

Royal Decree 102/2019 of 1 March 2019 creating the Spanish macroprudential authority (AMCESFI), establishing its legal regime and implementing certain aspects relating to macroprudential tools. (Official State Gazette of 2 March 2019)

I

In today's complex and interconnected financial system, safeguarding financial stability and preventing potentially systemic risks that may ultimately adversely affect the real economy take on particular importance. Systemic risks affect the financial system as a whole and stem from, inter alia, price bubbles in some financial and real estate assets, the increase at aggregate level in the volume of lending, the risks associated with interconnectedness between credit institutions and those related to the use of modern technologies to render financial services.

During the last financial crisis, the ability of the traditional economic policy and financial supervision tools at the authorities' disposal to prevent and mitigate some of these risks proved limited.

In the European Union, the European Commission requested a group of high level experts make recommendations with a view to strengthening European supervisory mechanisms. The de Larosière Report was published on 25 February 2009. Its recommendations included the creation of a European body charged with overseeing risk in the financial system as a whole.

The European Systemic Risk Board (ESRB) was created as a result of this recommendation. According to [Regulation \(EU\) No 1092/2010 of the European Parliament and of the Council of 24 November 2010](#) on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, the ESRB should monitor and assess systemic risk and contribute to ensuring financial stability and mitigating the negative impacts of financial instability on the real economy.

On 22 December 2011 the ESRB issued a Recommendation on the macro-prudential mandate of national authorities in which it urged European Union Member States to designate an authority entrusted with macroprudential supervision. This Recommendation aimed to make macroprudential policy more efficient, by making national authorities responsible for adoption of the measures necessary to maintain financial stability.

In addition to the ESRB Recommendation, various national and European Union provisions have reflected the need to adopt national macroprudential measures. For instance, in the European regulatory framework, [Article 458 of 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 establishes a series of macroprudential measures that may be applied in certain circumstances by the authority that the Member State designates for such purpose. In Spain, the first transitional provision of Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions establishes that until a specific macroprudential authority is created, such powers shall fall to the Banco de España.

Also, the eighteenth additional provision of Law 10/2014 of 26 June 2014 required the Government to inform Parliament of the measures to be taken to strengthen, in Spain, the oversight of financial stability, macroprudential analysis, the coordination and exchange of information to prevent financial crises and, in general, cooperation between competent authorities for the preservation of financial stability.

In turn, in the 2017 Financial Sector Assessment Program for Spain, the International Monetary Fund recommended establishing a Systemic Risk Council for inter-agency coordination on systemic risk factors, surveillance, and system-wide financial sector policies.

Royal Decree-Law 22/2018 of 14 December 2018 establishing macroprudential tools has also recently conferred additional powers on the Banco de España, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGSFP) to address potential macroprudential risks to the Spanish financial system.

II

This Royal Decree continues to make headway towards ensuring appropriate oversight of macroprudential risks. To this end, it creates the Spanish macroprudential authority (AMCESFI) and regulates its organisation and functioning.

In 2006 the then Ministry of Economic Affairs and Finance, the Banco de España, the CNMV and the DGSFP signed a cooperation agreement with the aim of fostering collaboration on financial stability and the prevention and management of crises with potentially systemic effects. The Financial Stability Committee (CESFI) was created under this agreement.

AMCESFI replaces CESFI and seeks to enhance the coordination of national macroprudential oversight and help prevent and mitigate systemic risks, which should result in the financial system making a more sustainable contribution to economic growth. In addition, its tasks are, first, to monitor and analyse such factors that might affect systemic risks and, second, where deemed appropriate in light of its prior analysis, to issue opinions, warnings and recommendations. The national authorities, which have more information and experience in monitoring the supervised institutions, keep the supervisory powers they have been exercising to date and thus their

independence is respected. AMCESFI aims to strengthen those functions, through analysis and by issuing opinions and warnings and, ultimately, by sending macroprudential policy recommendations to the three sectoral financial supervisors (Banco de España, CNMV and DGSFP) so that they adopt specific measures.

This Royal Decree also elaborates on regulatory aspects of some macroprudential tools. Thus, it establishes the matters to be considered when adopting certain tools, such as capital buffer requirements and the establishment of sectoral concentration limits and of terms and conditions on lending and other exposures, where only required for exposures to a specific sector or category. This Royal Decree also lists the different macroprudential tools defined in the sole additional provision of Royal Decree-Law 22/2018 of 14 December 2018 and that each piece of sectoral legislation regulates.

