as a "bail-in" arrangement (the absorption of losses by the shareholders and by the creditors of the institution under resolution).

---

1 The Law carries out the transposition into Spanish law of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EEC, 2007/36/EEC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, which is in turn one of the regulations that contributes to the constitution of the Single Resolution Mechanism, created by means of Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, this being one of the pillars of the so-called Banking Union.

2 See "Financial Regulation: 2012 Q4", Economic Bulletin, January 2013 Banco de España, pp. 36-42.

3 The provisions of this Law will not be applicable to IFs whose legally required minimum share capital is less than €730,000, or whose activity meets certain characteristics indicated in the regulations, such as not being able to have deposited with it the money or securities of its customers and, for this reason, not being ever able to be in a debtor position vis-à-vis such customers.

4 The supervisory function involves ensuring compliance with the disciplinary regulations governing institutions' activity and, especially, with solvency regulations, with the ultimate aim of safeguarding financial stability. Its interest, above all else, is in the continuity of the institution.

CONTENTS

TABLE 1

A National Resolution Fund (NRF) financed by the institutions themselves has been created. Its end-purpose will be to finance the resolution measures executed by the FROB, which will oversee its management and administration.

These changes, along with others of particular relevance, are elaborated upon below.

EARLY INTERVENTION

Recovery plan

On a pre-emptive basis, institutions shall draw up and keep updated a recovery plan envisaging the measures and actions to be adopted by the institution in order to restore its financial position should this undergo a significant deterioration. The plan and its updates shall be approved by the institution's board, for subsequent review by the competent supervisor.

The plan shall include a series of quantitative and qualitative indicators that will be taken into account as a reference for undertaking the actions envisaged. In no case may access to public financial assistance be assumed.

Early intervention measures

If an institution or a parent of a consolidated group of institutions does not comply, or will foreseeably not be able to comply in the near future, with solvency, regulatory and disciplinary rules, but is in a position to return to compliance through its own means, the competent supervisor shall declare an early intervention situation as initiated and may adopt certain measures detailed in the regulations, such as requiring the cessation or replacement of one or several members of the board of directors. If the measures were not sufficient, it may resolve to appoint one or several administrators, or to provisionally replace the institution's board of directors or one or several of its members.

PRE-EMPTIVE PHASE OF RESOLUTION

The pre-emptive resolution authority shall draw up and approve, further to a report from the FROB and from the competent supervisor and having previously consulted the resolution authorities of the jurisdictions in which significant branches are established, a resolution plan for each institution that is not part of a group subject to supervision on a

consolidated basis. This plan shall contain the resolution actions to be applied by the FROB if the institution were non-viable or it was foreseen that it would be so in the near future, without prejudice to the fact that, in light of the circumstances, the FROB may also apply other measures.

RESOLUTION

Unfolding of the resolution process

The resolution of an institution shall proceed when, simultaneously, certain circumstances arise: 1) the institution is non-viable or is reasonably expected to be so in the near future[5]; 2) there is no reasonable prospect that private-sector measures (such as, inter alia, the measures applied by institutional protection systems), supervisory measures (such as, inter alia, early intervention measures) or the redemption or conversion of capital instruments may prevent the non-viability of the institution within a reasonable time; and 3) for reasons of public interest, it is necessary or advisable to undertake the resolution of the institution, provided that the winding-up and liquidation of the institution through an insolvency procedure would not reasonably allow the objectives to be attained to the same extent.

Following the opening of the resolution process, the FROB shall agree to and make public the replacement of the institution's board of directors and of the managing directors or similar officers[6], appointing as administrator of the institution the person or persons who, on their behalf and under their control, shall exercise the functions and powers proper to such status. The FROB shall likewise approve the framework of action of the special administrator, including the periodic information the latter has to prepare on the performance of its functions. The substitution measure shall remain in force for a period no longer than one year, although the FROB may, exceptionally, extend this period if it considers it necessary in order to complete the resolution process.

Resolution principles

Resolution processes shall be based on specific principles set out in the Law. These include the following: 1) the shareholders of the institutions shall be the first to bear losses; 2) the creditors of the institutions shall bear the losses arising from resolution after the shareholders or partners and in accordance with the order of seniority established under insolvency legislation, with the qualifications set out in the Law, and 3) guaranteed deposits shall be fully protected.

Resolution instruments

The resolution instruments the FROB may implement are: 1) the sale of the institution's business; 2) the transfer of assets or liabilities to a bridge entity; 3) the transfer of assets or liabilities to an asset management company, and 4) internal recapitalisation.

With the exception of internal recapitalisation (which shall be addressed later), the remaining instruments are already included under Law 9/2012, which is now updated by the Law in keeping with European regulations.

5 An institution shall be understood to be non-viable if any of the following circumstances prevail: 1) the institution fails significantly to meet, or it is reasonably foreseeable that in the near future it will fail significantly to meet, solvency requirements or other requirements needed to maintain authorisation; 2) the institution's liabilities exceed its assets or it is reasonably foreseeable that this will be so in the near future; 3) the institution cannot meet, or it is reasonably foreseeable in the near future that it cannot meet, the claims on it, and 4) the institution requires extraordinary public financial assistance. In relation to this latter point, the institution shall not be considered to be non-viable if the extraordinary public financial assistance is granted to avoid or resolve severe shocks in the economy and to preserve financial stability, provided that such assistance adopts one of the forms specified in the Law.

6 The FROB shall be entitled not to replace the board of directors, or the managing directors or similar officers, in those extraordinary cases in which, in view of the composition of the shareholder structure or of the institution's board of directors at the time the resolution process is initiated, it is strictly necessary to maintain them to ensure the appropriate unfolding of the resolution process.

Redemption and conversion of capital instruments

Before agreeing to the redemption and conversion of capital instruments or, indeed, internal recapitalisation, the FROB shall value the institution's assets and liabilities, which will be the basis for the calculation of the amount for which the institution concerned will need to be recapitalised.

In keeping with the calculation made, the FROB shall determine the amount at which the eligible liabilities should be redeemed or converted in order to restore the common equity Tier 1 capital ratio of the institution under resolution or, where appropriate, of the bridge entity, and to maintain sufficient market confidence in these institutions, so as to allow them to comply, for at least one year, with the conditions governing their authorisation and to pursue the activities in which they are authorised to engage.

Internal recapitalisation

Internal recapitalisation, which will come into force on 1 January 2016, is a new resolution instrument, since the loss-absorption mechanism makes it extensive to all the institution's creditors, and not only to the shareholders and the subordinated creditors as envisaged under Law 9/2012 of 14 November 2012.[7]

In this respect, eligible liabilities are all the institution's liabilities that are not expressly excluded or have not been excluded further to a decision by the FROB.[8] These liabilities shall be susceptible to amortisation or conversion into capital for the internal recapitalisation of the institution concerned. Among the liabilities excluded are: 1) deposits guaranteed by the DGF (up to €100,000), and 2) liabilities incurred with employees, trade creditors (whose end-purpose is the supply of goods and services essential to the normal pursuit of the institution's activities) and the tax or social security authorities.

