

Recent key developments in the area of Spanish financial regulation

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Royal Decree creating the Financial Stability Council Macroprudential Authority, establishing its legal regime and implementing certain aspects related to macroprudential instruments (Royal Decree 102/2019, published in the official state journal on March 2nd, 2019)

The purpose of this Royal Decree is the creation of the Financial Stability Council Macroprudential Authority (AMCESFI for its acronym in Spanish) as the national macroprudential authority in charge of identifying, preventing and mitigating the development of systemic risk. In tandem with the three financial sector supervisors, it will facilitate the financial system's sustainable contribution to economic growth. The following constitute key aspects of the Royal Decree:

- AMCESFI will replace the Financial Stability Committee and will have the ranking of a collegiate body under the Ministry of the Economy and Business. It will be composed of a Board, Technical Committee and any sub-committees duly established.
- The Board will meet at least once every six months. The Minister of the Economy and Business will serve as its chair, while the Governor of the Bank of Spain will act as vice-chair. Other members include the President of the Spanish securities market regulator (CNMV), the Sub-Governor of the Bank of Spain, the Secretary of State for the Economy and Business Support, and the head of the insurance and pension sector watchdog (DGSFP). The State Attorney from the General Secretariat of the Treasury and International Financing will act as Secretary of the Board, but will not exercise a vote.
- The Royal Decree stipulates the duties of the Board members and the regime for calling Board meetings, including quorums. It also outlines the composition of the Financial Stability Technical Committee and its members' duties.
- The AMCESFI's duties will focus on oversight and analysis of factors that could lead to systemic risk in the financial sector. Based on the results of its work, the AMCESFI is entitled to issue opinions, alerts and recommendations, which will be made public, along with the responses by the recipients of the recommendations, unless such action could undermine financial stability.
- The AMCESFI will issue an annual report that compiles and analyses the main sources of systemic risk identified and the opinions, alerts and recommendations the Board has decided to make public.
- In terms of cooperation and coordination, the legislation itemises the national bodies and authorities which must collaborate with and provide information to the AMCESFI. It also outlines the AMCESFI's duty to collaborate with the macroprudential authorities of other member states, and report any recommendations and alerts issued to the ESRB and the ECB whenever the recommendation issued affects institutions under its direct supervision.

Lastly, the Royal Decree enacts macroprudential instruments that may be adopted by the Bank of Spain, the CNMV and the DGSFP and implements the procedure for reporting the proposed use of such instruments to the AMCESFI prior to their adoption.

Ministerial Order on payment accounts with basic features, the procedure for switching payment accounts and requirements for comparison websites (Ministerial Order ECE/228/2019, published in the official state journal on March 5th, 2019)

The purpose of this Order is to enact implementation provisions addressing the maximum fees and commissions, publicity, reporting and other aspects concerning payment accounts with basic features (basic payment accounts). It also outlines the the procedure applicable to the switching of payment accounts in Spain, the facilitation of cross-border account opening in other EU member states and additional requirements for fee comparison websites.

In relation to basic payment accounts, the following are the main requirements:

- Institutions may charge customers a single and aggregate monthly fee of no more than 3 euros for the provision of the services included in a payment account with basic features. Those services shall include up to 120 annual payment transactions in euros within the EU (direct debits, transfers and standing orders).
- Institutions may pass on fees or expenses to their customers charged by third parties as a result of the withdrawal of cash from ATM machines.
- Institutions are obliged to apply AML/CTF legislation to the opening and use of basic payment accounts.
- Denial of an application to open a basic payment account, the unsubstantiated closure of an account or any other controversy may be the subject of a claim by a customer.
- The Order stipulates the information which banks must provide free of charge at their establishments, on their websites and other distribution channels.

As for the switching of payment accounts, the following is worth highlighting:

- The switch shall be initiated by the payment service provider at the request of the customer. The payment service provider will bear the costs of the transfer.
- It stipulates the steps payment service providers must take to comply with customers' requests to switch and the relevant deadlines.
- It specifies the information that must be provided to customers free of charge as well as the procedure for transferring the outstanding credit balance and terminating the payment account framework agreement.

In terms of fee comparison websites, it establishes additional requirements for market participants that offer these kinds of services.

In addition, it stipulates that the “statement of fees” may be delivered to customers together with, but not integrated within, the notification outlined in the Transparency Order. It also provides the Bank of Spain with the power to establish and modify the accounting rules and templates applicable to the financial statements of credit establishments.