Also, it is established that AMCESFI should be notified of both the possible adoption of macroprudential measures and their recalibration and deactivation prior to their being adopted and subsequently communicated to the general public and the parties concerned.

III

This Royal Decree has six chapters. Chapter I establishes the general provisions on AMCESFI, laying down its nature and purpose. AMCESFI is created as a collegiate body as per Law 40/2015 of 1 October 2015 on the Legal Regime of the Public Sector, attached to the Ministry of the Economy and Enterprise, subject to the arrangements for the collegiate bodies of government units, with the specific features established in this Royal Decree.

Chapter II governs the organisational structure and functioning of AMCESFI. AMCESFI comprises a Council, a Technical Committee which supports the Council and the sub-committees that the Council may decide to create. Such bodies are composed of representatives from the Ministry of the Economy and Enterprise, the Banco de España and the CNMV. Other public authorities, such as the Spanish executive resolution authority (FROB), the Deposit Guarantee Scheme for Credit Institutions, the National Commission on Markets and Competition and the Independent Authority for Fiscal Responsibility, in addition to representatives from European and international institutions, may be invited to participate. AMCESFI functions pursuant to the criteria established for the collegiate bodies of the different tiers of government in Law 40/2015 of 1 October 2015, which are adapted to its specific characteristics.

Chapter III governs AMCESFI's functions and powers. It may formulate opinions, warnings and recommendations on all such matters as might affect financial stability. The addressees of AMCESFI recommendations must explain how they plan to comply with them or adequately justify, where

applicable, the reasons for deeming compliance therewith unnecessary or unsuitable.

Chapter IV addresses the macroprudential tools and the procedure for notifying AMCESFI.

To help maintain financial stability in the European Union, Chapter V governs the obligation to cooperate with other Member States' macroprudential authorities and with the competent European institutions.

Lastly, Chapter VI establishes AMCESFI's accountability, through the preparation of an annual report and the appearance of the Chair of AMCESFI before the corresponding Parliamentary Committee.

The Royal Decree also includes three additional provisions, one repealing provision and four final provisions. The first additional provision designates the Banco de España as the competent authority for the application of Article 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, thus definitively enshrining a power heretofore conferred temporarily by the first transitional provision of Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014, while the third additional provision provides that the Ministry of the Economy and Enterprise shall draw up every three years – and for the first time in 2022 – a report on AMCESFI's attainment of the goals established in this Royal Decree.

IV

This Royal Decree abides by the principles of necessity, efficacy, proportionality, legal certainty, transparency and efficiency, as required by Article 129 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure for General Government.

As regards the principles of necessity and efficacy, this Royal Decree is the optimal instrument for creating a national authority whose ultimate aim is to identify, prevent and mitigate the development of systemic risk and to ensure the financial system makes a sustainable contribution to economic growth. The new authority is a collegiate body in accordance with Law 40/2015 of 1 October 2015 and comprises representatives from the three sectoral financial supervisors and the Ministry of the Economy and Enterprise.

Turning to the principles of proportionality, legal certainty and efficiency, this Royal Decree establishes the minimum essential regulation to fulfil its purposes, is consistent with the other Spanish and international legislation and does not create administrative hurdles. Lastly, with regard to the principle of transparency, the Royal Decree has undergone the pertinent public information and consultation process.

V

This Royal Decree is enacted in accordance with: Article 22 of Law 40/2015 of 1 October 2015; the second final provision of Royal Decree-Law 22/2018 of 14 December 2018; the fifth final provision of Collective Investment Institutions Law 35/2003 of 4 November 2003; the thirteenth final provision of Law 10/2014 of 26 June 2014; the seventh final provision of Law 22/2014 of 12 November 2014 regulating venture capital entities and other closed-end collective investment institutions and the management companies of closed-end collective investment institutions, and amending Collective Investment Institutions Law 35/2003 of 4 November 2003; the second final provision of the Consolidated Securities Market Law, enacted by Royal Legislative Decree 4/2015 of 23 October 2015; and the seventeenth final provision of Law 20/2015 of 14 July 2015 on the regulation, supervision and solvency of insurance and reinsurance undertakings.

