

## FINANCIAL REGULATION: 2015 Q3

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## Introduction

This article summarises the financial legislation and regulations adopted in 2015 Q3.

The European Central Bank (ECB) has promulgated various provisions on: 1) limits on the remuneration on government deposits held with national central banks (NCBs); 2) monetary and financial statistics to be submitted by NCBs; 3) the asset-backed security purchase programme; and 4) accounting and financial information in the European System of Central Banks (ESCB).

For its part, the Banco de España has published two circulars introducing certain modifications to the financial and statistical information to be submitted by credit institutions.

In relation to the securities market, two CNMV (National Securities Market Commission) circulars have been approved: one concerning the transparency of stock-exchange transactions, and the other referring to the technical and legal specifications of the websites of listed companies and savings banks.

Finally, various provisions are discussed referring to 1) the partial transposition of European legislation on the supervision and solvency of insurance and reinsurance undertakings; 2) changes to the anti-money laundering and terrorist financing measures in the European Union; 3) the Account Auditing Law; and 4) new features of the second-chance and financial burden reduction mechanisms, and other social measures.

The contents of this article are set out in Table 1.

**ECB: internal assets and liabilities management operations and limits on the remuneration of deposits**

*Guideline (EU) 2015/1575 (ECB/2015/28) of 4 September 2015 (OJ L of 22 September 2015), amending Guideline ECB/2014/9 of 20 February 2014,<sup>1</sup> on domestic asset and liability management operations by the national central banks, which came into force on 22 September 2015, and Decision (EU) 2015/1574 (ECB/2015/29) of 4 September 2015 (OJ L of 22 September 2015), amending Decision ECB/2014/8 of 20 February 2014 on the prohibition of monetary financing and the remuneration of government deposits by national central banks, which came into force on 12 October 2015, were published.*

Guideline ECB/2014/9 and Decision ECB/2014/8 established, inter alia, the limits on remuneration on government deposits with NCBs, such that, specifically, the “secured market rate”, with a maturity equivalent to the limits laid down in Article 5(2) of Guideline ECB/2014/9, would apply to term deposits in the national currency.

The secured market rate is defined as the euro repo market offered rate (EUREPO) with comparable maturity. Given that the EUREPO rate was discontinued on 2 January 2015, the STOXX EUR GC Pooling index with a comparable maturity will now be used instead.

<sup>1</sup> See “Financial regulation: 2014 Q2”, Economic Bulletin, July-August 2014, Banco de España, pp. 46-48.

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## ECB: monetary and financial statistics

*Regulation (EU) 2015/1599 (ECB/2015/30) of 10 September 2015 (OJ L of 24 September 2015), amending Regulation (EU) 1333/2014 (ECB/2014/48), of 26 November 2014,<sup>2</sup> concerning statistics on the money markets, was published, coming into force on 14 October 2015.*

The latter regulation provided, for the first time, for the collection of statistical data on certain money market operations for submission to the ECB to facilitate the exercise of its functions.<sup>3</sup> This obligation requires reporting agents<sup>4</sup> to submit consolidated daily statistical data on transactions involving money market instruments to the NCB of the Member State in which they are based. In turn, NCBs are required to forward these money market statistics received from reporting agents to the ECB. However, this regulation (1333/2014) also envisages that NCBs may decide that reporting agents are to submit statistical data directly to the ECB, in which case it will be reporting agents that send this information to the ECB.

<sup>2</sup> See "Financial regulation: 2014 Q4", Economic Bulletin, January 2015, Banco de España, pp. 16-18.

<sup>3</sup> In particular, the data required in the Regulation provides information used to analyse the mechanism of transmission of monetary policy decisions. It also serves as analytical and statistical support to the Single Supervisory Mechanism (SSM), and for the performance of the ECB's functions in the field of financial stability.

<sup>4</sup> Reporting agents are monetary financial institutions (MFI) resident in the euro area, with the exclusion of NCBs and certain money market funds (MMF).

As NCBs will receive a series of instructions describing the detailed parameters for submission of the required statistical data to the ECB, for consistency, Regulation (EU) 2015/1599 incorporates certain details regarding these instructions in the annexes to Regulation (EU) 1333/2014.

#### ECB: Programme of asset-backed securities purchases

*ECB Decision (EU) 2015/1613 (ECB/2015/31) of 10 September 2015 (OJ L of 25 September 2015)*, amending ECB Decision (EU) 2015/5 (ECB/2014/45) of 19 November 2014, on the implementation of the asset-backed securities purchase programme (ABSPP) was published. Decision (EU) 2015/1613 entered into force on 15 October 2015.