Internal recapitalisation may be adopted, on one hand, to recapitalise the institution so that it may resume its activities, maintaining market confidence, and, on the other, to convert into capital or to reduce the principal of the loans or debt instruments transferred on applying resolution instruments comprising the constitution of a bridge entity, the sale of the business or the segregation of assets.

Reorganisation plan

On applying the internal recapitalisation measure, the FROB shall require the institution's board of directors, or the person or persons designated for this purpose, to submit an *activities reorganisation plan* containing the measures, having regard to the economy's situation and to the markets in which the institution operates, geared to restoring the long-term viability of the institution, or a part of its activities, over a reasonable timeframe.

Contribution of the NRF

In certain cases, the NRF may make a contribution to the institution under resolution in order to cover any loss that has not been absorbed by eligible liabilities and to restore the net value of the institution's assets, making it equal to zero, or to purchase shares or other capital instruments of the institution under resolution, in order to recapitalise it. For this contribution to be made, the conditions laid down in the Law must be met.

7 The rules on recapitalisation contained in Law 9/2012 14 November 2012 shall remain in force until 31 December 2015.

8 Such as, for instance, when exclusion is strictly necessary and proportionate in order to: 1) ensure the continuity of core functions and the main branches of activity so as to maintain the capacity of the institution subject to resolution to continue with the main operations, services and transactions, or 2) to avoid giving rise to extensive contagion, in particular in respect of eligible deposits held by individuals, micro-firms and SMEs, that may seriously upset the functioning of the financial markets, including their infrastructure, in such a way as to seriously disrupt the economy of a Member State or that of the European Union.

THE NRF

The Law creates the NRF, administered by the FROB and set up as a separate fund, whose financial resources should be at least 1% of the amount of the guaranteed deposits of all institutions. The Law establishes a transition period – which will commence in 2015 – to attain this level, to be reached no later than 31 December 2024.

To this end, the FROB shall, at least annually, levy ordinary contributions from institutions, including branches in the European Union, in conformity with the following criteria: 1) the contribution of each institution will be commensurate with the proportion it accounts for relative to the total aggregate of institutions, calculated taking the institution's total liabilities, excluding own funds and the guaranteed amount of deposits, and 2) the contributions will be adjusted to each institution's risk profile, in keeping with the regulatory criteria specified.

When institutions' ordinary contributions prove insufficient to finance the measures envisaged in this Law, the FROB may raise extraordinary contributions.

Finally, the mutualisation of the NRF along with the funds of the Eurosystem member countries in the Single Resolution Fund (SRF) is envisaged, pursuant to the provisions of Regulation (EU) 806/2014 of 15 July 2014, and the Agreement on the transfer and mutualisation of contributions to the SRF, entered into on 21 May 2014, whereby the portion corresponding to the NRF shall be transferred to the SRF for the amount and in the form established in the above-mentioned regulations.

CHANGES IN THE LEGAL REGIME OF THE FROB

The end-purpose of the FROB shall be to manage the resolution processes of institutions in the enforcement stage and, in any event, to exercise the powers attributed to it by the Law, other national legislation and European Union law.

Governing Committee

One change involves the creation of the figure of Chairman, appointed by the Council of Ministers, upon a proposal by the Ministry of Economic Affairs and Competitiveness, as the maximum representative of the Governing Committee. The Chairman shall be entrusted with direction and day-to-day management, with a five-year non-renewable mandate and with regulated causes of dismissal. A member of the CNMV will also join the Governing Committee owing to the extension of the scope of the law to IFs.

The Governing Committee shall approve internal regulations for the FROB which shall detail the essential rules governing its conduct in economic, financial, budgetary, accounting, organisational and procedural matters. The rules shall reflect the guiding principles of its policy of ownership of institutions to which it has provided public financial support and shall include internal control mechanisms for the governance of the FROB. These rules shall be underpinned by the principles of good management, objectivity, transparency, competition and publicity.

Financing mechanisms

For the financing of the measures envisaged in this Law, the FROB shall have the following mechanisms:

1) The NRF.

2) Alternative means of financing such as the issuance of fixed-income securities, receiving loans, applying for the opening of credit lines and the carrying out of whatsoever other debt operations, provided that the ordinary contributions are insufficient to cover resolution costs and that extraordinary contributions are not immediately accessible or sufficient.

3) The possibility of applying to the financing mechanisms of the other European Union Member States for loans, under the procedure envisaged in the attendant regulations. Such application may only be made if, along with the previous options having been exhausted, the alternative financing mechanisms cannot be employed under reasonable conditions either.

Cooperation and coordination with other competent authorities

As regards the national authorities, the FROB shall collaborate with those that have been entrusted with functions relating to the supervision or resolution of institutions and, in particular, with the supervisory or preventive resolution bodies or authorities overseeing the institutions covered by the scope of the Law.

With regard to other international authorities, in the event of the resolution of institutions belonging to international groups, the FROB and the preventive resolution authority shall collaborate with the European Union institutions, including the Single Resolution Board, the ECB, the European Banking Authority (EBA), and the foreign authorities entrusted with functions relating to the supervision or resolution of institutions, and they may to this end finalise collaborative agreements with them and request and exchange information to the extent necessary for the exercise of the competencies attributed to them in relation to the planning and execution of early intervention or resolution measures.

PROCEDURAL AND SANCTIONING REGIME

The procedural regime regulates the particularities of administrative appeals against the acts dictated by the FROB and, especially, of the decisions adopted in early intervention and resolution processes, and the measures applied in respect of the redemption or conversion of capital instruments and internal recapitalisation.

With regard to the sanctioning regime, the different types of infringements are regulated, along with the related sanctions to be applied to the institutions and individuals who hold administrative or management posts in such institutions, if they infringe the obligations envisaged in the Law.

STRUCTURE AND FUNCTIONING OF THE PREVENTIVE RESOLUTION AUTHORITIES

The Banco de España and the CNMV shall adopt the necessary measures so that their organisational structure may ensure operational independence and prevent conflicts of interest between the supervisory functions and preventive resolution functions attributed to them by the Law. Both institutions shall draw up a regulation for the management of potential conflicts of interest, so that the latter are duly identified, managed, controlled and, where appropriate, eliminated.

They shall further provide the information that the FROB requires in the exercise of its competences and, generally, of those powers it holds as the enforcement resolution authority.

THE DGF

Royal Decree-Law 16/2011 of 14 October 2011[9], creating the DGF, has been amended to include certain changes that are discussed below.

The DGF is divided into two self-contained parts: one relating to the guarantee for deposits, the other to that for securities.

Each part shall respond exclusively for the costs, expenses and obligations expressly attributed to it. In addition, the contribution by each part to types of items that were not

9 See "Financial Regulation: 2011 Q4", Economic Bulletin, January 2012, Banco de España, pp. 126-128.

attributed to either part shall be calculated on the basis of the amount of the deposits or securities guaranteed by each part, under the regulatory terms established.

