

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 developing the Law regulating mortgage credit agreements (Royal Decree 309/2019, published in the *Official State Journal* on April 29th, 2019)

This Royal Decree transposes Directive 2014/17/EC on credit agreements for consumers relating to residential immovable property and Directive 2017/2399/EC on the ranking of unsecured debt instruments within the insolvency hierarchy. The Royal Decree took effect on June 16th, 2019, with the exception of certain provisions, which became active the day after the Decree's publication.

The most noteworthy aspects enacted by this Royal Decree include:

- **Advisory services.** Advisory services shall constitute a separate activity from the granting and intermediation of mortgage credit. When the creditor, credit intermediary or their appointed representatives do not provide advisory services, they must state so expressly and clearly in the pre-contractual information. Additionally, if an advisor receives remuneration or any kind of benefit from a lender or third parties, it must state so in the advisory agreement. This requirement is irrespective of whether such remuneration is related to the provision of advisory services. If a lender only offers a borrower products it has manufactured itself, the lender no longer falls within the category of the provision of advisory services.
- **Independent advisory services.** In addition to the requirements stipulated in Spanish Law 5/2019, those individuals who provide independent advisory services must consider a sufficiently large number of loan agreements available in the market and present the potential borrower with at least three binding offers from credit providers, alongside advice regarding the related legal and financial terms. Moreover, they may not receive remuneration for such services from one or more lenders or any third party with a vested interest in the transaction.
- **Lender registry.** The Royal Decree establishes the requirements for inscription in the corresponding registry and for verification of compliance by the competent authority.
- **Information that must be provided to the borrower throughout the term of the contract.** That information must clearly and faithfully reflect the terms of the agreement and cannot single out any potential benefit, be excessively optimistic or hide intrinsic risks. As well, it must be consistent with the contents and essential terms of the agreement without omitting or distorting any relevant information. Specifically, the following information should be provided:
 - Each time interest or fees are settled, the lenders must provide the borrowers with a document outlining details such as the nominal interest rate, the applicable fees and commissions and any other expenses charged.
 - During the month of January, the lender must send the borrower a statement with information about the fees and charges accrued and the interest rates applied and collected during the prior year.

- Any modification of the agreed interest rate must be notified with at least 15 days notice.
 - If a mortgage holder passes away, the individuals taking over the mortgage credit agreement or its guarantors should receive information regarding their new status.
- *Telematic channels for submitting documentation* by the lender, credit intermediary or appointed representative to the notary public include the following stipulations:
- Telematic channels must fulfil a series of principles such as ensuring connection with the notaries; providing the notary with the ability to certify the date of upload into the application of the documents signed by the lender; and the ability to access and download the documentation at any time.
 - The platforms used by the lender, credit intermediary, their appointed representatives and the notaries must have authentication mechanisms that ensure exclusive use, identification of the user and privacy protection.
 - The Royal Decree establishes the terms underpinning the procedure for circulating documentation between the lender, the mortgage credit intermediary or their designated representatives and the notary public.
 - The submission of the uncertified or authorised electronic copy of the deed requested by the borrower or lender from the notary must follow the stipulated requirements and procedures.
- Other noteworthy provisions:
- The lenders, credit intermediaries, their appointed representatives and all of their consolidated groups must provide the Bank of Spain with the statements and information deemed necessary for it to fulfil its supervisory duties.
 - Mortgage lenders must implement the internal policies and procedures needed to ensure that the credit products subject to Spanish Law 5/2019 are designed and marketed so as to avoid conflicts of interest.
 - Additional provision one of Royal Decree 84/2015, implementing Law 10/2014 on the regulation, supervision and solvency of credit institutions, with respect to the prior approval of additional tier 1 and tier 2 capital instruments has been repealed.
 - Royal Decree 1012/2015, implementing Law 11/2015 on the recovery and resolution of credit institutions, has been amended to introduce a new provision regarding the regime applicable in the event of bankruptcy proceedings. Debt instruments will not be deemed to contain embedded derivatives simply by virtue of being measured against variable interest rates derived from widely used benchmark rates.
- Order developing the Law regulating mortgage credit agreements (Ministerial Order ECE/482/2019, published in the *Official State Journal* on April 29th, 2019)**
- This Ministerial Order partially transposes the Mortgage Credit Directive –Directive 2014/17/EU– into Spanish law. To that end, it amends Order EHA/1718/2010 on the regulation and control of the advertising of bank services and products so as to: (i) extend the banking advertising rules to include mortgage credit lenders and intermediaries; and, (ii) incorporate the standard information to be included in the representative example for mortgage credit advertisements.
- It also amends Order EHA/2899/2011 on transparency to address the following matters:
- Adjustments to the pre-contractual information sheet.