Under this programme, the ECB purchases eligible asset-backed securities from counterparties. As well as being eligible as collateral for Eurosystem financing operations, these securities must also meet other minimum creditworthiness requirements, and comply with additional criteria concerning the nature and location of the debtors of the securitised assets backing these bonds. In October 2014 the Governing Council of the ECB announced the details of the programme and decided that the eligibility criteria for intermediate subordinated tranches (known as mezzanine tranches) would be communicated at a later stage.

Decision (EU) 2015/1613 now establishes the criteria for the eligibility of mezzanine tranches under the ABSPP, which must be appropriately secured in accordance with the Eurosystem collateral framework criteria. Specifically, collateral requirements similar to those for marketable assets are demanded, and the guarantor's credit assessment must be at least credit quality step 3 in the Eurosystem's harmonised rating scale.

For the purposes of this Decision, "mezzanine tranche" means a tranche of an asset-backed security issue that, in accordance with the post-enforcement priority of payments (or if applicable, the post-acceleration priority of payments as set out in the prospectus) ranks 1) below the non-subordinated tranche or sub-tranches of the same asset-backed security issue (senior tranche), and 2) above the most subordinated tranches that are the first to bear losses incurred on the securitised exposures.

#### ECB: legal framework for accounting and financial reporting in the European System of Central Banks

*Guideline (EU) 2015/1197 (ECB/2015/24) of 2 July 2015 (OJ L of 21 July 2015)* (hereinafter, the Guideline), amending Guideline ECB/2010/20 of 11 November 2010, legal framework for accounting and financial reporting in the European System of Central Banks,<sup>5</sup> was published, coming into force on 22 July 2015.

The Guideline explains the rules for the submission of financial information on securities issued by supranational or international organisations purchased through the public sector purchase programme (PSPP), established by Decision (EU) 2015/774 (ECB/2015/10) of 4 March 2015,<sup>6</sup> on a secondary markets public sector asset purchase programme, whose holdings are to be included in Section 7.1 of assets "Securities held for monetary policy purposes" of Eurosystem NCBs.

Finally, a number of technical changes have been made to Annex IV of Guideline ECB/2010/20, with reference to the composition and valuation criteria for these NCBs' balance sheets.

<sup>5</sup> Guideline ECB/2010/20 establishes the framework for accounting and financial reporting in the Eurosystem, recommending that, insofar as is possible, NCBs follow the standards established in this guideline when preparing the national financial accounts and statements.

<sup>6</sup> See "Financial regulation: 2015 Q2", Economic Bulletin, July-August 2015, Banco de España, p. 13.

**Banco de España: credit institutions' statistical and financial data**

The Banco de España published two circulars: *CBE 3/2015 of 29 July 2015* (BOE of 12 August 2015), amending, inter alia, CBE 1/2013 of 24 May 2013,<sup>7</sup> and CBE 5/2014 of 28 November 2014,<sup>8</sup> which came into force on 13 August 2015, and *CBE 4/2015 of 29 July 2015* (BOE of 13 August 2015), amending CBE 4/2004 of 22 December 2004,<sup>9</sup> CBE 1/2013 of 24 May 2013, and CBE 5/2012 of 27 June 2012,<sup>10</sup> which came into force on 14 August 2015, with the exception of some provisions that will come into force on 31 December 2015 or 31 December 2016, as applicable.

CHANGES INTRODUCED BY  
CBE 3/2015

The main objective of CBE 3/2015 is to amend (or, where applicable, discontinue) the submission of certain accounting statements and CIR modules, as a result of the future EBC regulations on credit risk information, known as *AnaCredit (Analytical Credit Dataset)*,<sup>11</sup> which, inter alia, will entail the modification of Annex IX, "Risk analysis and coverage", of CBE 4/2004.

It also includes the obligation that significant groups of credit institutions send individual financial information on their subsidiaries in European Union Member States that are not participating in the Single Supervisory Mechanism (SSM), or in third countries, and that this information must arrive no later than the fortieth working day following the period to which the data refer.

The frequency of the credit distribution statements has also been changed, such that they are now quarterly rather than monthly, given the high cost to institutions of preparing them. Finally, the so-called "CIR parallel period" has been extended for a further year, until 31 March 2016. During this period data pursuant to CBE 1/2013 and its predecessor CBE 3/1995 of 25 September 1995 are to be submitted simultaneously, until the information received by the CIR is confirmed to be of sufficient quality.

CHANGES INTRODUCED BY  
CBE 4/2015

CBE 4/2015 introduces the relevant changes to CBE 4/2004 and CBE 1/2013 to enable the essential data to be gathered from the special accounting records on regional bonds and internationalisation bonds, based on the minimum content which Royal Decree 579/2014 of 4 July 2014<sup>12</sup> laid down for each of the registers.