The funds in the deposit guarantee part shall amount, at least, to 0.8% of guaranteed deposits, although, in light of certain factors, it may be reduced to 0.5% further to authorisation by the European Commission. In any event, the level shall be attained by no later than 3 July 2024.

The envisaged annual contributions to the securities guarantee part may not exceed 0.3% of the amount of the securities guaranteed.

Finally, the Law stipulates that, as from 3 July 2017, the Banco de España shall subject the DGF, at least once every three years, to stress tests of its capacity to meet its payment obligations in situations of stress.

REGIME APPLICABLE IN THE EVENT OF INSOLVENCY OF INSTITUTIONS

Certain changes are made to the regime applicable in the event of the insolvency of an institution, in order to provide greater protection to the deposits of individuals and SMEs. In this respect, the following shall be considered as privileged credit in the order of seniority of claims:

1) Deposits guaranteed by the DGF (maximum of €100,000) and the rights to which they may have been subrogated should the guarantee have been made effective.

2) The portion of the deposits of individuals and of SMEs that exceeds the guaranteed level, and those deposits of those individuals and SMEs that would be guaranteed had they not been set up in branches located outside the European Union.

AMENDMENTS TO SECURITIES MARKET LEGISLATION

The first final provision of the Law introduces certain amendments to Law 24/1988 of 28 July 1998[10] on the Securities Market. A series of adjustments in respect of book-entry securities is included, providing for both the reversibility of this book-entry status and for the requirements that must be met by the issuance document. Further amendments clarify the structure and functioning of the Spanish securities registration system, which has two levels making up the so-called two-step system.

Moreover, the questions relating to the settlement of securities and to the legal regime governing central securities depositories are adapted to the provisions of Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014[11].

Also of note is the creation of a specific reporting system for the oversight of securities clearance, settlement and registration, which will be managed by the central securities depository.

OTHER CHANGES

Specific limits have been placed on the compensation of directors and managers of institutions wholly owned or financially supported by the FROB, or those which, being

10 See "Regulación financiera: tercer trimestre de 1988", Boletín Económico, October 1988, Banco de España, pp. 61-62.

11 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving security settlements in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU Regulation (EU) No 236/2012.

subject to resolution measures, require financing from the NRF or the SRF. Exceptions to this limit are made for the directors and managers who would have joined the institution or its group after or at the same time that a stake was taken in it or that financial support was given by the FROB, the NRF or the SRF.

Lastly, Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions[12] has been amended to adapt the provisions of this law to the causes of intervention and replacement of directors, and to the content of the agreement governing the intervention and replacement of said directors.

ECB: Eurosystem monetary policy framework

Guideline (EU) 2015/510 (ECB/2014/60) of 19 December 2014 (OJ L of 2 April 2015) (hereinafter, the Guideline) on the implementation of the Eurosystem monetary policy framework was published and subsequently amended by *Guideline (UE) 2015/732 (ECB/2015/20) of 16 April 2015* (OJ L of 6 May 2015). These Guidelines came into force on 1 May 2015.

Resolution of 23 April 2015 of the Executive Commission of the Banco de España (BOE of 28 July 2015) was published, amending the Resolution of 11 December 1998, approving the general conditions applicable to the Banco de España's monetary policy operations, in order to incorporate the changes introduced by both Guidelines.

Guideline (EU) 2015/510 introduces new changes to the framework set out in Guideline ECB/2011/14 of 20 September 2011[13] on monetary policy instruments and procedures of the Eurosystem, and recasts all earlier Guidelines into a single text.

While Guideline (EU) 2015/510 includes some amendments in its core content with respect to Guideline ECB/2011/14, updating the monetary policy implementation framework, the most significant change is its completely new structure. As a result of this change, the new text is divided into articles on the monetary policy framework, specifying more clearly the binding provisions of the latter and removing the merely informative or descriptive parts.

Own funds of credit institutions: implementation of EU regulations

Decision (EU) 2015/656 (ECB/2015/4) of 4 February 2015 (OJ L of 25 April 2015) (hereinafter, the Decision) on the conditions under which credit institutions are permitted to include interim or year-end profits in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation (EU) No 575/2013[14] was published, and came into force on 6 February 2015.

The purpose of the Decision is to develop certain aspects of the respective conditions, which shall only apply to credit institutions over which the ECB exercises direct supervision in accordance with Regulation (EU) 1024/2013[15] and Regulation (EU) 468/2014 (ECB/2014/17)[16].

---

12 See "Financial regulation: 2014 Q2", Economic Bulletin, July-August 2014, Banco de España, pp. 33-42.

13 See "Financial Regulation: 2011 Q4", Economic Bulletin, January 2012, Banco de España, pp. 113-114.

14 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 and amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. See "Financial Regulation: 2013 Q2", Economic Bulletin, July-August 2013, Banco de España, pp. 53-61.

15 Council Regulation (EU) No 1024/2013 of 15 October 2013, conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, established a Single Supervisory Mechanism, comprising the ECB and the National Competent Authorities (NCAs) of the participating Member States. See "Financial Regulation: 2013 Q4", Economic Bulletin, January 2014, Banco de España, pp. 71-74.

16 Regulation (EU) 468/2014 (ECB/2014/17) of 16 April 2014 establishing the framework for cooperation within the SSM between the ECB and the NCAs and with national designated authorities (SSM Framework Regulation). See "Financial Regulation: 2014 Q2", Economic Bulletin, July-August 2014, Banco de España, pp. 42-45.

Thus, the ECB considers that the verification of the profits requirement has been fulfilled if the credit institution provides the ECB with a document signed by an external auditor. In connection with the second requirement, in order to demonstrate that any foreseeable charges or dividends have been deducted from the amount of profits, the credit institution shall submit to the ECB a document signed by a qualified person (using the model letter in the Annex to the Decision) detailing the main components of those interim or year-end profits, including deductions for any foreseeable charges or dividends, within the meaning of Articles 2 and 4 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014[17].

ECB: secondary markets public sector asset purchase programme

Decision (EU) 2015/774 (ECB/2015/10) of 4 March 2015 (OJ L of 14 May 2015) (hereinafter, the Decision) on a secondary markets public sector asset purchase programme (hereinafter, PSPP[18]) was published, and applies from 9 March 2015. The PSPP is aimed at enhancing the transmission of monetary policy and facilitating credit provision to the euro area economy.

Under the PSPP, the Eurosystem central banks may puchase from eligible conterparties[19] eligible marketable debt securities issued by 1) central governments of a Member State whose currency is the euro, and 2) recognised agencies, international organisations and multilateral development banks, all of them located in the euro area.

Where the envisaged amount to be purchased in marketable debt securities issued by central governments or recognised agencies located in their jurisdiction cannot be attained, Eurosystem central banks may propose to the Governing Council the purchase of marketable debt instruments issued by public non-financial corporations that fulfil certain criteria.

