

8

NEW REGULATORY DEVELOPMENTS IN SUPERVISORY MATTERS



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The Banco de España prepares circulars implementing higher-ranking regulations, and technical guidelines with criteria, practices, methodologies or procedures for compliance with supervisory regulations



BANCO DE ESPAÑA'S NEW REGULATORY DEVELOPMENTS

Since January 2022, the Banco de España has published 3 circulars, including most notably Circular 3/2022, which finalises the transposition of CRD-V into Spanish law



BANCO DE ESPAÑA DRAFTS IN PROGRESS

There are 3 draft circulars in progress, all on reporting obligations to the Banco de España



SPANISH AND EUROPEAN DRAFT LEGISLATION

Draft Law to adapt Spanish legislation to the future European Regulation on MiCA cryptoasset markets. European Commission Proposal for a Regulation on instant credit transfers in euro

8.1 Banco de España circulars and guidelines

8.1.1 Circular 1/2022

Circular 1/2022 of 24 January to specialised lending institutions on liquidity, prudential rules and reporting obligations, and amending Circular 1/2009 of 18 December to credit institutions and other supervised institutions, in relation to information on the capital structure and non-voting equity units of credit institutions, and on their branches, and on the senior officers of supervised institutions, and Circular 3/2019 of 22 October exercising the power conferred by Regulation (EU) 575/2013 to define the materiality threshold for past due credit obligations.

This circular completes the SLI legal regime by implementing Law 5/2015¹ and Royal Decree 309/2020². It regulates the liquidity buffer and the structure of SLI funding and maturities, building on those of credit institutions, but adapting them to the nature, funding structure and lower liquidity risk of their activities. Moreover, it establishes their solvency and liquidity reporting obligations. Lastly, it sets the guarantees required in the event that the control of an SLI is to be exercised by non-EU persons, the reporting obligations on the shareholder structure, and the circumstances in which an SLI must carry out the internal capital adequacy assessment process (ICAAP) and the Banco de España must carry out the SREP.

8.1.2 Circular 2/2022

Circular 2/2022 of 15 March on rules for the submission to the Banco de España of payment statistics by payment service providers and payment system operators.

This circular establishes the obligations for payment statistic reporting to the Banco de España; in particular, with regard to the reporting procedure and frequency and the Banco de España's power to grant exemptions from these obligations to certain

¹ Law 5/2015 of 27 April on the promotion of business financing.

² Royal Decree 309/2020 of 11 February on the legal regime of specialised lending institutions and amending the Mercantile Registry Regulation, approved by Royal Decree 1784/1996 of 19 July, and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the regulation, supervision and solvency of credit institutions.

reporting agents. This circular also determines the form and frequency with which payment service providers must submit to the Banco de España statistical fraud data related to different means of payment, in accordance with ECB Regulation (EU) 1409/2013 [as amended by Regulation (EU) 2020/2011] and Royal Decree-Law 19/2018. Circular 2/2022 repeals Circular 2/2015.

8.1.3 Circular 3/2022

Circular 3/2022 of 30 March, amending Circular 2/2016 of 2 February to credit institutions on supervision and solvency, which completes the adaptation of Spanish law to Directive 2013/36/EU and Regulation (EU) No 575/2013; Circular 2/2014 of 31 January to credit institutions on the exercise of various regulatory options contained in 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; and Circular 5/2012 of 27 June to credit institutions and payment service providers on the transparency of banking services and responsible lending.

The main purpose of this circular is to complete, by amending Circular 2/2016, the transposition of CRD-V into Spanish law, in the terms established by the enabling powers granted to the Banco de España by Royal Decree-Law 7/2021³ and Royal Decree 970/2021⁴, which amend, inter alia, Law 10/2014⁵ and Royal Decree 84/2015⁶, respectively. The enabling powers cover various aspects of corporate governance, remuneration, capital and leverage ratio buffers and information to be reported by branches of credit institutions with head offices in non-EU Member States.

In addition, other amendments to Law 10/2014 and Royal Decree 84/2015 arising from the transposition of CRD-V make it necessary in turn to amend Circular 2/2016, either to adapt the current regime to the provisions of those regulations —for example, in relation to the remuneration areas or capital buffers— or to adjust it to their new content on new topics, such as the approval regime for financial holding companies and mixed financial holding companies or the leverage ratio buffer. Also, the opportunity provided by the CRD-V transposition was used to introduce

3 Royal Decree-Law 7/2021 of 27 April on the transposition of European Union directives in the areas of competition, anti-money laundering, credit institutions, telecommunications, tax measures, prevention and remedying of environmental damage, posting of workers in the transnational provision of services and consumer protection.