It is also enacted in compliance with Article 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

While being drawn up the draft Royal Decree was submitted to the Insurance and Pension Fund Advisory Board for consideration via the written procedure and was subject to the Spanish Data Protection Agency's prior report and the opinion of the European Central Bank.

In view of the foregoing and at the proposal of the Minister for the Economy and Enterprise, with the prior approval of the Minister for Territorial Policy and the Civil Service, in accordance with the State Council and following the discussion by the Council of Ministers at its meeting on 1 March 2019,

I HEREBY PROVIDE:

CHAPTER I

General provisions

Article 1. *Nature and purpose of AMCESFI.*

1. The purpose of this Royal Decree is to create the Spanish macroprudential authority (AMCESFI), the national macroprudential authority tasked with identifying, preventing and mitigating the development of systemic risk and ensuring the financial system makes a sustainable contribution to economic growth.

2. A further aim is to develop the macroprudential tools that the Banco de España, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGSFP) can use and the procedure for notifying AMCESFI before adopting any such measures.

3. For the purposes of this Royal Decree, systemic risk shall mean, in accordance with the sole additional provision of Royal Decree-Law 22/2018 of 14 December 2018 establishing macroprudential tools, a risk that might

trigger a financial services market shock with a potentially adverse impact on the real economy.

4. AMCESFI is a collegiate body attached to the Ministry of the Economy and Enterprise. It shall be governed by the provisions of this Royal Decree and, with regard to any matters not addressed herein, by Section 3 of Chapter II of the Preliminary Title of Law 40/2015 of 1 October 2015 on the Legal Regime of the Public Sector.

5. AMCESFI's goal is to contribute to the stability of the financial system as a whole by identifying, preventing and mitigating any circumstances or actions that may give rise to systemic risk.

To that end, AMCESFI shall monitor and analyse the factors that might affect systemic risk and may issue opinions, warnings and recommendations in accordance with the provisions of Chapter III.

6. AMCESFI shall pursue the objective laid down in Article 1(5) with functional independence and in collaboration with the three sectoral financial supervisors, in accordance with the provisions of this Royal Decree and the corresponding sectoral legislation.

CHAPTER II

Structure and functioning of AMCESFI

Article 2. *Structure of AMCESFI.*

AMCESFI shall comprise a Council, a Technical Committee and the sub-committees created pursuant to Article 8.

Article 3. *Structure and functioning of the Council.*

1. The functions conferred on AMCESFI shall be exercised by the Council, to which end it shall adopt the pertinent decisions and monitor their implementation.

2. The Council shall comprise the following members:

(a) The Minister for the Economy and Enterprise, who shall chair the Council.

(b) The Governor of the Banco de España, who shall be the Council's Vice-Chair.

(c) The Chair of the CNMV.

(d) The Deputy Governor of the Banco de España.

(e) The Vice-Chair of the CNMV.

(f) The Secretary of State for the Economy and Business Support.

(g) The Director General of Insurance and Pension Funds.

3. The Secretary General of the Treasury and International Finance shall act as secretary to the Council, with the right to speak but not to vote on account of their not being a member of the Council. [1]

4. The Council may agree to its meetings being attended, as experts and in a non-voting capacity, by staff from the Ministry of the Economy and Enterprise, the Banco de España, the CNMV and other public institutions related to financial stability, such as the Spanish executive resolution authority (FROB), the Deposit Guarantee Scheme for Credit Institutions, the National Commission on Markets and Competition and the Independent Authority for Fiscal Responsibility, in addition to representatives from European and international institutions.

5. The members of the Council:

(a) Shall be called to meetings and informed of the agenda with the minimum advance notice provided for in Article 6(2). The information on the content of the business on the agenda shall be made available to the members sufficiently in advance of the meeting.

(b) May participate in the discussions at the meetings.

(c) May exercise their right to vote, cast a dissenting vote and state the way they voted and their reasons for doing so.

(d) May raise any other business.

(e) Shall obtain the information required to perform the functions conferred upon them.

(f) Exercise such other functions inherent in their capacity as members of the Council.

6. The members of the Council may not confer on themselves the functions of representation entrusted to the Chair and Vice-Chair in Article 4.