Law regulating mortgage loan agreements (Law 5/2019, published in the official state journal on March 16th, 2019)

The purpose of this legislation is to transpose Directive 2014/17/EU of the European Parliament and of the Council, of February 4th, 2014, on credit agreements for consumers relating to residential real estate into Spanish law.

Law 5/2019 concerns itself with three areas: transparency and conduct rules; the legal regime governing credit intermediaries and lenders that offer real estate credit; and the sanctions applicable in the event of any breach of obligations thereunder.

The law applies to loan agreements granted by parties who perform such activity professionally when the borrower or guarantor is a natural person and the purpose

of the agreement is to grant loans secured by a mortgage or another comparable security or right over residential property. It also applies when the purpose of the agreement is to grant loans for the acquisition or retainment of property rights over land or existing or planned buildings, so long as the borrower or guarantor is a consumer. Certain agreements are carved out, such as those awarded by an employer to its employees. These agreements are made on an ancillary basis, free of interest or at a below-market Annual Percentage Rate of Charge (APRC). They are also unavailable to the general public.

Some of the most significant aspects of Law 5/2019 are itemised below:

- As for the rules of conduct, lenders, intermediaries and their representatives are required to act honestly, impartially, transparently and professionally. They must uphold borrowers' rights and interests when formulating, awarding and providing intermediation or advisory services related with credit products and when executing loan agreements.
- The Law stipulates the basic information which must feature in real estate credit advertisements. Specifically, the borrowing rate, the APRC, the repayment scheme, and the borrower's right to give the mortgaged property in lieu of payment in order to release borrowers from their debts.
- Lenders are required to assess in detail the creditworthiness of potential borrowers and guarantors prior to executing a loan agreement. For this purpose, they must institute internal procedures. An incorrect assessment of creditworthiness shall not give the lender the right to terminate the agreement unless it can be demonstrated that the borrower purposely hid or falsified information. Any denial of a loan application must be notified in writing and duly substantiated.
- Properties must be officially valued before the execution of a loan agreement by an appraisal firm, the appraisal arm of a credit institution and/or a certified professional

that is independent of the lender or intermediary.

- It stipulates the transparency obligations, such as the duty to file clauses that fall under the general terms of contracting in the General Contracting Terms and Conditions Register. Firms must also provide customers with the European Standardised Information Sheet (ESIS), the standardised clause disclosure sheet (FiAE for its acronym in Spanish) and the interest rate scenario analysis, among other documents.
- As for the rules of conduct, staff must at all times meet minimum knowledge and competence requirements with respect to the products they are selling.
- Tying practices are prohibited with certain exceptions. Bundling practices are allowed, with certain limitations.
- It sets out the principles governing remuneration policies for staff responsible for the assessment of borrowers' creditworthiness and the issuance of loans. It also requires the establishment of remuneration policies and procedures for the staff providing advisory services.
- It establishes the terms for the provision of advisory services.
- If a foreign currency loan agreement is issued, borrowers are entitled to convert the loan into an alternative currency.

The interest rate on the loan may not be modified at the expense of the borrower during the term of the loan without the mutual agreement of both parties. Any change must be set down in writing. It is prohibited to set a floor rate of interest or negative interest rate.

- The Law regulates early repayment, entitling borrowers to prepay some or all of the amounts owed at any time prior to the agreed-upon termination date. Lenders are not permitted to collect compensation or fees for full or partial early repayment other than: (i) 0.15% on variable-rate loans

or variable-rate tranches if the prepayment takes place within the first five years and 0.25% if it takes place during the first three years; (ii) 2% on fixed-rate loans or fixed-rate tranches if the prepayment takes place during the first ten years and 1.5% if it occurs thereafter; and, (iii) in the case of portability or subrogation, compensation is limited to 0.15% of the sum prepaid during the first three years of the term of the loan agreement and no compensation or fees may be demanded after year three.

- Early expiration shall be triggered if the following circumstances are met simultaneously: (i) the borrower is in default on some of his principal or interest payments obligations; (ii) the amount by which the borrower is in arrears is equivalent to at least 3% of the initial size of the loan, if the default occurs during the first half of the loan agreement term or 7% if it occurs during the second half; and, (iii) the lender has sought payment from the borrower, granting the borrower at least a month to remedy the situation and warning that failure to perform will accelerate full repayment of the loan.
- The corresponding late-payment interest permitted is the borrowing rate plus three percentage points during the period when such interest is enforceable.