The PSPP also establishes certain limitations on the execution of purchases which affect, among other instruments, newly issued securities and marketable debt instruments issued or fully guaranteed by the central governments of euro area Member States under a financial assistance programme.

Additionally, certain portfolio allocation percentages are set, so that of the total value of the instruments purchased under the PSPP, 12% shall be purchased by Eurosystem central banks in securities issued by eligible international organisations and multilateral development banks, and 88% shall be purchased in securities issued by eligible central governments and recognised agencies, with the ECB also participating in these purchases. Overall, 92% of the total purchases shall be conducted by the Eurosystem central banks according to their key for subscription to the ECB's capital, and the remaining 8% shall be purchased by the ECB.

TARGET2: amendments to legislation

Guideline (EU) 2015/930 (ECB/2015/15) of 2 April 2015 (OJ L of 19 June 2015) amending Guideline ECB/2012/27 of 5 December 2012[20] on TARGET2 (hereinafter, the Guideline) was published, and took effect on the day following its notification to the NCBs of the Member

17 Commission Delegated Regulation (EU) No 241/2014 of 7 January 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.

18 PSPP stands for Public Sector Purchase Programme.

19 Eligible counterparties are as follows: 1) entities that participate in Eurosystem monetary policy operations, and 2) counterparties that are used by NCBs for the investment of their euro-denominated investment portfolios.

20 See "Financial Regulation: 2013 Q1", Ecnomic Bulletin, April 2013, Banco de España, p. 66.

States whose currency is the euro, and *Decision (EU) 2015/929 (ECB/2015/22) of 26 May 2015* (OJ L of 19 June 2015) amending Decision ECB/2007/7 of 24 July 2007, concerning the terms and conditions of TARGET2-ECB, was issued, and became effective from 22 June 2015.

Additionally, the following two Resolutions were published: *Resolution of 11 June 2015 of the Executive Commission of the Banco de España* (BOE of 19 June 2015), amending the Resolution of 20 July 2007, approving the general clauses relating to the harmonised conditions for participation in TARGET2-Banco de España, and *Resolution of 11 June 2015 of the Executive Commission of the Banco de España* (BOE of 19 June 2015), approving the general clauses relating to the harmonised conditions for the opening and operation of a dedicated cash account in TARGET2-Banco de España in order to adapt Spanish legislation to the Guideline. Both the amendments to the Resolution of the Executive Commission of the Banco de España of 20 July 2007 and the general clauses relating to the harmonised conditions for the opening and operation of a dedicated cash account in TARGET2-Banco de España came into force on 22 June 2015.

The Guideline amends Guideline ECB/2012/27 to include the operation of TARGET2-Securities (T2S)[21], and to adapt it to the judgment of the General Court of the European Union in case T-496/11, United Kingdom v ECB, ECLI:EU:T:2015:133.

ECB: supervisory fees applicable to credit institutions

Decision (EU) 2015/727 (ECB/2015/17) of 10 April 2015 (OJ L of 6 May 2015) (hereinafter, the Decision) on the total amount of annual supervisory fees for the first fee period and for 2015 was published, in conformity with Regulation (EU) No 1163/2014 (ECB/2014/41) of 22 October 2014[22], and came into force on 29 April 2015.

The Decision sets the total amount of annual supervisory fees for the first fee period (i.e. November to December 2014) and for 2015 at €326 million, corresponding to the ECB's actual costs for November and December 2014 (€30 million) and an estimate of the ECB's annual costs for 2015 (€296 million), as set out in Annex I to the Decision. Each category of supervised entities and supervised groups shall pay the total amount of annual supervisory fees as laid down in Annex II.

ECB: statistical information

The following legal acts were published: *Regulation (EU) 2015/730 (ECB/2015/18) of 16 April 2015* (OJ L of 7 May 2015) (hereinafter, the Regulation) amending Regulation (EU) No 1011/2012 (ECB/2012/24) concerning statistics on holdings of securities, which came into force on 27 May 2015; *Guideline (EU) 2015/948 (ECB/2015/19)of 16 April 2015 (OJ L* of 19 June 2015) amending Guideline ECB/2013/7, of 22 March 2013, concerning statistics on holdings of securities, which came into force on 19 June 2015, and *Guideline (EU) 2015/571 (ECB/2014/43) of 6 November 2014 (OJ L* of 9 April 2015) amending Guideline ECB/2014/15, of 4 April 2014, on monetary and financial statistics, which came into force on 9 April 2015.

The main purpose of Regulation (EU) 2015/730 and of Guideline (EU) 2015/948 is to expand the actual reporting population to include insurance corporations and to lay down the statistical reporting requirements in connection with their holdings of securities.

---

21 T2S, regulated in Guideline (ECB/2012/13) of 18 July 2012 on T2S, is the set of hardware and software components and other components of the technical infrastructure through which the Eurosystem provides central security depositories and the Eurosystem NCBs with services allowing for the core, neutral and borderless settlement of securities transactions on a delivery-versus-payment basis in an integrated technical environment with cross-border capabilities.

22 Regulation (EU) 1163/2014 of the ECB (ECB/2014/41) of 22 October 2014 on supervisory fees. See "Financial Regulation: 2014 Q4, Economic Bulletin, January 2015, Banco de España, pp. 15-16.

The entities with reporting obligations are: 1) insurance companies incorporated and resident in the territory of the relevant euro area Member State, including subsidiaries whose parent entities are located outside that territory; 2) branches of the aforementioned insurance corportations that are resident outside the territory of the relevant euro area Member State, and 3) branches of the insurance corporations that are resident in the territory of the relevant euro area Member State but whose head office is outside the European Economic Area (EEA)[23].

The statistical reporting requirements for insurance corporations and the derogations therefrom that may be granted by NCBs are similar, albeit observing their specificities and establishing a transitional period, to those laid down for the other reporting agents.

Ethics Framework for the Eurosystem and the SSM

The following Guidelines were published: *Guideline (EU) 2015/855 (ECB/2015/11) of 12 March 2015* (OJ L of 2 June 2015) laying down the principles of a Eurosystem Ethics Framework and repealing Guideline ECB/2002/6, of 26 September 2002[24], and *Guideline (EU) 2015/856 (ECB/2015/12) of 12 March 2015* (OJ L of 2 June) laying down the principles of an Ethics Framework for the SSM.

Guideline (EU) 2015/855 updates Guideline ECB/2002/6 which laid down minimum ethics standards for the Eurosystem NCBs when conducting monetary policy operations and foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets. Furthermore, Guideline (EU) 2015/856 lays down similar provisions for the members of the bodies and staff members of the ECB and the NCAs of the Member States participating in the SSM.

RULES ON THE PREVENTION OF MISUSE OF INSIDE INFORMATION

The ECB and the NCAs shall adopt internal rules laying down the specific restrictions for insiders taking into account effectiveness, efficiency and proportionality considerations. Such specific restrictions may comprise, among others, the prohibition of specific financial transactions or a prior authorisation requirement for specific financial transactions.