For their part, when issuing regional bonds or internationalisation bonds, specialised lending institutions are to keep the corresponding special accounting register and will be subject to the reporting requirements applicable to credit institutions under CBE 4/2004.

7 CBE /2013 of 24 May 2013 on the central credit register (CIR in its Spanish initials). See "Financial regulation: 2013 Q2", Economic Bulletin, July-August 2013, Banco de España, pp. 70-74.

8 CBE 5/2014 of 28 November 2014, amending Circular 4/2004 of 22 December 2004, on public and confidential financial reporting rules, and standard forms of financial statements; Circular 1/2010 of 27 January 2010, on statistics on interest rates applied to deposits and lending to households and non-financial corporations, and Circular 1/2013 of 24 May 2013, on the Bank of Spain's central credit register. See "Financial regulation: 2014 Q4", Economic Bulletin, January 2015, Banco de España, p. 19.

9 CBE 4/2004, 22 December 2004, addressed to credit institutions, on public and confidential financial reporting rules, and standard formats for financial statements. See "Financial regulation: 2004 Q4", Economic Bulletin, January 2005, Banco de España, pp. 117-121.

10 CBE 5/2012 of 27 June 2012, addressed to credit institutions and payment services providers, on banking service transparency and responsible lending. See "Financial regulation: 2012 Q3", Economic Bulletin, October 2012, Banco de España, pp. 81-86.

11 *AnaCredit* is an ECB plan to create a central register of granular data on the credit risks of credit institutions and other financial institutions lending in euro area countries. European Union Member States outside the Eurosystem will also have the option of taking part in the programme. *AnaCredit* data will be gathered via a network of internal credit registers. The ECB's requirements include harmonisation of the data supplied to these internal registries so that they are more granular. Consequently credit institutions will be required to report each loan and borrower individually.

12 Royal Decree 579/2014 of 4 July 2014 implementing certain aspects of Law 14/2013 of 27 September 2013, to support entrepreneurs and their internationalisation, concerning internationalisation bonds.

Lastly, Annex 8 of CBE 5/2012 of 27 June 2012 has been amended, as regards the sources of information for the official mortgage market reference rates. Specifically, the changes affect the “average rate on unsubsidised one- to five-year house-purchase mortgage loans granted by credit institutions in the euro area” as a consequence of the fact that the sources used to date to obtain this rate have ceased to be available. Consequently, other alternative sources publishing this information may now be used.

**Securities Market:  
transparency of  
transactions**

*CNMV Circular 2/2015 of 23 June 2015 (BOE of 10 August 2015)* (hereinafter, the Circular), amending Circular 3/1999 of 22 September 1999,<sup>13</sup> on transparency of transactions on official securities markets, was published, coming into force on 11 August 2015.

In line with current regulations, the Circular discontinues the obligation established in Circular 3/1999, whereby securities markets were required to disclose information on the identity of the buying and selling member both in transactions executed on the Spanish Stock Market Interlinking System (SIBE) and in special stock market transactions carried out pursuant to Royal Decree 1416/1991 of 27 December 1991 on special stock market transactions.

**Listed companies and  
savings banks: technical  
and legal specifications  
for websites**

*CNMV Circular 3/2015 of 23 June 2015 (BOE of 10 August 2015)* (hereinafter, the Circular), on the technical and legal specifications and information requirements for the websites of listed companies and savings banks that issue securities on official secondary securities markets was published, coming into force on 30 August 2015. Entities subject to the Circular must ensure the content of their website is compliant with its requirements by 1 January 2016.

The Circular determines these specifications under the powers granted by Order ECC/461/2013 of 20 March 2013,<sup>14</sup> and defines the information websites are to provide based on the minimum established in the aforementioned Order. It also establishes the principle of information transparency, such that all the information included on the website must be clear, complete, correct and accurate, and that content may not be included that may lead to error or confusion or that does not allow the investor to make a founded judgement about the entity.

In relation to the technical and legal specifications, entities are to have the means necessary to ensure their websites are easy to find on the Internet using the most commonly used search engines. If versions are offered for different types of electronic device, their content and presentation must be as uniform as possible. The home page is to include a specific section, easily recognised and directly accessible, where, under the heading of Information for shareholders (in the case of listed companies) and Information for investors (in the case of savings banks that issue securities in the terms mentioned), or another similar heading, all the information required by the regulations in force, and, in particular, by the Circular, is to be included.

As regards the obligatory information that is to be included on the website, this must comply, in terms of content and time of publication, with the requirements set out in the

<sup>13</sup> See “Financial regulation: 1999 Q3”, Economic Bulletin, October 1999, Banco de España, p. 76.