Royal Decree establishing a regime for the provision of payment accounts with basic features free of charge to unbanked or vulnerable consumers (Royal Decree 164/2019, published in the official state journal on April 3rd, 2019)

The key aspects regulated by Royal Decree 164/2019 include:

- Credit institutions may not demand a fee for the provision of basic payment account services (subject to the limitations provided for in Order ECE/228/2019 on payment accounts with basic features, the procedure for switching payment accounts and requirements for comparison websites) when all of the holders and authorised users

of a basic payment account are considered 'vulnerable' or 'at risk of financial exclusion'.

- To determine the condition of 'vulnerable' or 'at risk of financial exclusion', the Royal Decree establishes annual pre-tax income thresholds as a function of the number of household members. Additionally, none of the members of the household in question may directly or indirectly own or hold claims over properties other than the main household residence or be the beneficial owners of corporate enterprises.
- Consumers must be informed in writing and free of charge of the decision to award or deny a free basic payments account within a maximum of 30 days of the customer providing all required information.
- Credit institutions must provide information regarding the entitlement conditions for a free basic payments account.
- The duration of entitlement to a free basic payments account shall be two years, unless the institution can certify that the customer has ceased to qualify as vulnerable or at risk. Institutions must provide their customers with notice at least two weeks before the end of the above two-year term of the renewal or loss of their entitlement to the free basic payments account. Once continued entitlement has been certified, free account access shall be extended for successive two-year periods.
- Credit institutions are required to safeguard the documentation related with the Royal Decree for at least six years, regardless of whether or not entitlement to a free account has been granted.

Bank of Spain Circular on the Fee Information Document and Statement of Fees and payment account fee comparison websites (Circular 2/2019, published in the official state journal on April 4th, 2019)

The purpose of this Circular is to complete the regulations stipulated in Royal Decree-Law 19/2017 on payment accounts with basic features, payment account switching and

the comparability of fees and the associated implementing Order ECE/228/2019. It took effect the day after its publication. The following aspects of the new Circular are worth highlighting:

- It establishes the list of the most representative services associated with a payment account.
- It implements the obligation to furnish existing or prospective customers, free of charge and in good time before executing a payment account contract, a Fee Information Document containing the fees applicable to each of the services on the list of the most representative services linked to a payment account.
- It establishes additional requirements regarding the Statement of Fees that payment service providers must provide annually to their customers. This must include all of the fees and commissions charged during the prior year for services associated with their payment accounts, including applicable interest rates.
- In relation to the payment account fee comparison website to be managed by the Bank of Spain, the Circular establishes the requirement that payment service providers send the Bank of Spain the Fee Information Documents corresponding to each type of account they offer, indicating the corresponding account type category.
- As for operators of comparison websites other than the Bank of Spain, it stipulates the format and contents of the compliance statement they are required to provide to the Bank of Spain before initiating their activities or in the event of a change of data.
- It regulates the information which must be regularly submitted to the Bank of Spain. Credit institutions must send a document with information about their basic payment accounts annually. Payment service providers are required to submit a document with information about the account switching service.

Elsewhere, it regulates the quarterly submission by credit institutions of the

average fees or charges they have levied on their customers for transfer and direct debit services (in euros) within the EU during the previous year.

- It amends Bank of Spain Circular 5/2012 on banking service transparency and responsible lending to align the information requirements regarding interest rates and fees with the provisions of Circular 2/2019.

CNMV Circular amending CNMV Circular 1/2009 on CIU categories by investment strategy (Circular 1/2019, published in the official state journal on April 8th, 2019)

The purpose of this Circular is to align the definitions of ‘investment strategy of a monetary nature’ included in the Annex of Circular 1/2009 with the types of money market funds contemplated in Regulation (EU) 2017/1131 of the European Parliament and of the Council, of June 14th, 2017, on money market funds.

Specifically, the ‘euro fixed income’ category has been split into two components (‘short-term euro fixed income’ and ‘euro fixed income’) in order to provide unitholders with more accurate information about the interest rate risk borne, thereby differentiating the two investment strategies as a function of the portfolios’ maturities. Both categories are entitled to have foreign currency exposure of up to 10%.