7. In the event of vacancy, absence and illness and, in general, on any justified grounds, the alternates designated by the incumbent members of the Council may deputise for them. The alternate must at least hold the position of Director General at the authority where the incumbent holds their office, except in the case of the Director General of Insurance and Pension Funds, whose alternate may be any of the other representatives from the Ministry of the Economy and Enterprise.

The Vice-Chair shall stand in for the Minister for the Economy and Enterprise, pursuant to Article 4(2).

8. The Council may adopt internal rules of procedure which shall implement the rules on the organisation and functioning of the Council and the Technical Committee.

[1]

Article 3(3) worded according to the first final provision of Royal Decree 403/2020 of 25 February 2020 implementing the basic organisational structure of the Ministry of Economic Affairs and Digital Transformation (Official State Gazette of 27 February 2020).

Article 4. *Chair and Vice-Chair of the Council.*

1. The Chair shall be responsible for:

(a) Driving and supervising all actions to be performed by AMCESFI in accordance with this Royal Decree.

(b) Representing AMCESFI.

(c) Calling the ordinary and extraordinary meetings and establishing the agenda, taking into account the requests of the other members, provided they have been made in good time.

(d) Chairing the meetings, moderating the debates and suspending them on justified grounds.

(e) Casting the deciding vote in ties for the purpose of adopting resolutions.

(f) Enforcing the law.

(g) Endorsing the minutes and certificates of Council resolutions.

(h) Answering to the Spanish Parliament pursuant to Article 20.

2. It falls to the Vice-Chair to represent AMCESFI at international organisations and authorities and to stand in for the Chair in the event of vacancy, absence and illness.

Article 5. *Secretary to the Council.*

1. The Secretary to the Council shall:

(a) Attend the meetings in a non-voting capacity.

(b) Issue notice of the Council's meetings by order of the Chair and call the members.

(c) Ensure the formal and material legality of the collegiate body's actions.

(d) Ensure the rules and procedures for constituting a quorum and adopting resolutions are observed.

(e) Receive the members' communication with the Council, be it notifications, data requests, rectifications or any other kind of document of which it should be apprised.

(f) Prepare the agendas and draw up and certify the minutes to the meetings.

(g) Issue certificates for the consultations, opinions and resolutions adopted.

(h) Perform such other functions inherent in the position of Secretary.

2. In the event of vacancy, absence and illness, the Chair of the Council shall decide the Secretary's alternate, who shall be a person discharging functions in the authorities represented on the Council who has a level of qualification similar to that of the Secretary, including the members of the Council.

Article 6. *Notice of meeting and Council meetings.*

1. The Council shall meet at least once every six months and whenever called by the Chair on the Chair's initiative, at the request of at least two of its members or at the request of the Technical Committee, in accordance with the provisions of Article 6(2).

2. Notice of meeting shall be served at least fifteen days in advance. This timeframe may be shortened to a minimum of two days where warranted on grounds of urgency. On an exceptional basis, the Council may also hold extraordinary meetings, without prior notice, provided that all of its members and the Secretary are present and they unanimously resolve to convene the Council and hold the corresponding meeting.

On grounds of urgency duly stated in the notice of meeting, the Council may, on an exceptional basis, convene and adopt its decisions remotely via electronic means.

3. For the Council to be quorate for the purposes of holding meetings, deliberating and adopting resolutions, all members or, where applicable, their alternates shall be required to attend, in person or virtually.

4. The Council's decisions shall be adopted by the simple majority of its members. In the event of a tie, the Chair shall have the casting vote.

5. At the request of the respective members of the Council, the minutes shall reflect their vote against the resolution adopted, their abstention and the reasons for doing so, or their vote for the resolution.

Article 7. *Financial Stability Technical Committee.*

1. The Financial Stability Technical Committee supports the Council and is tasked with preparing and studying the matters to be submitted to the Council. To such end, the Financial Stability Technical Committee shall perform the following functions:

(a) Review of the financial stability landscape and submission of the pertinent reports to the Council.

(b) Submission to the Council of proposed opinions, warnings and recommendations.

(c) Monitoring of macroprudential policy discussions in international fora, including the measures adopted in other jurisdictions with implications for Spain.

(d) Any functions conferred on it by the Council.

2. The Financial Stability Technical Committee shall comprise the following members:

(a) The Deputy Governor of the Banco de España, as its Chair.

(b) The Secretary General of the Treasury and International Finance, as its Vice-Chair.