RULES ON THE AVOIDANCE OF CONFLICTS OF INTEREST

The ECB and the NCAs shall adopt internal rules requiring the members of their bodies and their staff members to avoid during their employment any situation liable to give rise to a conflict of interest and to report such situations. The ECB and the NCAs shall ensure that, when a conflict of interest is reported, appropriate measures are in place to avoid such conflict, including the relief from duties for the relevant matter.

RULES ON THE ACCEPTANCE OF GIFTS AND HOSPITALITY

The ECB and the NCAs shall adopt internal rules prohibiting the members of their bodies and their staff members from soliciting, receiving or accepting a promise related to receiving for themselves or any other person any advantage connected in any way with the performance of their official duties, unless these advantages are offered by NCBs, Union institutions, bodies or agencies, international organisations and government agencies, or, as the case may be, are of a negligible value. The ECB and the NCAs shall ensure that these exemptions do not influence or may not be perceived as influencing the independence and impartiality of the members of their bodies and of their staff members.

European Union: long-term investment funds

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 (OJ L of 19 May 2015) (hereinafter, the Regulation) on European long-term investment funds (ELTIFs) was published, and shall apply from 9 December 2015.

23 The EEA consists of the 29 European Union countries, Liechtenstein, Norway and Iceland.

24 Guideline ECB/2002/6 of 26 September 2002 on minimum standards for the ECB and NCBs when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets.

SUBJECT MATTER AND SCOPE

The Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of European Union alternative investment funds (AIFs) that are marketed in the EU as ELTIFs.

The ELTIFs are structured as a type of AIF that may only be marketed in the European Union when it has been authorised by the NCAs, for which it must comply with the provisions laid down in the Regulation. The authorisation as an ELTIF shall be valid for all Member States (European passport). The NCAs shall inform ESMA, on a quarterly basis, of authorisations granted to or withdrawn from ELTIFs. ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation, its manager and its NCA.

ELTIFs shall be managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU[25] that shall be responsible for ensuring compliance with this Regulation and shall be liable for any losses or damages resulting from non-compliance therewith. ELTIFs may be internally managed where the legal form of the ELTIF so permits it and no external AIFM has been appointed

The Regulation lays down a set of rules relating mainly to eligible investments, diversification limits and the attendant marketing requirements.

INVESTMENT POLICIES

An ELTIF shall invest at least 70% of its capital in the following assets: 1) equity or quasi-equity instruments which have been issued by a qualifying portfolio undertaking or by an undertaking of which the former is a majority-owned subsidiary; 2) debt instruments issued by a qualifying portfolio undertaking; 3) loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF; 4) units or shares of one or several other ELTIFs, European Venture Capital Funds (EuVECAs) and European social Entrepreneurship Funds (EuSEFs) provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10 % of their capital in ELTIFs, and 5) direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets with a value of at least €10,000,000.

A qualifying portfolio undertaking shall be a portfolio undertaking that fulfils the following requirements: 1) it is not a financial undertaking; 2) it is not admitted to trading on a regulated market or on a multilateral trading facility (MTF), or it is admitted to trading but has a market capitalisation of no more than €500 million, and 3) it is established in the European Union or in a third country provided that the third country meets certain requirements[26].

Additionally, the Regulation sets certain capital diversification limits. For example, an ELTIF shall invest no more than: 1) 10% of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking; 2) 10% of its capital directly or indirectly in a single real asset, and 3) 10% of its capital in units or shares of any single ELTIF, EuVECA or EuSEF. However, the Regulation provides for certain derogations from the general diversification limits.

25 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC, and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

26 Most notably, it is not a high-risk and non-cooperative jurisdiction identified by the Financial Action Task Force (FATF) and has signed an agreement with the home Member State of the manager of the ELTIF and with every other Member State in which the units or shares of the ELTIF are intended to be marketed to ensure an effective exchange of information in tax matters.

REDEMPTION POLICY AND LIFE OF ELTIFS

Investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. However, the possibility of redemptions before the end of the life of the ELTIF may be envisaged provided that certain conditions are fulfilled, including that redemptions are not granted before five years after the date of the authorisation as an ELTIF or half the life of the ELTIF, whichever is earlier.

The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF. For this purpose, a specific date for the end of the life of the ELTIF shall be clearly indicated, although the right to extend the life of the ELTIF may be provided for. Rules or instruments of incorporation of the ELTIF shall stipulate the date for the end of the life of the ELTIF and the right to extend this life and the conditions for exercising such a right.

TRADING AND ISSUE OF UNITS OR SHARES, AND DISTRIBUTION OF PROCEEDS AND CAPITAL

The rules of incorporation of an ELTIF shall not prevent 1) the units or shares of the ELTIF from being admitted to trading on a regulated market or on an MTF, or 2) investors from freely transferring their units or shares to third parties other than the manager of the ELTIF.

An ELTIF may offer new issues of units or shares in accordance with its rules or instruments of incorporation. However, it shall not issue new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors in the ELTIF.

MARKETING OF UNITS OR SHARES OF ELTIFS

The Regulation provides for these instruments to be marketed to both professional and retail investors and lays down certain requirements for marketing to the latter, due to the illiquid nature of this type of investment. Thus, when an ELTIF is marketed to retail investors, the AIFM shall previously assess whether the ELTIF is suitable for the particular retail investor and provide the investor with appropriate investment advice, among other things. In addition, the AIFM shall publish a key information document in accordance with Regulation (EU) No 1286/2014[27].

Where the portfolio of a potential retail investor does not exceed €500,000, the AIFM shall ensure that the potential retail investor does not invest an aggregate amount exceeding 10% of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is €10,000. In addition, where the life of an ELTIF exceeds 10 years, the AIFM should indicate in written form that this product may not be suitable for those retail investors unable to sustain such a long-term and illiquid commitment.

European Union: legislation on interchange fees for card-based payment transactions

Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 (OJ L of 19 May 2015) (hereinafter, the Regulation) on interchange fees for card-based payment transactions was published, and came into force on 8 June 2015.

SCOPE

The Regulation lays down uniform technical and business requirements for card-based payment transactions carried out within the European Union, where both the payer's[28]

27 Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

28 The payer is the cardholder who authorises a payment order from his/her card (usually, the consumer).

payment service provider[29] and the payee's[30] payment service provider are located therein[31]. The Regulation does not apply to services based on specific payment instruments that can be used only in a limited way and meet any of the conditions specified therein.

INTERCHANGE FEES FOR CARD TRANSACTIONS

The Regulation lays down the ceilings for interchange fees charged on credit or debit card transactions which shall apply from 9 December 2015. These limits do not apply to: 1) transactions with commercial cards; 2) cash withdrawals at automated teller machines or at the counter of a payment service provider, and 3) transactions with payment cards issued by three-party payment card schemes[32].

In transactions with debit cards, interchange fees per transaction may not exceed 0.2% of the value of the transaction.

Until 9 December 2020, Member States may allow payment service providers to apply a weighted average interchange fee of no more than the equivalent of 0.2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme.