<sup>14</sup> Ministerial Order ECC/461/2013 of 20 March 2013 setting out the content and structure of the annual corporate governance report, the annual compensation report, and also implementing the obligations regarding other information mechanisms for listed companies, savings banks and other entities issuing securities admitted to trading on official securities markets. The Order regulated the content of the information mechanisms used by listed companies and savings banks issuing marketable securities on official secondary securities markets, and, specifically, the minimum content of their website. See “Financial regulation: 2013 Q1”, Economic Bulletin, April 2013, Banco de España, pp. 77-78.

Annexes to the Circular, without prejudice to other information which may be required by other regulations.

Finally, responsibility for the content of the website lies with the directors, in the case of listed companies, and the general manager, or whoever is established as being responsible in the specific sectoral regulations, in the case of savings banks.

**Organisation, supervision and solvency of insurance and reinsurance undertakings**

*Law 20/2015 of 14 July 2015 (BOE of 15 July 2015)* (hereinafter, the Law), on the organisation, supervision and solvency of insurance and reinsurance undertakings (hereinafter, the entities) was published, coming into force on 1 January 2016. At the same time, Legislative Royal Decree 6/2004 of 16 June 2000, enacting the consolidated text of the Law on the Ordering and Supervision of Private Insurance, was almost entirely repealed.

**OBJECT AND PURPOSE OF THE LAW**

The Law introduces some of the provisions of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009,<sup>15</sup> on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), which require incorporation through a rule with the status of law. The remainder of the provisions of this Directive will be transposed into Spanish legislation by means of a regulation, which will also implement some of the provisions of this Law, without prejudice to the implementing measures that may be stipulated by the European Commission.

Its purpose is the regulation and supervision of the insurance and reinsurance business, including the conditions for taking up and pursuing this business, and the rules on solvency, reorganisation and winding up of entities, in order to protect the rights of policy holders, insured parties and beneficiaries, and to promote the appropriate degree of transparency and proper development of the insurance business.

**MAIN NEW FEATURES OF THE LAW**

The main changes this Law introduces are:

- 1) In relation to the conditions for the pursuit of the business, persons exercising effective control over insurance undertakings and controlling entities of groups of insurance undertakings shall be required, inter alia, to meet the conditions of good repute, and necessary professional qualifications and experience. This requirement shall also apply to persons performing functions included within the undertaking's system of governance, under similar terms to those established in the Solvency II Directive.
- 2) The requirement for entities to have an effective system of governance (one of the new features introduced by the Solvency II Directive), which recognises that some risks can only be duly taken into consideration through requirements for entities' governance and rather than by means of quantitative requirements. The governance system includes the basic risk-management function, the compliance function, the internal audit function and the actuarial function. Within risk management, all insurance and reinsurance undertakings must

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<sup>15</sup> This Directive was amended fundamentally by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014, amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)(Omnibus Directive II). See "Financial regulation: 2009 Q4", Economic Bulletin, January 2010, Banco de España, pp. 162-164.

assume, as a habitual practice, the periodic internal evaluation of their global solvency risks in the light of their specific risk profile. For the purposes of transparency, insurance and reinsurance undertakings must disclose the essential information on their financial situation and solvency at least once a year by making it available to the public.

- 3) Two levels of solvency capital requirements are established: one, obligatory solvency capital, varying as a function of the risk assumed by the entity and based on a prospective calculation, and the other, the minimum obligatory capital, configured as a minimum level of security below which the entity's financial resources must never drop. Should the entity have insufficient obligatory solvency capital, the Law establishes an appropriate escalating ladder of intervention by the supervisory authority.
- 4) As regards supervision, insurance and reinsurance undertakings considered individually constitute an essential element of supervision. However, unlike the preceding legislation, the Law gives a more substantive character, as supervised parties, to groups of insurance and reinsurance undertakings, which are regulated in Title V. An important new feature in this field is the possibility of creating groups without capital links, in particular mutual insurance groups. The Law also identifies the Directorate General of Insurance and Pension Funds (DGSFP) as the national supervisory authority, without prejudice to the supervisory and regulatory powers expressly conferred upon the Minister for Economic Affairs and Competitiveness and the competencies that correspond to the autonomous regions, where applicable. It also regulates the set of powers and competences allowing the Spanish supervisory authority for insurance to oversee the orderly conduct of the business, including outsourced activities and functions. It also confers upon the DGSFP the regulatory authority to issue binding circulars in the sphere of the supervision of insurance and reinsurance activities. Furthermore, it includes the mechanisms available to the supervisory authority to address entities' financial impairment, including special control measures.
- 5) The law specifies the concept of a specially privileged creditor under an insurance contract in the event of an entity's being wound up, and confers upon members of mutual and cooperative insurance societies the same rights as partners in capital companies, in particular the right to information and a share of the assets resulting from the liquidation. In liquidations by the Insurance Compensation Consortium, certain modifications have been introduced with regard to the purchase of credits from its resources, in particular in relation to labour credits that may be advanced, and also regulating participation in bankruptcy proceedings.
- 6) Finally, the types of infringers under the infringements and penalties regime are adjusted to the new requirements for the taking-up and pursuit of the business. The limits to the financial penalties are defined more precisely and more details of disciplinary proceedings are set out.

