

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)

Law 4/2022 on consumer and user protection in cases of social and economic vulnerability (published in the Official State Journal on March 1st, 2022)

Law 4/2022 introduces changes to the recast text of the General Consumer and User Protection Act and other complementary laws enacted by Royal Legislative Decree 1/2007 with the aim of reinforcing consumer and user protection guarantees and effectively upholding the legitimate interests of vulnerable consumers. To that end, the legislation introduces the figure of a person who is vulnerable in consumer relations terms, defined as physical persons who, individually or collectively, on account of their personal, economic, educational or social circumstances, find themselves, whether in regional, sector-specific or temporary terms, in a position of particular subordination, defencelessness or vulnerability that prevents them from being able to exercise their rights as consumers on an equal footing. The legislation also defines their basic rights.

It is worth highlighting the new requirements for amendments to contracts with consumers and users that are not negotiated individually with respect to font size and line spacing. Specifically, accessibility and legibility requirements state that contract font sizes may not be smaller than 2.5 millimetres and line spacing may not be smaller than 1.15 millimetres.

The new legislation also includes a package of measures designed to enhance vulnerable consumers' financial inclusion, particularly that of the elderly, which the government must push through within three months of effectiveness of Law 4/2022, making the corresponding legislative changes needed to ensure the provision of personal

payment service customer care to vulnerable consumers and users who seek it, without any discrimination on the grounds of the "digital divide".

That package is to be prepared in coordination with the Bank of Spain, in a supervisory capacity, and representatives from the banking sector, and must include the following:

- The closure of bank branches may not imply the switching off of external ATMs.
- An increase in support staff dedicated to helping less digitally-savvy people perform the transactions they need.
- The installation of signage and instructions to give vulnerable consumers priority use of ATMs.
- Encouragement of the reservation of certain ATMs for exclusive use by vulnerable consumers.
- Simple, understandable, inclusive and secure bank access technology.
- Maximum security to protect bank users against online theft, hoaxes and fraud.
- Measures for guaranteeing personal customer attention for older people and other groups for whom accessing financial services using new technologies constitutes a motive for financial exclusion.
- Measures for bringing financial services to everyone, especially in rural areas, paying particular attention to the needs of people with disabilities and the elderly.

In addition, the government will foster, among the lines of strategic initiative pursued by the national state postal service, initiatives

designed to prevent the financial exclusion of vulnerable consumers and the installation of ATMs in post offices in small towns without such services, or the execution of agreements with the banks to enable the lodging and withdrawal of cash.

The new legislation took effect the day after its publication, except for the article related with contract font sizing, which will take effect three months after its publication.

Bank of Spain Circular 2/2022 on the rules applicable to payment service providers and payment system operators regarding the provision of payment statistics to the Bank of Spain (published in the *Official State Journal* on March 18th, 2022)

The Circular implements regulations addressing the following aspects:

- The procedure by which reporting agents must submit statistical data to the Bank of Spain.
- The frequency with which that statistical data has to be furnished to the Bank of Spain (quarterly, half-yearly and annually).
- The Bank of Spain's power to exonerate certain reporting agents from having to comply with the statistical data reporting requirements.

The Circular also determines the manner and frequency with which payment service providers must provide the Bank of Spain with statistical data on fraud related with the various methods of payment itemised in article 67.4 of Royal Decree-law 19/2018.

The reporting agents' first submission of statistical data to the Bank of Spain will be that corresponding to the first quarter of 2022 and must be presented no later than the last working day of April 2022.

Lastly, the new Circular repeals Bank of Spain Circular 2/2015 on the rules applicable to payment service providers and payment

system operators for sending the Bank of Spain the payments and payment systems statistics itemised in Regulation (EU) 1409/2013 of the European Central Bank of November 28th, 2013, on payments statistics.

Circular 2/2022 took effect the day after its publication.

Royal Decree-law 6/2022 enacting urgent measures under the scope of the National Response Plan to the economic and social consequences of the war in Ukraine (published in the *Official State Journal* on March 30th, 2022)

The key economic measures implemented by means of Royal Decree-law 6/2022 are the following:

- Measures to reinforce liquidity for businesses and self-employed professionals. Approval of a new 10-billion-euro state guarantee line for businesses and self-employed professionals until December 31st, 2022, designed to mitigate the economic consequences of Russia's invasion of Ukraine, which must first be authorised by the European Commission. The applicable terms, conditions and requirements will be determined by means of a Cabinet Resolution.
- Amendment of Royal Decree 164/2019. Victims of trafficking or sexual abuse have been added to the groups of people deemed vulnerable or at risk of financial exclusion in terms of qualifying for payment accounts with basic features free of charge.
- Amendment of Royal Decree-law 5/2021. Elimination of the requirement that the beneficiaries of the public support measures (businesses and self-employed professionals) need to have sustained a significant reduction in their revenue as a result of the COVID-19 pandemic. Specification that the Code of Good Practices governing renegotiations for customers with state-guaranteed loans will determine the sectors, cases and conditions on which principal repayments may be

temporarily suspended by means of an extension of the existing grace period or the granting of a new grace period, in the event the original period has already lapsed.