In transactions with credit cards, per transaction interchange fees may not exceed 0.3% of the value of the transaction. For domestic credit card transactions, Member States may define a lower per transaction interchange fee cap[33].

Any territorial or cross-border restrictions in licensing agreements or in payment card scheme rules for issuing payment cards or acquiring card-based payment transactions shall be prohibited.

OTHER CHANGES

The Regulation includes a series of provisions that shall come into force on 9 June 2016, including most notably the following:

1) Payment card schemes and processing entities shall be independent in terms of accounting, organisation and decision-making processes.

2) Any payment card scheme provisions that hinder or prevent an issuer from sharing two or more payment brands or payment applications on a card-based payment instrument shall be prohibited.

3) Payment card schemes shall not impose reporting requirements, obligations to pay fees or similar obligations with the same object or effect on card-

29 Payment service providers are institutions authorised to provide payment services (generally, credit institutions, payment institutions and electronic money institutions).

30 The payee is the intended recipient of funds which have been the subject of a card payment transaction (usually the entrepreneur or merchant).

31 Spanish law makes similar requirements of institutions acting as payment service providers in respect of interchange fees and merchant service charges received on transactions carried out at point of sale terminals located in Spain, using a debit or credit card (see Law 18/2014 of 15 October 2014, which raised Royal Decree-Law 8/2014 of 4 July 2014 on the approval of urgent measures for growth, competitiveness and efficiency to the status of law, and Banco de España Circular 1/2015 of 24 March 2015 addressed to payment service providers, concerning information on merchant service charges and interchange fees received.

32 There are two payment card schemes: the three-party payment card scheme and the four-party payment card scheme. The former involves three parties: the cardholder (payer), the merchant (payee) and the same payment service provider for both. The latter scheme involves four parties: the cardholder, the payer's payment service provider (card issuer), the merchant (payee) and the payee's payment service provider.

33 Likewise in Spain, in transactions carried out with a credit card charges may not exceed 0.3% of the value of the transaction. If the amount of the transaction does not exceed €20, charges may not exceed 0.2% of the value of the transaction.

issuing and acquiring payment service providers for transactions carried out with any device on which their payment brand is present in relation to transactions for which their scheme is not used.

4) Acquirers shall offer and charge payees merchant service charges[34] individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges.

Payment service providers and payment system operators

Banco de España Circular 2/2015 of 22 May 2015 (*BOE* of 26 May 2015) (hereafter, the Circular), on the rules for the transmission of the payments and payment systems statistics, envisaged in Regulation (EU) No 1409/2013 (ECB/2013/43) of 28 November 2013 on payments statistics, by payment service providers and payment system operators to the Banco de España, was published and came into force on 27 May 2015.

The Circular applies to the payment service providers established in Spain and inscribed in the official registers of the Banco de España, and the payment system operators established in Spain, which comprise the actual reporting population and are, at all times, reporting agents and, in general, senders.

The reporting agents shall provide the Banco de España with all the statistical information required under Regulation (EU) No 1409/2013, unless the Banco de España decides that they need not send certain information that it already possesses through other means of compilation of statistical information. The reporting agents shall provide the statistical information annually, relating to the previous calendar year, by electronic means, in accordance with the formats, conditions and requirements established in the technical applications implementing the Circular.

Banco de España: delegation of powers

The *Resolution of 22 May 2015 of the Executive Commission of the Banco de España* (*BOE* of 2 June 2015) approving the regime governing the delegation of powers was published. The Resolution repeals the regime governing the delegation of powers approved by the Executive Commission of the Banco de España in a resolution dated 18 December 2009, in its version in force up to the entry into force of this Resolution on 3 June 2015.

The start-up of the SSM on 4 November 2014 prompted a major change in banking supervision procedures and responsibilities in the euro area countries. It has required the Banco de España to take on new activities and pursue new functions, as a result of which recent changes have been made in its internal structure entailing significant changes in its organisation chart.

The regime governing the delegation of powers has had to be adapted to the new internal structure established, for which purpose the Executive Commission, at its session on 22 May 2015, approved a new regime governing the delegation of powers that replaces the former regime.[35]

34 The merchant service charge is a fee paid by the payee to the acquirer in relation to card-based payment transactions.

35 The regime governing the delegation of powers was contained in the Resolution of the Executive Commission of the Banco de España of 18 December 2009 and successive amendments thereof, which become null and void.

Legal framework governing investment firms and other institutions providing investment services: legislative amendment

Royal Decree 358/2015 of 8 May 2015 (*BOE* of 9 May 2015) (hereafter, the Royal Decree), amending Royal Decree 217/2008 of 15 February 2008[36] on the legal framework governing investment firms and other institutions providing investment services, and partially amending the implementing regulations of Collective Investment Institutions Law 35/2003 of 4 November 2003, approved by Royal Decree 1309/2005 of 4 November 2005,[37] was published and came into force on 10 May 2015.

The Royal Decree has two essential aims: to complete the transposition into Spanish law of European Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013;[38] and to transform Royal Decree 217/2008 into the main set of implementing regulations governing the regulation, supervision and solvency of investment firms.

The main new developments are discussed below.

SHARE CAPITAL

A significant reduction is established in the minimum share capital required of investment firms: 1) for securities dealers, down to €730,000 (from €2 million previously); 2) for securities brokers, down to €125,000 (from €500,000 or €300,000 previously, according to whether they intended to become members of secondary markets or to join securities clearing and settlement systems and whether their activity programmes included the custody of financial instruments or they were authorised to keep special temporary credit-balance accounts); 3) for securities brokers not authorised to hold customer funds or securities, down to €50,000 (previously €120,000 or professional indemnity insurance, a bond or equivalent guarantee, or a combination of the two); and 4) for portfolio management companies, down to €50,000 or professional indemnity insurance, a bond or equivalent guarantee, or a combination of capital and professional indemnity insurance (previously €100,000 without the insurance option).

CORPORATE GOVERNANCE AND REMUNERATION POLICY MEASURES

The Royal Decree places more emphasis on the suitability requirements for board members, managers and similar officers and for persons holding internal control functions or key posts for the day-to-day running of the business of investment firms, in similar terms to those required of credit institutions. In the case of remuneration policy, it implements the legislation introduced by Law 10/2014 that also applies to credit institutions.

Regarding the supervision of remuneration policies, the CNMV will compile and send to the EBA information on the number of natural persons receiving annual remuneration of €1 million or more, including their responsibilities in their respective posts, the business area concerned and the main salary components, incentives, long-term bonuses and pension contributions.

SOLVENCY OF INVESTMENT FIRMS

The functions of risk management units[39] are extended; they must present a full view of the complete range of risks to which an investment firm is exposed and must determine,

36 See "Financial regulation: 2008 Q1", *Economic Bulletin*, April 2008, Banco de España, pp. 11-13.

37 See "Financial regulation: 2005 Q4", *Economic Bulletin*, January 2006, Banco de España, pp. 112-116.

38 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 of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, and repealing 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 and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

39 Investment firms must establish and maintain an independent risk management unit when this is proportionate to the nature, scale and complexity of their business activity and to the nature and range of investment services they provide.