#### OTHER CHANGES

The range of activities for which insurance is mandatory has been widened, such that persons exercising certain activities posing a direct and specific risk to people's health or safety, including financial security, may be required to hold insurance covering any damages they may cause and for which they may be liable.

The consolidated text of the Law regulating pension schemes and pension funds, enacted by Legislative Royal Decree 1/2002 of 29 November 2002, has been reformed to improve the regulation of open-end pension funds, so as to channel investments from other pension funds and pension schemes assigned to other pension funds. Open-end pension funds must be in one of the following categories: 1) occupational open-end pension funds, intended to channel investments from occupational pension funds; and 2) personal open-end pension funds, intended to channel investments from personal pension funds. Under the terms of the regulations, open-end pension schemes (whether occupational or personal) may also channel resources from their position account into open-end pension funds of the same category (occupational or personal). The direct integration of pension schemes in open-end pension funds is voluntary, but in all cases must be within the same category (i.e. occupational or personal).

Finally, the Law covers the regulation of the oversight committee for occupational open-end pension funds. This committee is to comprise representatives of the investing funds and schemes and, where applicable, of the directly integrated schemes, who will be appointed by the oversight committees of the latter funds and schemes from among their members. If there is a single investing fund or single investing pension scheme, the oversight committee of the latter will exercise the role of the oversight committee of the open-end pension fund. In the case of personal open-end funds, the role of the oversight committee may be assumed by the management entity.

#### Anti-money laundering and terrorist financing measures: changes to European regulations

*Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 (OJ L of 5 June 2015) (hereinafter, the Regulation), on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 of 15 November 2006,<sup>16</sup> and Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (OJ L of 5 June 2015) (hereinafter, the Directive), on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of 4 July 2012,<sup>17</sup> and repealing Directive 2005/60/EC of 26 October 2005<sup>18</sup> and Commission Directive 2006/70/EC of 1 August 2006,<sup>19</sup> were published.*

The Regulation will apply as of 26 June 2017 and the Directive must be transposed into Member States' domestic legislative systems prior to that date.

#### NEW FEATURES OF THE REGULATION

The Regulation establishes certain rules on the information that is to accompany transfers in any currency of funds sent or received by a payment services provider or intermediary payment services provider established in the European Union.<sup>20</sup>

Certain transactions are excluded from the scope of the Regulation, including, inter alia: 1) payment transactions effected exclusively in cash and direct from the payer to the payee,

<sup>16</sup> Regulation (EC) 1781/2006 of the European Parliament and of the Council of 15 November 2006 on the payer information accompanying transfers of funds.

<sup>17</sup> Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 June 2012 on OTC derivatives, central counterparties and trade repositories. See "Financial regulation: 2012 Q3", Economic Bulletin, October 2012, Banco de España, pp. 96-100.

<sup>18</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

<sup>19</sup> Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed persons and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

<sup>20</sup> In Spanish legislation, Law 16/2009 of 13 November 2009 on payment services, recognises credit institutions, electronic money entities, and payment entities regulated under this law, among others, as payment service providers.



without the intervention of any intermediaries, and transactions effected by payment service providers, or between agents or branches, acting on their own behalf; 2) services of providers of cash withdrawal services from cash dispensers acting on behalf of one or more card issuers, when these service providers do not perform other payment services; and 3) transfers effected with a payment card, or electronic money instrument or mobile telephone, or other similar prepaid or postpaid computer or digital device, unless used to make transfers between individuals.

Member States may decide not to apply the Regulation to transfers made within their territory when used solely to pay for the provision of goods and services provided that certain conditions are met and the amount is not more than €1,000.

Additionally, the obligations of the payment service providers of the payer and of the payee are expanded. The payer must include the full details and account numbers of both the payer and payee with the transfer, and must verify the accuracy of this information using documents, data or information from a reliable independent source before transferring the funds. The payment service provider of the payee must implement appropriate procedures to detect that the transfer data have been completed, determining, where applicable, when to execute, reject or suspend a transfer that does not contain full information on the payer and payee, and ensure that appropriate measures are taken (which may even entail the discontinuation of commercial dealings in cases of repeated omission of information), particularly if the amount transferred exceeds €1,000, or a smaller amount if it is considered that the transfer is linked to other funds transfers jointly exceeding €1,000.