Royal Decree-law 6/2022 took effect the day after its publication.

Resolution of March 29th, 2022, issued by the Secretary of State for the Economy and Business Support publishing the Agreement reached by the Spanish Cabinet that same day amending the Code of Good Practices for renegotiating the guarantees contemplated in Royal Decree-law 5/2021 (published in the Official State Journal on March 30th, 2022)

The Spanish Cabinet, at a meeting held on March 29th, 2022, ratified an Agreement modifying the Code of Good Practices governing the renegotiation of the state-guaranteed loans contemplated in Royal Decree-law 5/2021. The following measures stand out:

- The entities endorsing the Code must respect the limits and terms and conditions of the working capital facilities granted to all customers and, specifically the financing extended by virtue of Royal Decree-law 5/2021, until at least September 30th, 2022. In the event they implement any of the measures contemplated in the Code, that deadline will be at least June 30th, 2023.
- Elimination of the requirement that applicants' revenue must have fallen by at least 30% between 2019 and 2020 in order to access the measures contemplated in Appendix II of the Code.
- Any extension of transaction grace periods must be notified by June 1st, 2022, at the latest. For maturity extensions applied for and granted after March 31st, 2022, self-employed professionals and SMEs from the sectors with economic activity codes 01, 03, 493 and 494 (agriculture, animal production, fishing and road transportation, respectively) will be entitled to a six-month

suspension of principal repayments either by extending the prevailing grace period or granting an additional grace period if the original one has already lapsed. The self-employed professionals and SMEs from those sectors whose loan maturity dates cannot be extended as they have already reached the limit will be entitled to the above temporary suspension.

The banks have a deadline of 15 days to notify the General Secretariat of Treasury and International Financing, in writing, of their intention not to be bound by the amendments introduced by this Agreement, in which case they must continue to apply the version of the Code of Good Practices applicable under the Resolution of January 13th, 2022, issued likewise by the General Secretariat of Treasury and International Financing.

Bank of Spain Circular 3/2022 amending Circular 2/2016, Circular 2/2014 and Circular 5/2012 (published in the Official State Journal on April 6th, 2022)

The goal of Circular 3/2022 is to: (i) complete transposition of CRD V in Spain by amending Circular 2/2016; (ii) exercise the options and discretions that CRR II attributes to the competent national authorities by amending Circular 2/2014; and (iii) implement certain information obligations in respect of revolving credit at the pre-contractual and contractual phases, by modifying Circular 5/2012. The following aspects stand out:

1. Amendment of Circular 2/2016:

- Implementation of the Bank of Spain's powers, contemplated in Royal Decree-law 7/2021 and implementing Royal Decree 970/2021 (transposition of CRD V) in relation to the following matters, among others:
 - The information the banks must document and provide to the Bank of Spain in respect of loans extended to members of their boards and parties related to them. That information must also be published on the banks' websites.

- Remuneration requirements, including the thresholds for the exemption from certain variable remuneration requirements. Specification that remuneration policy implementation may not discriminate on the grounds of gender.
 - The method for calculating the buffer for systemic risks.
 - The regime for authorising financial holding companies and mixed financial holding companies.
 - The additional annual reporting requirements applicable to branches of credit institutions headquartered outside a European Union Member State.
 - The additional method for identifying globally systemically important institutions (G-SIIs).
 - Calculation of the maximum distributable amount as a function of the leverage ratio buffer.
- Introduction of provisions related with the delegation of the provision of services or exercise of duties.
 - Elimination of the systemic risk assessment as a result of the establishment of the new macroprudential framework (macroprudential authority, alerts and oversight rules).
 - Likewise, the content related to the management of interest rate risk has been eliminated as that aspect is now regulated by Law 10/2014 and Royal Decree 84/2015, as amended. However, the extent of the information regarding interest rate risk that must be submitted to the Bank of Spain has been expanded.

2. The amendments made to Circular 2/2014 relate basically to the options and national discretions related with liquidity risk.

3. The amendments made to Circular 5/2012 on banking service transparency and

responsible loan granting address matters related with the information to be provided to customers before and after executing a revolving credit facility contract, including interest payment and fee notices and statements.

The Circular took effect the day after its publication, except for the changes made to Circular 5/2012, which will take effect six months after publication.