Risk management and internal control requirements

quantify and give notice of the key risks in an appropriate manner. In addition, the figure of risk management unit manager is created; the manager must be an independent senior executive who does not have operational duties and who specifically assumes that responsibility, and whose appointment cannot be revoked without the prior approval of the Board of Directors.

The Royal Decree also implements the internal capital adequacy assessment process envisaged in Law 10/2014. The ICAAP strategies and procedures will be summarised in an *annual internal capital adequacy assessment report*, to be submitted to the CNMV by 30 April of each year, or earlier if so established by the latter.

Adoption of measures to return to compliance with solvency standards

Similarly to credit institutions, when the eligible capital of an investment firm or consolidated group of investment firms falls short of the capital required by the solvency regulations, it will inform the CNMV immediately and will submit, within one month, a programme setting out the plans for a return to compliance. That programme must be approved by the CNMV, which may include any changes or additional measures it considers necessary to ensure a return to the minimum capital levels required.

Capital buffers

Also similarly to credit institutions, investment firms must comply, at all times, with the combined capital buffer requirement, understood to be the common equity Tier 1 (CET1) required to establish a capital conservation buffer[40] and, where appropriate, the following capital buffers: an institution-specific countercyclical capital buffer; a capital buffer for global systemically important institutions (G-SIIs); a capital buffer for other systemically important institutions (O-SIIs); and a capital buffer against systemic risks.

In the event of non-compliance with the combined capital buffer requirement, Royal Decree 84/2015 of 13 February 2015[41] shall apply, which establishes a series of limits on the distribution of CET1, for which purpose investment firms must calculate the maximum amount that may be distributed, as stipulated by the CNMV. They must also prepare a capital conservation plan to be submitted to the CNMV.

PRUDENTIAL SUPERVISION AND REPORTING REQUIREMENTS

The Royal Decree describes the objective and subjective scope of the supervisory function of the CNMV, the cooperation arrangements among the supervisory authorities and the reporting and disclosure requirements on similar terms to those established in Royal Decree 84/2015 for credit institutions.

Objective scope of supervision: the CNMV will review the systems, strategies, procedures and means used by investment firms to comply with the solvency regulations and will assess, 1) the risks to which investment firms and their consolidated groups are or could be exposed, 2) the risks that investment firms pose for the financial system, taking into account the determination and measurement of systemic risk, and 3) any risks revealed by the stress tests, taking into account the nature, scale and complexity of the investment firms' activities.

Subjective scope of the supervisory function: the CNMV is responsible for the consolidated supervision of investment firms and their consolidated groups, in specific cases detailed in the regulations.

40 Capital conservation buffers comprise CET1 equivalent to 2.5% of the total amount of the risk exposure, on an individual and consolidated basis.

41 Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

Cooperation with supervisory authorities of other countries. The CNMV will supply any relevant information requested by those authorities and, in any event, ex officio, any information that may have a significant impact on assessment of the financial soundness of an investment firm or financial institution of another State. It will also provide the EBA with any information it may need to perform the functions assigned to it.

Reporting and disclosure requirements. The CNMV shall publish, among other aspects, on its website: 1) the general guidelines adopted in the area of solvency regulations; 2) the way in which the options and powers envisaged in EU law have been exercised; 3) the criteria and methodology followed by the CNMV to review the agreements, strategies, procedures and means used by investment firms and their groups to comply with the solvency regulations and assess the risks to which they are or could be exposed; and 4) a brief description of the outcome of the supervisory review and a description of the measures imposed in the event of non-compliance with the solvency regulations.

CNMV: Statistical information on market infrastructures

CNMV Circular 1/2015 of 23 June 2015 (*BOE* of 29 June 2015) (hereafter, the Circular) on data and statistical information on market infrastructures was published, in accordance with the express authorisation contained in Spanish Ministerial Order ECC/2515/2013 of 26 December 2013 implementing Article 86(2) of Securities Market Law 24/1988 of 28 July 1988. The Circular came into force on 30 June 2015.

The Circular aims to establish and regulate registries, internal or statistical databases and documents containing information on the structure, form of operation or activities performed in financial instruments, where appropriate, at institutions that manage, administer or control market infrastructures, i.e. official secondary market operators, multilateral trading facility operators, central counterparties and central securities depositories (excluding the Banco de España), and Sociedad de Bolsas, SA.

Promotion of business financing

Law 5/2015 of 27 April 2015 on the promotion of business financing (*BOE* of 28 April 2015) (hereafter, the Law) was published and came into force, with certain exceptions, on 29 April 2015.

The main new developments introduced by the Law are discussed in brief below.

NEW LEGAL REGIME FOR CREDIT FINANCIAL INTERMEDIARIES (CFIS)

The Law establishes a new legal regime for credit financial intermediaries, which were formerly specialised credit institutions that lost their credit institution status under Royal Decree-Law 14/2013[42] of 29 November 2013, although they continued to be subject to the legal regime for credit institutions up to the entry into force of this Law. CFIs continue to be included in the financial supervisory perimeter of the Banco de España. Overall, the new regulations maintain, in general and to all effects, the legal regime applicable to the former specialised credit institutions, with the singularities determined in the Law.

In addition, the Law regulates two types of hybrid institutions: 1) firms that intend to become CFIs and, in turn, to provide payment services, which will be considered *hybrid payment institutions;* and 2) firms that intend to become CFIs and, in turn, to issue electronic money, which will be considered *hybrid electronic money institutions.* Both will have to be specifically authorised to pursue their respective activities by the Minister for

42 Royal Decree-Law 14/2013 of 29 November 2013 on urgent measures to adapt Spanish law to EU supervisory and solvency regulations for financial institutions. See "Financial regulation: 2013 Q4", *Economic Bulletin*, January 2014, Banco de España, pp. 67-71.

Economic Affairs and Competitiveness, following a report from the Banco de España and from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC) on matters within their respective remit.

REFORM OF SECURITISATIONS REGIME

The Law groups asset securitisation vehicles and mortgage securitisation vehicles in a single legal category. However, mortgage securitisation vehicles existing at the date of entry into force of the Law will coexist with the new asset securitisation vehicles until they are gradually extinguished.

In keeping with best international practice, the Law significantly reinforces transparency and investor protection requirements and stipulates the functions that management companies must exercise, including, in any event, administering and managing the assets grouped in the securitisation vehicles, without prejudice to the relevant expenses being charged to the latter, in accordance with the provisions of the deeds setting them up.

IMPROVED ACCESS TO CAPITAL MARKETS

The Law amends Securities Market Law 24/1988 of 28 July 1988 to encourage companies to move from multilateral trading facilities (MTFs) to official secondary markets, easing some of the requirements for a transitional period of two years. Specifically, companies will not be required to release and disseminate the second half-yearly financial report and the interim management statement.