In the case of transfers of less than this amount there will be no obligation to verify the accuracy of the information about the payee, unless payment is made in cash or in anonymous electronic money, or there are reasonable grounds for suspecting money laundering or terrorist financing. Missing or incomplete information on the payer or the payee is to be considered as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU)<sup>21</sup> in accordance with Directive (EU) 2015/849.

#### NEW FEATURES OF THE DIRECTIVE

Changes in the scope  
of application

Broadly speaking, the Directive applies to the same regulated entities, which are, inter alia: credit institutions; auditors; external accountants and tax advisers; estate agents; notaries and other independent legal professionals, provided they are acting on behalf and in the name of their clients in certain financial or real-estate transactions; persons trading in goods, when transactions are paid in cash for amounts of €10,000 or more (previously €15,000), independently from whether payment is made as a single transaction or a series of apparently linked transactions, with the new feature that this is now extended to providers of gambling services (previously it only applied to casinos), with the exemptions it provides for.

Changes to due  
diligence measures

The circumstances in which regulated entities are to apply due diligence measures have been extended to: 1) transfers of funds regulated under Regulation (EU) 2015/847 of over

<sup>21</sup> A FIU (Financial Intelligence Unit) is a central, national agency responsible for receiving, analysing and submitting to the competent authorities cases of money laundering deriving from the delivery of financial information relating to funds suspected to be the proceeds of criminal activity or information required by national legislation in order to counteract money laundering. FIUs are points of centralisation of information on unusual or suspicious financial transactions and also receive confidential reports from financial organisations. Spain's FIU is the Executive Service of the Commission for the Prevention of Money Laundering (SEPBLAC).

€1,000; 2) occasional cash transactions with a value of €10,000 or more by persons trading in goods, whether the transaction is carried out in a single operation or in several apparently linked transactions; and 3) gambling transactions for a value of €2,000 or more whether upon the collection of winnings, the wagering of a stake, or both.<sup>22</sup>

In the case of electronic money, the amount stored electronically below which Member States may allow regulated entities not to apply certain customer due diligence measures has been raised from €150 to €250, provided the risk-mitigation conditions established in the Directive have been met (a Member State may increase the maximum amount to €500 for payment instruments that can be used only in that Member State).

#### Risk assessment

The Directive introduces the risk assessment that both the European Commission and Member States are to carry out. The Commission will assess the risk of money laundering or terrorist financing affecting the internal market in relation to cross-border activities. For their part Member States will take appropriate steps to identify, assess, understand and mitigate the risks of money laundering and terrorist financing affecting them, as well as any data protection concerns in that regard. Each Member State will designate an authority or establish a mechanism with which to coordinate the national response to the risks identified. The identity of that authority or the description of the mechanism will be notified to the Commission, the European Supervisory Authorities (ESAs), and other Member States.

#### Information on beneficial ownership

Another new feature of the Directive is that the customer due diligence measures include the requirement that regulated entities report beneficial ownership. Thus, Member States are to ensure that corporate and other legal entities incorporated within their territory are required to provide regulated entities with information about their beneficial owners, in addition to information about their legal owner. Member States must also ensure that this information is held in a central register in each Member State (for example a commercial register, companies register, or a public register). The information on beneficial ownership in this database must be accessible in accordance with legislation on national systems.

#### Other changes

The functions of the FIU have been strengthened. FIUs will be responsible for receiving and analysing suspicious transaction reports and other relevant information on potential money laundering, associated underlying crimes, or the potential for terrorist financing. Finally, the cooperation obligations of FIUs, supervisory authorities, and other competent authorities involved in combating money laundering and terrorist financing have been expanded to ensure they have effective mechanisms of cooperation and coordination at national level for the preparation and application of policies and activities to combat money laundering and terrorist financing. The competent authorities are also to provide ESAs with all the information they need to fulfil their obligations.

#### Statutory Audit Law

*Law 22/2015 of 20 July 2015 (BOE of 21 July 2015) on Statutory Audits (hereinafter, the Law), was published, and is due to come into force on 17 June 2016.*

The main purpose of the Law is to adapt Spanish legislation to the changes introduced by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014

<sup>22</sup> In Spain, Law 7/2012 of 29 October 2012 amending the fiscal and budgetary legislation and adapting financial legislation to intensify measures to prevent and combat fraud, imposed a general limit on cash payments of €2,500 in transactions in which one or other of the parties was acting in a business or professional capacity. In the case of payers who substantiate that they are not resident in Spain for tax purposes and are not acting in a business or professional capacity, the limit is €15,000.

amending Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, on those points where there were divergences. Also, as regards the auditors of public-interest entities, supplementary provisions to Regulation 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC have been included.