(c) The Vice-Chair of the CNMV.

(d) The Director General of the Treasury and Financial Policy.

(e) The Director General of Insurance and Pension Funds.

(f) The Director General Financial Stability, Regulation and Resolution of the Banco de España.

(g) The Director General Banking Supervision of the Banco de España.

(h) The Director General of Policy and International Affairs of the CNMV.

(i) The Director General of Markets or the Director General of Institutions of the CNMV, depending on the subject to be addressed.

3. The provisions of Article 3(5) for the members of the Council shall apply to the members of the Technical Committee.

4. The functions of Secretary to the Technical Committee shall be discharged by the Director General Financial Stability, Regulation and Resolution of the Banco de España, in a speaking and voting capacity, as a member of the Technical Committee. The Secretary to the Technical Committee shall be responsible for the same functions as those laid down in Article 5 for the Secretary to the Council.

5. The Technical Committee may agree to its meetings being attended, in a non-voting capacity, by other members of the institutions and authorities that comprise it and by members of other financial stability-related institutions.

6. In the event of vacancy, absence and illness and, in general, on any justified grounds, the alternate designated by the incumbent Financial Stability Technical Committee members may stand in for them. The alternate must at least hold the position of Deputy Director General or equivalent office at the authority where the incumbent holds their office.

7. The Technical Committee shall hold ordinary meetings at least once a quarter and whenever called by its Chair on their own initiative or at the request of at least two of its members. For the Technical Committee to be quorate for the purposes of holding meetings, deliberating and adopting resolutions, the majority of its members, including the Chair and the Secretary, shall be required to attend, in person or virtually.

8. Notice of meeting shall be served at least fifteen days in advance. This timeframe may be shortened to a minimum of two days where warranted on grounds of urgency.

9. The reports and proposals to be submitted to the Council shall be adopted by simple majority of the attendees, with the Chair having the casting vote.

Article 8. *Sub-committees.*

The Council may agree, on its own initiative or at the request of the Technical Committee, to create the temporary or standing sub-committees it deems necessary where warranted by the specificity of the subjects to be addressed. Such sub-committees shall report on their activity to the Technical Committee with the frequency it establishes.

CHAPTER III

Functions and powers of AMCESFI

Article 9. *Functions and powers.*

1. AMCESFI's functions are to identify, prevent and mitigate such circumstances or actions that may generate systemic risk in the financial

sector. To this end, AMCESFI shall monitor and analyse the factors that may cause a systemic risk, as defined in Article 1(3) of this Royal Decree. As a result of performing these functions, AMCESFI may issue opinions, warnings and recommendations in the terms provided for herein.

Pursuant to Article 13, AMCESFI may also encourage the use of the macroprudential tools conferred on the three sectoral financial supervisors.

2. When issuing its opinions, warnings and recommendations, AMCESFI must specify, where possible, the systemic risk factor it aims to tackle and its level of severity.

3. The Council and the Financial Stability Technical Committee may request non-binding reports from independent experts.

Article 10. *Analysis of systemic risk factors.*

1. The Council shall identify and prioritise the systemic risk factors of the financial sector and the financial markets.

2. To such end, the Technical Committee shall select and identify the systemic risk indicators it considers appropriate for monitoring the risk factors, establishing the frequency with which they are calculated. It may also propose the introduction of new indicators and develop the necessary methodologies. Furthermore, it shall take into account the opinions, warnings and recommendations issued by the competent European institutions, especially those of the European Systemic Risk Board.

Article 11. *Opinions.*

The Banco de España, the CNMV and the DGSFP shall notify AMCESFI of their intention to adopt a decision on the application of any of the macroprudential tools provided for in the applicable legislation in the terms laid down in Article 16. Having received such notice, AMCESFI shall issue its opinion in this respect. Where such opinion includes a recommendation, the provisions of Article 13 shall apply.

Article 12. *Warnings.*

1. AMCESFI may issue warnings to the financial system as a whole, a specific financial authority or a group or sub-group of financial sector participants about those activities or factors that might constitute a systemic risk factor.

2. Warnings addressed to supervised institutions shall be conveyed to them by the corresponding supervisor.

Article 13. Recommendations.

1. AMCESFI may recommend the Banco de España, the CNMV and the DGSFP adopt measures within their fields of competence to prevent or mitigate systemic risk factors.