- The contents of the standardised clause disclosure sheet (FiAE for its acronym in Spanish), which the lender, credit intermediary or their appointed representative must provide the borrower or potential borrower and any natural persons guaranteeing the loan at least 10 calendar days prior to the execution of the loan.
- In the case of variable rate credits, the borrower or potential borrower and any natural persons guaranteeing the loan must be provided with a separate document making specific reference to the instalments payable by the borrower in different interest rate scenarios and the scope for hedging that exposure. These scenarios should factor in whether or not official reference rates are used.
- The reference index or interest rate used to calculate the financial loss in the event of early repayment is IRS rates plus a spread. The spread shall be set at the difference existing at the time of the transaction between the transaction interest rate and the IRS for the terms that are closest, as of that date, to the next scheduled interest rate reset date or until the date of maturity.
- In the case of foreign currency loans, borrowers should receive additional information together with the statement pertaining to the interest or fees applied for their services. That information may be provided, at the choice of the borrower, in the currency in which he/she primarily receives income or holds assets from which the credit is to be repaid.
- The possibility of tying the mortgage credit to the opening or maintenance of a payment or savings account by the borrower, his/her spouse or a relative removed from the borrower by a kinship of up to the second degree of consanguinity or affinity. This is permissible so long as the only purpose of the account is to accumulate capital to repay the credit and/or interest payments, to pool the resources needed to obtain the credit or to offer the lender enhanced security against non-performance.
- The minimum level of knowledge and competency necessary for staff who provide mortgage credit services, with the most notable requirements including:
 - Required training may be provided by the lender, credit intermediary or appointed representative itself or through agreements with educational entities, companies or universities. The courses can be taken in person or remotely.
 - Certification will be performed by certification entities or firms authorised by the Bank of Spain. Under no circumstances can the training and certification activities be provided by the same entity or firm.
 - The Order stipulates the subjects about which staff must have knowledge/skills.
 - Certification of knowledge and competency in the subjects contemplated shall require the completion of training of at least 50 hours (65 hours in the case of staff providing advisory services). At least 10 hours of continuous training must be completed annually (15 hours in the case of staff providing advisory services).
 - Certain knowledge requirements can be deemed met when the professional in question has a master's degree in legal science, economics or business studies or has completed the courses needed to provide investment advice for MiFID II purposes.
 - Professional experience in areas related with mortgage credit for at least five years may account for a maximum of 20% of the training hours required.
 - It is up to the board of directors to set and apply the internal policies and procedures applicable to staff knowledge and competency. In addition, related to the compliance, equivalent unit or, in the absence thereof, the board of directors or the natural person lender or mortgage credit intermediary shall be

responsible for overseeing application of the procedures.

- Those individuals who perform support tasks but are not involved in the process of marketing or granting mortgage credit (specifically loan administration and accounting, human resources, IT and telecommunications staff) are exempt from the knowledge and competence requirements.
- The Order contemplates the possibility of allowing staff who market, manufacture, offer, grant or advice but are not certified with the required level of knowledge and competence to provide their services under supervision until June 16th, 2020.
- A new chapter has been added for reverse mortgages in order to update the regulation following approval of Law 5/2019.

The Order took effect on June 16th, until which date it was obligatory to submit the personalised information sheet. However, the provisions regarding the standardised clause disclosure sheet, staff knowledge and competency requirements will not take effect until three months after its publication.