The main new features of the Law from the financial point of view are as follows:

- 1) In contrast to the preceding legislation, two separate systems have been implemented, distinguishing between a regulatory framework for statutory audits in general, and another for statutory audits of public-interest entities. The latter include credit institutions, issuers of securities admitted to trading on official secondary markets, and insurance undertakings subject, respectively, to the supervision and control regime of the Banco de España, the CNMV, the Directorate General for Insurance and Pension Funds, and the regional bodies with powers over the organisation and supervision of insurance undertakings. The overall purpose is to ensure that audits of the latter entities are of high quality, while guaranteeing at the same time a high level of consumer and investor protection at European level.
- 2) The transparency of auditors' activities will be increased, with clarification of their function, scope and limitations, in accordance with European legislation. In this regard, new requirements on the content of the audit report are established, which are stricter in the case of public-interest entities. Additionally, the auditors of public-interest entities are required to send an additional report to the entity's Audit Committee setting out the audit's findings, and the account auditors must include certain financial information specified by the Law in the annual transparency report. The channels of communication between the auditors and supervisors of these entities are also strengthened.
- 3) Auditors' independence and objectivity in the exercise of their activity has been bolstered. To this end, the mixed system under the previous legislation has been retained, which was based, firstly, on a general principle of independence, requiring auditors to abstain when their objectivity in relation to the financial and economic information it is necessary to audit could be compromised, and secondly, on the enumeration of a series of circumstances or specific relationships in which, should they arise, it is deemed that auditors are not sufficiently independent from the entity concerned. However, more stringent requirements have now been introduced, such as: 1) the obligation that Member States ensure that any person who may influence the results of the audit (not just the auditor) refrain from taking part in the entity's decision-making processes; 2) the adoption of measures by the auditor or audit firm to avoid conflicts of interest or direct or indirect commercial or other relationships actually or potentially compromising their independence; and 3) the establishment of safeguards to ensure that auditors or audit firms, or their staff or whoever provides them with services in the exercise of the audit activity, and certain family members, do not hold a significant direct interest or conduct certain transactions in financial instruments in the audited entity.

- 4) Auditors' contracts with public-interest entities may not be shorter than three years nor longer than ten years, including extensions. Nevertheless, after the end of the total contracting period, under certain circumstances this period may be extended for up to a further four years.
- 5) Finally, rules are established limiting the fees of auditors of public-interest entities, as established in Regulation (EU) 537/2014.

**Second-chance mechanism, reduction of financial burden, and other social measures**

*Law 25/2015 of 28 July 2015 (BOE of 29 July 2015) (hereinafter, the Law), on the second-chance mechanism, reduction of financial burden, and other social measures, was published, coming into force on 30 July 2015.*

The Law has been used to introduce certain amendments to Royal-Decree Law 1/2015 of 27 February 2015,<sup>23</sup> on the second-chance mechanism, reduction of financial burden, and other social measures. These include improvements to the code of good practice introduced by Royal Decree-Law 6/2012 of 9 March 2012<sup>24</sup> on urgent measures to protect mortgage debtors without resources. The code's scope of application has been broadened by increasing the annual income limit for beneficiary families, calculated based on the annual 14-monthly payment Multi-Purpose Public Income Index (IPREM), including as a new case of special vulnerability the fact that the mortgagor is aged over 60, and introducing a new calculation of the limit on the price of properties acquired. Additionally, floor clauses in the contracts of debtors on the new exclusion threshold have been rendered definitively inapplicable.

Other relevant new features include:

**DEBT RELIEF SYSTEM FOR NATURAL PERSONS**

In relation to the debt relief system for natural persons in the framework of bankruptcy proceedings, the debtor is required to have acted in good faith, such that, among other requirements, the bankruptcy must have been declared free of culpability. The Law now establishes that even if the bankruptcy was declared to involve culpability because the debtor breached the duty to apply for a declaration of bankruptcy, the court may grant the benefit of debt relief in the light of the circumstances, provided that the debtor is not considered to have committed fraud or gross negligence.

Additionally, one of the requirements the debtor must accept in order to be covered by this system is to be listed in the special section of the Public Bankruptcy Register and to submit to a payment plan, cooperate during proceedings, not have obtained the benefit of debt relief in the previous ten years, and not have rejected a suitable job offer in the four years prior to the bankruptcy proceedings. The Law now restricts access to this register to persons having a legitimate interest in determining the debtor's situation, and public authorities and judicial bodies legally authorised to gather the information necessary for the exercise of their functions. This legitimate interest will be assessed by the authority in charge of the Public Bankruptcy Register.