2. The addressees of the recommendations shall inform AMCESFI of the measures taken to comply with the recommendations or shall explain the grounds for not doing so. AMCESFI shall inform the addressees of the deadline for submitting their answer.

3. If AMCESFI considers that the recommendation has not been followed or that the failure to act has not been suitably justified, it shall inform the addressees and grant them a further deadline to comply with the recommendation or, as the case may be, appropriately justify the failure to adopt the measures. Failure to comply with the recommendation or to provide suitable grounds by the new deadline shall be published, unless the Council rules otherwise in accordance with Article 14.

Article 14. Publication of opinions, warnings and recommendations.

1. The Council shall make public the opinions, warnings and recommendations issued and the addressees' response to the recommendations, unless publication is deemed to be potentially detrimental to financial stability. The decision against publication must be adopted by a simple majority of the Council.

2. If it is decided that an opinion, warning or recommendation should not be made public, the addressees and AMCESFI shall adopt all measures to ensure it remains confidential.

CHAPTER IV

Macroprudential tools and AMCESFI notification procedure

Article 15. Macroprudential tools.

1. The Banco de España, the CNMV and the DGSFP may adopt measures, in the terms stipulated in the corresponding sectoral legislation, for the following macroprudential tools in order to prevent systemic risks and ensure the financial system makes a sustainable contribution to economic growth:

(a) The capital buffer requirements pursuant to Articles 43 to 49 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions and Article 190 bis of the Consolidated Securities Market Law approved by Royal Legislative Decree 4/2015 of 23 October 2015.

(b) The establishment of limits on sectoral concentration in accordance with Article 69 bis of Law 10/2014 of 26 June 2014.

(c) The establishment of conditions on the granting of loans and other exposures in accordance with Article 69 ter of Law 10/2014 of 26 June 2014.

(d) As regards the institutions supervised by the Banco de España, the use of higher risk weights for real estate exposures in accordance with Articles 124(2) and 164(5) of 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.

(e) The application of any of the measures stipulated in Article 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

(f) The suspension of the redemption of shares or units in collective investment institutions, in accordance with Article 4(10) of the regulations implementing Collective Investment Institutions Law 35/2003 of 4 November 2003, approved by Royal Decree 1082/2012 of 13 July 2012, where, on account of the number or size of the institutions concerned, it might have implications for financial stability or the orderly functioning of the securities market.

(g) The adoption of measures aimed at increasing the level of liquidity of the portfolios of the collective investment institutions regulated in Collective Investment Institutions Law 35/2003 of 4 November 2003, in addition to those of the collective investment undertakings regulated in Law 22/2014 of 12 November 2014 regulating venture capital entities, other closed-end collective investment institutions and closed-end collective investment institution management companies, and amending Collective Investment Institutions Law 35/2003 of 4 November 2003.

(h) The establishment of limits on the level of leverage of collective investment undertakings, venture capital entities and closed-end collective investment institutions, in addition to other management restrictions vis-à-vis the vehicles managed, in accordance with Article 71 septies of Law 35/2003 of 4 November 2003 and Article 87 of Law 22/2014 of 12 November 2014, where such measures are adopted to preserve the stability and integrity of the financial system.

(i) The introduction of limits and conditions on the activity of supervised institutions in order to prevent private sector over-indebtedness that might affect financial stability, in accordance with Article 234 bis of the Consolidated Securities Market Law.

(j) The prohibition or restriction on short selling and similar transactions in accordance with Article 20 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain

aspects of credit default swaps, and the prohibition or restriction on sovereign credit default swap transactions pursuant to Article 21 of the same Regulation.

(k) The establishment of limits on the aggregate exposure of insurance and reinsurance undertakings, in addition to the establishment of limits and conditions on the transfer of insurance portfolios and exposures by these undertakings, in accordance with Article 117 bis of Law 20/2015 of 14 July 2015 on the regulation, supervision and solvency of insurance and reinsurance undertakings.

(l) Any other measure included in the sectoral laws and that the Council rules is a macroprudential tool.

