

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 19/2022 establishing a new Code of Good Practices, amending Royal Decree-law 6/2012 and adopting other structural measures to enhance the mortgage lending market (published in the Official State Journal on November 23rd, 2022)

The measures addressed via this piece of legislation:

- New Code of Good Practices (the Code) for vulnerable mortgage holders.

The new Code is intended as a circumstantial and temporary tool to remain in effect for 24 months in order to facilitate the passage of urgent measures for vulnerable mortgage holders. The specific measures will be implemented by means of a Council of Ministers Agreement (see below).

They will apply to individual holders of loans secured by mortgages over the primary residence of the debtor or of the non-debtor mortgage holder with an acquisition price of no more than 300,000 euros, arranged up until December 31st, 2022.

Credit institutions can sign up to the Code voluntarily, as can other entities or individuals whose profession involves the concession of loans or mortgages. Adherence to the Code must be notified to the General Secretariat of the Treasury and International Financing. Adherence will be deemed in effect for the scheduled term of effectiveness of the Code unless a lender expressly renounces application of the Code.

The entities that sign up to the Code of Good Practices contemplated in Royal Decree-

law 6/2012 shall be deemed adherents of this new Code unless they expressly apply to the above General Secretariat to be removed within a deadline of two weeks. The Secretary of State for the Economy and Business Support will publish the list of bound entities and lenders.

As from adhesion, the contents of the Code will apply to the entire portfolio of loans of the bound party and will be binding on third parties. As a result, even if a debtor has not enjoyed the Code's measures, he or she will continue to be entitled to invoke them during its term of effectiveness. The bound parties are required to adopt the measures needed to safeguard debtor rights in the event they assign their loans to third parties.

The entities and lenders signed up to the Code must inform their mortgage-holding customers about the existence of the Code and the possibility of availing of it by means of an individualised and specific communication within a deadline of one month from adhesion to the Code. They must also provide information about the Code measures in a prominent place on their websites and via their branch networks.

The Control Committee set up under Royal Decree-law 6/2012 will oversee compliance by the bound parties with the Code and publish a report to that end. The bound parties must send the Bank of Spain the information required of them by the Control Committee in relation to the Code on a monthly basis.

Any debtors benefitting from the Code provisions without duly qualifying to do so will be liable for any damages caused, as well as for general expenses incurred.

- Modification of the Royal Decree-law 6/2012 Code.

Royal Decree-law 19/2022 amends the Code contemplated in Royal Decree-law 6/2012 as follows:

- It maintains the definition of the 'threshold of exclusion' but adds a new circumstance for consideration as an 'especially vulnerable household': the existence in the family unit of a victim of sexual exploitation or trafficking.
- It eliminates the multiplication factor associated with a 'significant change in economic circumstances' when the financial burden implied by mortgage servicing relative to household income has increased.
- The contents of the Code will apply to the entire portfolio of contracts of the bound entities and will be binding on third parties.
- The new legislation adds three representatives to the Control Committee tasked with supervising compliance with the Code corresponding to the sector associations upholding the interests of the banks, savings banks/banking foundations and credit cooperatives, respectively.
- It also adds that tariffs and other solicitor and registration fees derived from the formalisation and inscription of loan novation agreements concluded under the scope of the Code must be paid for by the creditor and may be settled as a function of the deed notarisation or other inscription practice.
- The new legislation adds a new circumstance to the measures contemplated prior to mortgage foreclosure: when a debtor is party to a restructuring plan and, at the end of the principal repayment grace period, meets the 'threshold of exclusion', that debtor may request a second restructuring plan, so long as the fact of coming out of the grace period is not the main reason for meeting that threshold.
- Amendment of the restructuring plan specifying foreclosure and the financial consequences for the debtor as follows:
 - In the event of a 5-year principal repayment grace period, if the increase in the burden implied by mortgage servicing over household income is less than 1.5 times and the family unit does not qualify as an 'especially vulnerable household', the grace period will be reduced to two years.
 - In the event of extension of the repayment period to 40 years in total from the loan grant date, if the increase in the burden implied by mortgage servicing over household income is less than 1.5 times and the family unit does not qualify as an 'especially vulnerable household', the increase in repayment period will be up to seven years, without exceeding 40 in total.
 - The reduction in the interest rate applicable during the grace period will be EURIBOR less 0.10. For fixed-rate loans, the prevailing fixed rate will apply throughout the grace period. If the increase in the burden implied by mortgage servicing over household income is less than 1.5 times and the family unit does not qualify as an 'especially vulnerable household', the interest rate applicable during the grace period will imply a reduction in the loan's net present value of 0.5%.
 - Clauses limiting downward interest rate movements will not apply to the affected mortgage agreements.
- The timeframe for offering primary residence deeds in lieu of foreclosure has been extended to 24 months from application for restructuring.
- The scope for applying to rent one's regular abode in the event of foreclosure has been extended to 12 months from entry into effect of the new legislation.

