

# Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

## **Royal Decree-law on economic recovery measures for mitigating the impact of COVID-19 on transport and housing (Royal Decree-law 26/2020, published in the Official State Journal on July 18<sup>th</sup>, 2020)**

Below is a summary of the main measures taken in the financial arena.

1. Moratoria for the public freight transport sector and the non-regular transport of passengers by coach.

Introduction of a moratorium on loans and vehicle leases earmarked for the non-regular public transport of passengers by coach and the public transport of freight (including the transport of coal from fossil fuel power stations) with a maximum permitted weight of 3.5 tonnes for self-employed professionals and legal persons whose business activity includes the public transportation of passengers or freight if they are encountering financial difficulties on account of the COVID-19 crisis. This moratorium includes the following stipulations:

- The borrower is understood to be experiencing financial difficulties if his/her income or turnover declined by a monthly average of 40% between March and May 2020 with respect to the average reported during the same months of 2019. Financial difficulties are not deemed to exist when: (i) the loan or lease for which the moratorium is being applied is in arrears on account of full or partial non-payment prior to January 1<sup>st</sup>, 2020; (ii) the borrower had declared itself bankrupt prior to the declaration of the state of emergency.

- The moratorium does not apply to coaches associated with the provision of a regular passenger transport public service for general use under the scope of a concession with a public authority or subject to public service obligations.
- Applications can be submitted from the date of effectiveness of the legislation until the end of the term set in the EBA Guidelines on payment moratoria (September 30<sup>th</sup>, 2020, albeit with scope for extension). When applying for the payment moratorium, applicants must substantiate the existence of financial difficulties by providing the required documented support.
- The legislation contemplates liability for borrowers who avail of the moratorium fraudulently.
- Lenders must apply the moratorium by means of an official novation in keeping with the general rules. Registration of the extension of the initial term will have full effects *vis-a-vis* any registered intermediate creditors even if the latter have not provided their express consent thereto. The effects of the payment moratorium will extend to surety providers.
- The moratorium on the payment of principal will remain in effect for up to six months. Any deferred principal shall accrue ordinary interest on the terms of the original contract.
- The amount deferred must be settled by either: (i) extending the maturity date

by a number of instalments equivalent to the duration of the moratorium; or, (ii) redistributing the instalments without changing the repayment date or altering the applicable rate of interest.

- When a contract has already been the subject of any form of payment moratorium, whether legislative or non-legislative, the borrower or lessee may avail of the public transport sector payment moratorium for the time remaining to complete the contemplated six-month duration.
- Legal persons that benefit from a moratorium may not distribute profits, return capital, repurchase own shares or remunerate equity holders in any way until the moratorium is finished.
- Whenever a moratorium has been implemented, the lender or lessor, to the extent a credit institution supervised by the Bank of Spain, must notify the latter of its existence and duration. The balances due had the moratorium not been applied will not be considered in arrears.
- Every working day, the lending institutions must send the Bank of Spain information about the moratoria related to the preceding working day.

2. Moratoria on loans awarded under the scope of the various state sponsored home mortgage programmes.

Payment moratoria on the mortgages provided on special terms agreed by the authorities with the banks under the scope of the successive state housing programmes that the banks have offered or may offer in light of COVID-19 shall not imply the loss of such special status so long as the payment suspension corresponds to the full loan instalment, *i.e.*, the repayment principal plus interest.

3. Amendment of Royal Decree-law 8/2020 (March 17<sup>th</sup>, 2020) on extraordinary urgent measures for mitigating the economic and social impacts of COVID-19 as follows.

- The deadline for applying for the payment moratorium on mortgages arranged over regular abodes or properties used in the business activities of business owners and professionals has been extended to September 29<sup>th</sup>, 2020.

- Legislative and non-legislative payment moratoria can be awarded simultaneously. In such instances, the non-legislative moratorium agreement with the borrower must expressly acknowledge the legislative moratorium, with the effects of the non-legislative moratorium suspended until the end of the former.

4. Amendment of Royal Decree-law 11/2020 (March 31<sup>th</sup>, 2020) adopting complementary urgent measures in the social and economic arenas to mitigate the impact of COVID-19 as follows.

- The deadline for applying for payment moratoria on unsecured credit agreements has been extended to September 29<sup>th</sup>, 2020.

- Legislative and non-legislative payment moratoria can be awarded simultaneously. In such instances, the non-legislative moratorium agreement with the borrower must expressly acknowledge the legislative moratorium, with the effects of the non-legislative moratorium suspended until the end of the former.

- The deadline has similarly been extended to September 30<sup>th</sup>, for people who rent their regular abode and find themselves economically vulnerable to apply for the temporary and extraordinary deferral of their rent payments when the landlord is a company, a public housing entity or an established lessor, so long as the parties have not already agreed voluntarily to such deferral or to the partial or total forgiveness of the rent.

**Bank of Spain Circular on banking product and service advertising (Circular 4/2020, published in the Official State Journal on June 15<sup>th</sup>, 2020)**

The purpose of this Circular is to establish: (i) the principles and criteria governing the advertisement of banking products and services; and, (ii) a specific regime for advertising placed in digital media. To that end:

- It clarifies the types of entities whose advertising activities are subject to compliance with the sector regulations, *i.e.*, the Spanish and international financial institutions, and extends its scope of application to mortgage credit lenders and intermediaries.
- It introduces a series of definitions and develops the concept of ‘advertising activity’ in keeping with the terms of Ministerial Order EHA/1718/2010.
- It determines the general principles and criteria governing the content and format of advertising messages for banking products and services.
- It introduces a specific regime for advertising broadcast on TV and radio and another for advertising placed online and on social media.
- It continues to allow the banks to voluntarily accede to self-regulation systems in the advertising arena as one way of certifying the existence of the controls needed to ensure their advertising is aligned with the terms of the banking product and service advertising regulations.
- It introduces a notification obligation at the start of advertising activity for entities advertising banking products and services in Spain for the first time and implements registration requirements.