2. Where the macroprudential tools stipulated in Article 15(1)(a), (b) and (c) are only applied to exposures to a specific sector or category, the following matters, among others, may be taken into account by the Banco de España and the CNMV in their respective fields of competence:

(a) The quantitative materiality of credit institutions' and investment firms' different credit exposure sectors, in order to determine the potential sectoral concentration limits, in accordance with Article 69 bis of Law 10/2014 of 26 June 2014, and the possible countercyclical buffer established in Article 45 of the aforementioned law and in Article 190 bis of the Consolidated Securities Market Law approved by Royal Legislative Decree 4/2015 of 23 October 2015, when required for exposures to a specific sector.

(b) The relevant factors for establishing limits and conditions on lending and the acquisition of debt securities and derivatives by credit institutions, for transactions with the private sector located in Spain, in accordance with Article 69 ter of Law 10/2014 of 26 June 2014, including, among others, the loan-to-value ratio and debt-to-income ratio, the debt servicing burden, the term of these contracts, the fixed, floating or mixed nature of the interest rate and the currency of the loans.

(c) Lending dynamics in each credit exposure sector.

(d) The criteria established in this regard by the European and international organisations and authorities in relation to the macroprudential targets, instruments and indicators.

Article 16. *Notice to AMCESFI.*

1. In accordance with the sole additional provision of Royal Decree-Law 22/2018 of 14 December 2018, where the Banco de España, the CNMV and the DGSFP plan to adopt macroprudential measures, they must inform AMCESFI at least seven business days before notifying the general public and the parties concerned.

The same rules shall apply where macroprudential tools are to be recalibrated or deactivated.

2. This timeframe may be shortened where warranted by the market circumstances or where immediate application is required to ensure the measure's efficacy. In this case, the notice must include suitable justification of such urgency.

CHAPTER V

Cooperation and coordination with other authorities

Article 17. *Duty to cooperate.*

1. In accordance with the provisions of Article 141 of Law 40/2015 of 1 October 2015 on the Legal Regime of the Public Sector and with the specific legislation applicable to each of them, the following organisations and bodies shall cooperate in good faith with AMCESFI and provide it with the information at their disposal in the exercise of their respective responsibilities and that is necessary for AMCESFI to discharge its functions:

- (a) The Banco de España.
- (b) The CNMV.
- (c) The DGSFP.
- (d) The FROB.
- (e) The Accounting and Audit Institute.
- (f) The Deposit Guarantee Scheme for Credit Institutions.
- (g) The Investor Compensation Scheme.
- (h) The Insurance Compensation Consortium.
- (i) The Independent Authority for Fiscal Responsibility.
- (j) The National Commission on Markets and Competition.
- (k) The Institute of Spanish Actuaries.
- (l) Any other pertinent public organisation or authority.

2. AMCESFI may gather information relevant to the performance of its functions through the Banco de España, the CNMV and the DGSFP.

3. All data, documents and information held by AMCESFI by virtue of the exercise of its macroprudential oversight shall be used exclusively in the

exercise of its functions, shall be confidential and may not be disclosed to any person or authority.

4. The following exceptions shall be made to the duty of secrecy regulated in this article:

(a) Where the interested party expressly consents to the dissemination, publication and disclosure of the data.

(b) Publication of aggregate data for statistical purposes, or summary or aggregate disclosures that do not enable specific financial market participants to be identified, even indirectly.

(c) Information requested by competent judicial authorities in criminal proceedings.

(d) Information that AMCESFI must provide to the Banco de España, the CNMV and the DGSFP in order for them to fulfil their respective functions.

(e) Information disclosed to the European Systemic Risk Board, where such information is relevant to the pursuit of its tasks pursuant to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

(f) Information requested by the Spanish Court of Auditors or by a Parliamentary Committee, in the terms established in the specific legislation.

The Spanish Parliament may request the information subject to the duty of secrecy through the Chair of AMCESFI, in accordance with the internal rules of the Spanish Parliament. To this end, the Chair may, on a reasoned basis, request that the competent parliamentary bodies hold a secret session or apply the procedure established for access to classified material. Parliamentary Committee members who receive confidential information shall take the appropriate measures to ensure that it remains confidential.

Such data, documents and information shall cease to be confidential when the parties concerned make public the facts to which they relate.

5. All persons who perform or have performed an activity for AMCESFI and who have become aware of confidential data, documents and information shall be bound to hold such data, documents and information confidential. Such persons may not publish, disclose or exhibit any confidential data or documents, even when they are no longer in the service of AMCESFI, except where expressly authorised to do so by AMCESFI and in the cases stipulated by law.