- The entities must duly inform all of their mortgage-holding customers about the existence of the Code and the possibility of availing of its benefits by means of an individualised and specific communication. They must also provide information about the Code measures in a prominent place on their websites and via their branch networks.
- Other measures addressed at mortgage debtors facing difficulties and to enhance the mortgage market
- Amendment of the requirements for mortgage subrogation under Law 5/1994.
- Amendment of Law 5/2019 to increase the financial loss a lender may incur to 0.05% of the principal prepaid in the event of notation of the applicable rate of interest or subrogation to a third party of the creditor's rights during the first three years of effectiveness of the loan agreement. If no principal is prepaid as part of the novation, no fee may be collected.
- The Bank of Spain will prepare a "Guide of tools for mortgage debtors struggling to pay" and develop simulation tools to educate citizens about their possible eligibility for the Code measures contemplated in Royal Decree-laws 6/2012 and 19/2022.
- No consideration, fees or commissions may be accrued for the prepayment of variable-rate mortgages from entry into effect of this Royal Decree-law until December 31st, 2023. Nor shall any fees or commissions accrue for the conversion of mortgage loans from variable to fixed-rate loans during that same timeframe.
- Extension of the surety line by which the state covers the financing extended by the banks to businesses and self-employed professionals under the scope of Royal Decree-Law 6/2022 until December 31st, 2023.

Resolution of November 23rd, 2022, approving the Code of Good Practices on urgent measures for vulnerable mortgage holders (published in the Official State Journal on November 24th, 2022)

The Council of Ministers has agreed that the entities or individuals whose portfolios include mortgages over individuals' homes can have up to four weeks to confirm their adhesion to the Code for vulnerable mortgage holders in writing. The bound parties must duly inform their customers as to whether or not they are signing up to the Code. The mortgages defined in Royal Decree-law 19/2022 will be eligible.

The criteria for eligibility for 'vulnerable mortgage holder' are:

- a) The aggregate income of the members of the household unit does not exceed the threshold of 3.5 times the so-called 14-payment annual multi-purpose income indicator (IPREM for its acronym in Spanish).

That threshold will be 4.5 times that same indicator in the event that a member of the family unit has a certified disability of a severity of over 33%, requires dependent care or has a permanently incapacitating illness, again duly certified.

Likewise, the threshold may be 5.5 times the above indicator in the event that the mortgage debtor has cerebral palsy, mental illness or an intellectual disability of a certified severity of 33% or more or is a person with a physical or sensory disability of a certified severity of 65% or more or has a serious incapacitating illness that certifiably prevents the mortgage holder or his or her carer from working.

- b) That, during the four years prior to the application, the family unit has sustained a 'significant change in economic circumstances' in housing affordability terms or has suffered circumstances leaving it particularly vulnerable. A 'significant change in economic circumstances' is understood to have taken place when the

financial burden implied by mortgage servicing relative to household income has multiplied by at least 1.2.

Especially vulnerable households are the following:

1. Family units in which at least one of its members has a certified disability of a severity of 33% or more, is dependent or has an illness that certifiably and permanently prevents him or her from working.
 2. Family units in which the following live in the same home: one or more people who are removed from the mortgage holder or his/her spouse by a kinship of up to the third degree of consanguinity or affinity and are disabled, dependent or seriously ill such that they are certifiably unable to work.
 3. Family units in which there is a victim of gender violence or a victim of trafficking or sexual exploitation.
- c) The mortgage instalments are equivalent to more than 30% of the after-tax income received by the members of the household unit on aggregate.

Debtors may invoke the novation of their mortgages under the scope of Royal Decree-law 19/2022 from when the list of Code adherents is published until December 31st, 2024. After applying for novation, they will have a fortnight to complete it.

Eligible debtors may opt to have their mortgages novated in any of the following ways:

- Extension of the total loan term by up to seven years, with the mortgage debtor having the option of setting the instalment at the amount prevailing as of June 1st, 2022, or at the amount of the first instalment charged to them after that date for a period of 12 months from completion of the novation via a full or partial principal repayment grace period.

The principal not repaid will accrue interest at a rate of interest that implies a reduction in the loan's net present value of 0.5%. Extension of the loan's maturity may not imply a reduction in the instalment amount to below that which was being paid as of June 1st, 2022.

- Conversion of the initial formula for calculating loan interest from a variable rate, reviewed periodically, to a fixed rate. The entities are free to set the fixed rate of interest offered in such cases.

Under no circumstances may a loan's novation extend the total term beyond 40 years from its date of arrangement.

Ministerial Order ETD/1217/2022 regulating payment method movements declarations under the scope of the prevention of money laundering and terrorist financing (published in the *Official State Journal* on December 8th, 2022)

The purpose of the Order is to establish the declaration forms and requirements applicable to those, acting on their own behalf or on behalf of third parties, who make any of the payment method movements contemplated in article 34 of Law 10/2010. Specifically, it stipulates the various kinds of payment movements entering or leaving EU member states or countries outside of the EU that are subject to prior declaration, and the applicable reporting templates.

It is worth highlighting the creation of a new template for declaring unaccompanied payment movements leaving or entering the national territory for or from an EU member state and for unaccompanied movements within the national territory. The template has been left in place for declaring payment movements carried on their person by an individual either within the national territory or when leaving or entering the national territory for or from an EU member state. All other movements subject to declaration must be filled out and presented using the templates approved via Commission Implementing Regulation (EU) 2021/776.

Other matters addressed by the Order:

- The requirements for filling out and presenting the declaration forms;
- The requirements specific to the various types of declarations depending on the movement involved;
- The possibility that, in certain instances, registered banks can perform due diligence on the declarations presented by their customers;
- Payment method intervention requirements;
- The information that must be provided to travellers at customs;
- Systematic transaction reporting; and,
- The obligation to collaborate with other competent authorities in this area.

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