It repeals Bank of Spain Circular 6/2010 (of September 20<sup>th</sup>, 2010) on banking product and

service advertising by credit institutions and payment entities.

It also amends Circular 6/2001 (of October 29<sup>th</sup>, 2001) on owners of currency exchange establishments in order to update the disclosure requirements binding upon establishments that purchase and sell foreign notes or travellers’ cheques in exchange for euros.

The new Circular will take effect on October 15<sup>th</sup>, except for the registration obligations, which will become effective six months after the Bank of Spain publishes the contemplated technical specifications, and the start of advertising activity notification obligation, which takes effect on the day after its publication in the *Official State Journal*.

**Revolving Credit Regulation Order amending Ministerial Order ECO/697/2004 (March 11<sup>th</sup>, 2004), on the Risk Information Register, Order EHA/1718/2010 (June 11<sup>th</sup>, 2010), on the regulation and control of banking product and service advertising and Order EHA/2899/2011, (October 28<sup>th</sup>, 2011) on banking service customer transparency and protection (Order ETD/699/2020, published in the Official State Journal on June 27<sup>th</sup>, 2020)**

The purpose of this Order is to reduce the risk of excessive loan duration and an attendant increase in the final debt service burden with respect to the borrower’s initial expectations; to enhance the information received by the borrower from the lender throughout; and to improve the information available to lenders for the purpose of analysing the creditworthiness of borrowers.

In broad terms, the Order implements the following:

1. Amendment of Order ECO/697/2004 (March 11<sup>th</sup>, 2004) on the Central Risk Register. It separates the handling of the information received by the Bank of Spain while exercising its supervision and inspection duties from the

information processed in order to provide the reporting entities with data needed for their business activities. It also lowers the threshold for the data provided to the reporting entities in order to carry out their business activities.

2. Amendment of Order EHA/1718/2010 (June 11<sup>th</sup>, 2010) on the regulation and control of banking products and service advertising. It establishes specific criteria for the advertisement of a revolving credit facility.

3. Amendment of Order EHA/2899/2011 (October 28<sup>th</sup>, 2011) on banking service customer transparency and protection. Notably:

- In the assessment of creditworthiness, it introduces specific considerations in relation to consumer credit of indefinite duration. Specifically, verification that a customer has sufficient economic wherewithal to satisfy its obligations throughout the life of the transaction without becoming overly indebted.
- With respect to the information to be provided to the borrower, the new requirements cover the following: (i) the information to be provided before the execution of a credit agreement of indefinite duration or that is automatically renewable, excluding loans in which the holder repays the total amount of credit drawn down in a single payment at the end of the agreed settlement period, without interest; (ii) the possibility for the borrower to obtain a copy at any time of some or all of the ongoing information required, including the repayment schedule and detailed information about the amounts paid and the amounts outstanding; (iii) the obligation on the part of the lender to notify the borrower beforehand of each increase in the loan limit not requested by the latter, including, if warranted, the resulting new instalment and the amount of outstanding debt; (iv) contractual determination of the method to be used to send the information;

and, (v) the expenses the lender may charge for the provision of such information.

- It addresses the right to withdraw from the credit agreement.
- It introduces new official interest rates, specifically 1-week, 1-month, 3-month and 6-month EURIBOR, the euro short-term rate (€STR) and any other index expressly stipulated to that end by means of a resolution from the General Secretariat of the Treasury and International Financing. It eliminates MIBOR from the list of official interest rates, notwithstanding its continued publication for use in loan agreements arranged prior to January 1<sup>st</sup>, 2000.

This Order will take effect on January 2<sup>nd</sup>, 2021, with the odd exception.

**Royal Decree amending Royal Decree 304/2004 (February 20<sup>th</sup>, 2004) enacting the pension plan and funds regulation and Royal Decree 1060/2015 (November 20<sup>th</sup>, 2015), on the structuring, supervision and capital adequacy of insurance and reinsurance entities (Royal Decree 738/2020, published in the *Official State Journal* on August 7<sup>th</sup>, 2020)**

This piece of legislation implements certain matters needed to complete the transposition of the European Directives 2016/2341 and 2017/828 in relation to their impact on national pension fund regulations. Below is a summary of the key changes made to the pension plan and fund regulation as a result:

- It introduces information requirements for prospective members, members and beneficiaries as well as good repute and integrity requirements for those who effectively run the funds and those who carry out key functions within the pension funds' governance systems; it addresses own risk assessments and establishes rules for the outsourcing of activities.
- It introduces the rules governing the so-called 'pension plan key information

document' for members of occupational pension plans (IORPs).

- It modifies the contents of the IORP membership marketing materials.
- It adds the pension benefit statement to the information which must be provided annually to IORP members.
- It prioritises the provision of information to prospective members, members and beneficiaries through electronic means, including on a durable medium or by means of a website, or on paper if expressly requested.
- It modifies the delegation of the duties of pension fund management companies to align such delegation with the terms of the consolidated text of the Pension Plan and Fund Regulating Act in relation to outsourcing.
- It includes the actuarial function in relation to IORPs within the scope of actuarial services.
- It introduces obligations related with asset managers in terms of engagement policy and investment strategies and certain aspects of their mandates.

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