6. Personal data shall be processed in strict compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of

personal data and on the free movement of such data, and with the other personal data protection legislation.

Article 18. *Cooperation with macroprudential authorities from other countries.*

1. AMCESFI shall bear in mind the financial stability goals of the European Union and the European Economic Area and shall cooperate with the macroprudential authorities of other Member States and with the competent European institutions.

2. AMCESFI shall, in good time, inform the Secretariat of the European Systemic Risk Board about the recommendations issued pursuant to Article 13 and about the warnings issued in accordance with Article 12. It shall also inform the European Central Bank in good time where the recommendation issued affects institutions under its direct supervision.

3. AMCESFI may adopt, at national level, European Systemic Risk Board recommendations where it is the competent authority for such purposes, or provide justification for its inaction, as the case may be, in accordance with Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010.

CHAPTER VI
Accountability

Article 19. *Annual Report.*

AMCESFI shall prepare an annual report, which shall be public and include and analyse the main sources of systemic risk identified, in addition to the opinions, warnings and recommendations issued, except for those that the Council decides not to publish.

Article 20. *Parliamentary control.*

Following publication of the annual report, the Chair of AMCESFI shall appear before the Spanish Parliamentary Committee on the Economy and Enterprise to report on the sources of systemic risk identified and the steps taken by AMCESFI.

First additional provision. Competent authority for the application of Article 458 of Regulation (EU) No 575/2013 of 26 June 2013.

The Banco de España shall be the competent authority for the application of Article 458 of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Second additional provision. AMCESFI resources.

The measures stipulated in this Royal Decree shall not involve an increase in remuneration, resources or other staff costs. Each AMCESFI member organisation shall provide the human and physical resources necessary for the functioning of AMCESFI, charged to their respective budgets.

Third additional provision. Performance report.

Every three years, and for the first time in 2022, the Ministry of the Economy and Enterprise shall prepare a report on AMCESFI's performance in terms of attaining the goals laid down in this Royal Decree and on the suitability of its organisational structure, the tools available and the framework for cooperating with other authorities to attain such goals. On the basis of this report, the Government may adopt measures to improve the macroprudential framework.

Sole repealing provision. Regulatory repeal.

All legal provisions of equal or lower rank that are contrary to this Royal Decree and, in particular, the first transitional provision of Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, are hereby repealed.

First final provision. Enabling provisions.

This Royal Decree is issued under the provisions of Article 149(1)(11) and (13) of the Spanish Constitution, which give the State powers to regulate credit, banking and insurance, and to coordinate the general planning of economic activity, respectively.

Second final provision. Review of the make-up of the Council and the Technical Committee.

In the event an independent insurance supervisory authority is established, the Government shall amend the make-up of the Council of AMCESFI and its Financial Stability Technical Committee so that representatives from such new authority sit thereon.

Third final provision. Authorisation to implement this Royal Decree.

1. The Minister for the Economy and Enterprise is authorised to issue such legal provisions as necessary to implement this Royal Decree.

2. The Banco de España may via circular, and pursuant to Article 3 of Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España, issue such legal provisions as necessary to develop, implement and comply with the macroprudential tools stipulated in Article 15(1)(b) and (c) of this Royal Decree, in addition to those laid down in Article 15(1)(a) where they are only required for exposures to a specific sector or category, and in the provisions of Articles 43 to 49 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

Specifically, the circulars shall regulate the content of the tools, the procedure to inform the general public and the parties concerned, and the tools' purposes. To such end, the Banco de España may take into account, inter alia, the matters included in Article 15(2) of this Royal Decree.

3. The CNMV may via circular, and pursuant to Article 21 of the Consolidated Securities Market Law, issue such legal provisions as necessary to develop, implement and comply with the macroprudential tool stipulated in Article 15(1)(a) of this Royal Decree where it is only required for exposures to a specific sector and in Article 190 bis of the aforementioned Consolidated Securities Market Law.

Specifically, the circulars shall regulate the content of the tool, the procedure to inform the general public and the parties concerned, and the tool's purposes. To such end, the CNMV may take into account, inter alia, the matters included in Article 15(2) of this Royal Decree.

Fourth final provision. Entry into force.

This Royal Decree shall enter into force on the day following its publication in the Official State Gazette.