In relation to the revocation of debt relief, previously creditors could apply to the court for revocation if the debtor's economic situation improved within the five years following relief being granted, regardless of the cause. As of the entry into force of the Law, revocation may only be applied for if this improvement was the result of a fortuitous cause (inheritance, legacy or donation, or a game of luck or chance).

<sup>23</sup> See "Financial regulation: 2015 Q1", Economic Bulletin, April 2015, Banco de España, pp. 20-22.

<sup>24</sup> See "Financial regulation: 2012 Q1", Economic Bulletin, April 2012, Banco de España, pp. 147-151.

Finally, the effort a family at risk of social exclusion<sup>25</sup> is required to make in order for the court to declare relief from the remainder of the debt to be definitive, has been reduced, even if the payment plan has not been followed in full. For this to apply, the debtor must have devoted at least 25% of his or her income not exempt from attachment to repaying the debt for five years since the benefit of debt relief was provisionally granted. In other cases the share remains 50%.

#### REMUNERATION OF THE BANKRUPTCY ADMINISTRATORS

A number of changes have been made to the way the bankruptcy administrators are remunerated. These include setting the total maximum they can receive for their involvement in the bankruptcy proceedings at either 4% of the debtor's assets or €1,500,000, whichever is the smaller amount. However, the court may, stating its reasons and having heard the parties, approve remuneration in excess of this amount, due to the complexity of the proceedings, if justified by the costs incurred in administering the bankruptcy, but in no circumstances may it exceed 50% of this limit.

#### TARIFF GUARANTEE ACCOUNT SYSTEM

The Law establishes that, in those bankruptcy proceedings that conclude with insufficient assets to meet the all the claims against the estate, a minimum payment will be guaranteed through a "tariff guarantee account", which will be funded from the mandatory contributions by the bankruptcy administrators.

The applicable rules and constitution of the tariff guarantee account, which will be funded from the mandatory contributions of the bankruptcy administrators and which will depend on the Ministry of Justice, are established. The sums to be paid into this account will be calculated based on the remuneration effectively received by each bankruptcy administrator for his or her activity in the bankruptcy proceedings by applying the following percentages: 1) 2.5% of any remuneration obtained between €2,565 and €50,000; 2) 5% of any remuneration obtained between €50,001 and €500,000, and 3) 10% of any remuneration obtained in excess of €500,000. Bankruptcy administrators whose remuneration does not reach €2,565 for the proceedings as a whole or those that have to be paid from this account are exempted from this obligation.

#### PROTECTION OF MORTGAGE DEBTORS

The recast text of the Law regulating pension schemes and pension funds enacted by Legislative Royal Decree 1/2002 of 29 November 2002 has been amended to extend from two to four years, i.e. from 15 May 2015 to 15 May 2017,<sup>26</sup> the period during which pension scheme members may make effective their consolidated rights in the case of foreclosure proceedings against their principal residence, subject to the conditions and requirements established in this legislative instrument.

#### OTHER CHANGES

Law 35/2003 of 4 November 2003 on Collective investment institutions (CIIs) and Law 22/2014 of 12 November 2014<sup>27</sup> have been amended to expand the cross-border activity of CII management companies (SGIIC by their Spanish abbreviation) and management companies of closed-end type entities (SGEIC by their Spanish abbreviation). In this

25 For these purposes, a family is considered to be at risk of social exclusion if the circumstances envisaged in Article 3.1(a) and (b) or Royal Decree-Law 6/2012 of 9 March 2012 on urgent measures to protect mortgage debtors without resources are met, i.e.: 1) that all the members of the family unit are without income from employment or economic activities; and 2) the mortgage payment is more than 60% of the net income of all the members of the family unit.

26 The period began with the entry into force of Law 1/2013 of 14 May 2013 on measures to strengthen the protection of mortgage borrowers, debt restructuring, and rented social housing, which was on 15 May 2013.

27 Law 22/2014 of 12 November 2014 regulating venture capital entities and other closed-end collective investment institutions and the management companies of closed-end collective investment institutions, and amending Law 35/2003 of 4 November 2003 on CIIs.

regard, as well as managing CIs or managing venture capital entities and closed-end collective investment undertakings (EICC by their Spanish abbreviation), respectively, SGIC and SGEIC may provide certain services for which they have been authorised in other Member States of the European Union.

Similarly, SGIC and SGEIC from other Member States may provide certain services in Spain, either directly or through a branch, provided that they are authorised in their home Member State to manage these types of entities or provide these services.

15.10.2015.