4 Royal Decree 970/2021 of 8 November amending Royal Decree 1644/1997 of 31 October on administrative authorisation rules and solvency requirements for guarantee companies, Royal Decree 2660/1998 of 14 December on the changing of foreign currency in establishments open to the public other than credit institutions, and Royal Decree 84/2015 of 13 February implementing Law 10/2014 of 26 June on the regulation, supervision and solvency of credit institutions.

5 Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

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

amendments to the circular in areas which are unrelated to the directive but that improve the regulatory framework for credit institutions. These include most notably the areas related to the delegation of functions regime, where certain rules in the outsourcing guidelines issued by the EBA (EBA/GL/2019/02), which were adopted by the Banco de España and the ECB, were incorporated. In addition, doubts arising in the application of the rules were clarified and issues arising from the practical experience accumulated by the Banco de España in the supervision of Spanish institutions were reflected.

With regard to the amendment of Circular 2/2014, the objective is to exercise the options and discretions applicable at national level that the CRR-II or the Commission Delegated Regulation 2015/61⁷ attribute to the national competent authorities.

The circular also amends Circular 5/2012, with the aim of developing certain reporting obligations applicable to revolving credit, in the pre-contractual and contractual phase, established in Order 2899/2011⁸, which are necessary to achieve the public policy objectives on bank customer protection pursued in the aforementioned ministerial order.

8.2 Other draft circulars in progress

The Banco de España is preparing a circular to credit institutions, branches in Spain of credit institutions authorised in other EU Member States and SLIs, on the information to be submitted to the Banco de España on covered bonds and other loan mobilisation instruments, and amending circulars 4/2017 and 4/2019.

This draft circular responds to the need to regulate the reporting obligations set out in Royal Decree-Law 24/2021. Specifically, Article 35(1) establishes the reporting obligations of credit institutions as issuers of covered bonds to the Banco de España. These obligations relate to, inter alia, the eligibility of assets and cover pool requirements, the cover pool liquidity buffer and any other information that the Banco de España deems necessary for the exercise of its supervisory functions over covered bonds. Also included are the requirements related to collateralised mortgage bonds and mortgage transfer certificates as established in the third additional provision of the Royal Decree-Law, and to loan mobilisation instruments or loans secured by first chattels mortgage or first non-possessory pledge that may be issued by credit institutions and credit establishments regulated in the fourth additional provision of the Royal Decree-Law. The draft circular sets out the returns

⁷ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to liquidity coverage requirement for credit institutions.

⁸ Ministerial Order EHA/2899/2011 of 28 de October on transparency and customer protection in banking services.

that might be requested from institutions in order to comply with the aforementioned reporting requirements.

A circular on capital structure is also being drafted, which will comprehensively and fully regulate the new information on this matter, repealing the existing legislation contained in Chapter I of Circular 1/2009 of 18 December, since, in recent years, amendments have been made to Spanish legislation that make it advisable to update and harmonise these requirements.

In addition, the new circular will also repeal Chapter III of the aforementioned circular, corresponding to registration in the Senior Officer Register and to the submission of information on other positions held by senior officers in other companies, since the rules contained in that chapter have become obsolete and have been superseded by subsequent legislation of equal or higher rank. However, institutions will uphold the reporting obligations on this matter that derive from the legislation applicable to them.

Similarly, the amendment of circulars 2/2016 and 1/2022 is under way, with regard to the reporting of the remuneration policy of both credit institutions and SLIs.

This revision seeks to update the current reporting returns to bring them into line with the new models introduced by the EBA through its guidelines on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under Directive 2013/36/EU (EBA/GL/2022/06), and the guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and Directive (EU) 2019/2034 (EBA/GL/2022/08).

8.3 Other new regulatory developments

Although this is not legislation in force, it is worth mentioning the Draft Securities and Investment Services Markets Law, which is currently being examined by the Parliament.

Among other issues, this draft law aims to make the necessary adaptations for the implementation of the EU's future MiCA Regulation. This regulation will include a definition and classification of cryptoassets and it will incorporate, among several of its provisions, a regulation on their offering and issuance and on the provision of cryptoasset services.

On this basis, the draft law provides for the Banco de España to be entrusted with the supervision, inspection and sanctioning of compliance with the obligations under the MiCA Regulation as regards issuers of electronic money tokens (EMTs)

and asset-referenced tokens (ARTs). The draft law also introduces an infringements and sanctions regime applicable in relation to these issues.

Lastly, at the European level, it is worth mentioning the Proposal for a Regulation (EU) on instant credit transfers in euro, which is currently under way. Among other issues, this proposal intends to ensure that payment service providers offering their users a payment service for sending and receiving ordinary credit transfers also offer their customers instant payments in euros, that the charges for such payments are the same as or less than the charges for ordinary credit transfers, and that providers of euro instant payments check that the IBAN matches the payee's name and notify the payer of any possible mismatch between the two, before the payer authorises the transaction.