It also regulates, for the first time, the legal regime for crowdfunding platforms.[43] To that end, these platforms must be authorised by and registered with the CNMV, restricting the activity to authorised institutions so as to safeguard financial stability, combining, therefore, the principles of necessity and proportionality envisaged in Law 20/2013 of 9 December 2013 on market unity.

MEASURES TO PROMOTE SME FINANCING

Credit institutions must inform SMEs, in writing and with sufficient advance notice, of any decision to cancel or significantly reduce (by 35% or more) the funding extended to them. This advance notice must be accompanied by a document (*"SME-Financial Information"*) reflecting the SME's financial situation and payment record, in a standard format in accordance with the criteria established by the Banco de España.

Credit institutions must also provide SMEs with a report on their credit assessment, using the common methodology and models that will be prepared for this purpose by the Banco de España. These reports will assess the risk of Spanish SMEs on comparable and reliable terms, based on the combination of quality financial information, provided by the institutions, and the appropriate and standard uniform methodology devised by the supervisor.

OTHER NEW DEVELOPMENTS

The supervisory capacity of the CNMV is reinforced, to strengthen its role in safeguarding securities market transparency, correct price formation in the markets and investor protection.

Lastly, the government is mandated to make, within a period of six months, the necessary legislative changes required to enhance the existing institutional arrangements for customer protection and to make the existing public complaints services, ombudsmen

43 These platforms bring together promoters of projects in need of funding (in the form of securities or share issues or loans) and investors or funders seeking to obtain a return on their investment. Crowdfunding essentially involves a large number of investors providing small amounts of funding to small high-potential projects through high-risk investments.

and customer care services more efficient. In this context, it will assess the advisability of unifying the complaints services that are currently divided between the Banco de España, the CNMV and the Directorate General of Insurance and Pension Funds (DGSFP).

Urgent insolvency measures

Law 9/2015 of 25 May 2015 (*BOE* of 26 May 2015) on urgent insolvency measures (hereafter, the Law) came into effect on 27 May 2015. The Law amends several provisions of Insolvency Law 22/2003 of 9 July 2003 relating to insolvency arrangements, the winding-up phase, classification of the insolvency proceeding, out-of-court payment agreements and refinancing agreements, along with other related aspects of that Law. Ultimately, the Law derives from Royal Decree-Law 11/2014 of 5 September 2014[44] on urgent insolvency measures which introduced some key changes, with further changes added in its passage through Parliament.

The Law aims, inter alia, to include in insolvency arrangements the new features that were introduced into pre-insolvency arrangements by Law 17/2014 of 30 September 2014 adopting urgent measures on the refinancing and restructuring of corporate debt, namely: 1) making insolvency arrangements more flexible, seeking the continuity of economically viable firms; 2) adapting legal privilege to the underlying economic reality; and 3) respecting insofar as possible the legal nature of collateral in keeping with its genuine economic value. It also aims to clarify certain aspects introduced by Law 17/2014 that had caused some degree of controversy in their application.

The main new developments are discussed below.

INSOLVENCY ARRANGEMENTS

Creditors' meetings shall be understood to be duly assembled, not only when attended by creditors whose claims account for at least half of the ordinary claims, but also (the new development), if that percentage is not reached, when attended by creditors whose claims account for at least half of those that may be affected by the insolvency arrangements, excluding subordinated creditors. Thus, creditors that have acquired their claims after the insolvency order was made are assured the right to vote, except for creditors with special links to the debtor.

WINDING-UP

In the case of legal entities, once the winding-up plan has been approved, the insolvency administrator must send, for publication on the Public Insolvency Register's portal of winding-up proceedings, any information necessary to facilitate their sale.

Regarding the rules to be applied if a winding-up plan has not been approved and, where appropriate, in respect of any matters not envisaged in an approved plan, the general principle that establishments, operations and any other production units of goods or services be sold as a single unit is maintained, unless, following a report from the insolvency administrator, the court considers that it is in the interest of the insolvency proceeding that they be previously divided up or that some or all of the component parts be realised separately.

REFINANCING AGREEMENTS

Under the existing regulations, simple notice given by the debtor to the court of the fact that it had entered into negotiations to reach a refinancing agreement or to obtain support for an advance proposal for an arrangement on the terms envisaged in Law 22/2003 stayed judicial enforcement proceedings against assets required for the continuity of its professional or business activity, including any enforcement proceedings under way, for a

44 See "Financial regulation: 2014 Q3", *Economic Bulletin*, October 2014, Banco de España, pp. 92-94.

maximum period of three months. The Law now provides that the debtor must indicate in that notice which enforcement proceedings are under way against its assets and which affect assets that it considers essential for the continuity of its professional or business activity. In the event of dispute, the court shall decide whether or not an asset is essential for the continuity of the economic activity of the debtor, for the purpose of stay of the enforcement proceedings.

OTHER NEW DEVELOPMENTS

Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions is amended, adding the qualification that credit claims transferred to SAREB (the asset management company for assets arising from bank restructuring) shall be taken into account for calculation of the majorities needed to adopt court-approved refinancing agreements, even if SAREB is considered to have special links to the debtor.

It is clarified that steps arising from refinancing agreements, including court-approved refinancing agreements, and out-of-court payment agreements shall be deemed restructuring measures for the purposes of Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to boost productivity and improve public sector procurement. They shall also be considered insolvency proceedings for the purposes of Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

Lastly, a committee is established to monitor forbearance practices and debt overhang reduction, responsible for following up on and verifying compliance with the measures adopted by this Law and, where appropriate, for proposing to the Government any relevant reforms to facilitate the restructuring, at the pre-insolvency or insolvency stage, of the debt of economically viable firms.

Tax treatment of subordinated debt and preference shares

Royal Decree-Law 6/2015 of 14 May 2015 (*BOE* of 15 May 2015) was published, amending Film Industry Law 55/2007 of 28 December 2007, granting several extraordinary loans and supplementary funding in the State budget and adopting other tax measures.

Law 35/2006 of 28 November 2006 on personal income tax and partially amending the corporate income tax, non-resident income tax and wealth tax laws, was amended, establishing, in certain cases, improvements in the tax treatment of taxpayers affected by mis-selling of subordinated debt and preference shares.

The new rules will apply to taxpayers that receive compensation, on or after 1 January 2013, as a consequence of agreements reached with institutions that issued subordinated debt securities or preference shares and will affect: 1) that compensation; 2) any positive or negative income that may have been generated previously as a result of buy-back and subscription or exchange for other securities; and 3) income obtained on the sale of those securities.

Lastly, holders of subordinated debt or preference shares whose contracts have been declared null and void by the courts may request that their personal income tax self-assessments be corrected and, where appropriate, may obtain a refund of any tax paid incorrectly on the returns obtained, even if the right to apply for that refund is statute-barred. Rectification of self-assessments will only affect returns obtained on subordinated debt and preference shares, and any tax withholdings made against those returns.

15.07.2015.