FINANCIAL REGULATION: 2011 Q3

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Introduction

In 2011 Q3 a relatively small number of new financial provisions was promulgated in comparison with previous periods.

In the area of financial institutions, the regulation of electronic money institutions (ELMIs) was changed to adapt it to recent EU legislation.

In the government debt book-entry system, eligibility to become an account holder was extended to include all government agencies.

In the European Union area, there were four notable new provisions: amendment of the legislation on the balance sheet of the monetary financial institutions sector; the updating of legislation on monetary statistics; the introduction of certain changes in data collection regarding the euro and the operation of the currency information system; and the publication of a new directive relating to alternative investment fund managers (AIFMs).

Finally, a royal decree was promulgated which contains, inter alia, measures to support mortgagors, to control government expenditure and for settling the debt of local government.

Electronic money institutions: legal amendments

Law 21/2011 of 26 July 2011 (BOE of 27 July 2011) on electronic money establishes a new regulatory framework for electronic money institutions (ELMIs) and for the issuance of electronic money.[1] This new law resulted from the partial transposition of Directive 2009/110/EC of 16 September 2009[2] on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC of 26 October 2005 and 2006/48/EC of 14 June 2006 and repealing Directive 2000/46/EC of 18 September 2000, and builds on the past experience gained over these years.

Table 1 succinctly compares the main features of the current law with those of the previous legislation.

The definition of electronic money is changed slightly. It is based on three criteria: 1) any electronically or magnetically stored monetary value representing a claim on the issuer; 2) which is issued on receipt of funds for the purpose of making payment transactions as defined in Law 16/2009 of 13 November 2009 on payment services;[3] and 3) which is accepted as a means of payment by a natural or legal person other than the electronic money issuer;

Excluded from the scope of application is monetary value stored on specific instruments designed to meet specific needs and with limited use, either because the holder may only acquire goods or services in the premises of the issuer of these instruments, or because

1 The previous legal provisions, now repealed, were contained in Article 21 of Law 44/2002 of 22 November 2002 on financial reform measures and in Royal Decree 322/2008 of 29 February 2008 on the legal regime governing electronic money institutions.
2 See "Financial Regulation: 2009 Q4", *Economic Bulletin,* January 2010, Banco de España, pp. 155-158.
3 See "Financial Regulation: 2009 Q4", *Economic Bulletin,* January 2010, Banco de España, pp. 150-155.

ELECTRONIC MONEY INSTITUTIONS

TABLE 1

Law 44/2002 of 22 November 2002, and Royal Decree 322/2008 of 29 February 2008	Law 21/2011 of 26 July 2011
Legal regime	
They have credit institution status.	Loss of credit institution status. From now on, they have financial institution status.
A number of requirements are set for the creation of ELMIs. These include particularly the suitability and repute of the managers, the establishment of mechanisms for sound and prudent internal management, an appropriate organisational structure and effective procedures for identification, management, control and communication of risks.	No significant changes.
Own funds and limitation of investments	
They are required to have initial capital of at least €1 million and to hold at all times own funds which are equal to or above 2% of the current amount or the average of the preceding six month's total amount of their financial liabilities related to outstanding e-money.	The minimum initial capital is reduced to €350,000 from €1 million previously. This will be supplemented by a sufficient volume of own funds in relation to the business indicators. Based on the assessment of risk management processes, the Banco de España may require or permit ELMIs to hold up to 20% more or up to 20% less own funds.
Investment restrictions: ELMIs must make a series of compulsory investments in certain assets.	Repealed.
Not envisaged.	Requirements are set for safeguarding the funds received for the issuance of electronic money or for the provision of payment services. In particular, the procedure of safeguarding funds through coverage by an insurance policy or some other comparable guarantee may only be used if expressly authorised by the Banco de España in response to a reasoned request from the entity.
Regime governing activities	
The issuance of electronic money, as well as the provision of financial and non financial services closely related to electronic money issuance.	Additionally, they may provide payment services, grant credit in connection with certain payment services, manage payment systems, provide operational and auxiliary services closely linked to the aforementioned activities, and carry out any other economic activities different from the issuance of electronic money, in conformity with applicable legislation.
Not specifically envisaged.	ELMIs may delegate to third parties, or procure through agents, the performance of certain activities such as the distribution and redemption of electronic money. However, it is prohibited to issue electronic money through agents.
Not specifically envisaged.	A qualifying holdings regime similar to that in place for credit institutions is introduced.
Supervisory and penalty regime	
The Banco de España is responsible for the control and inspection of these institutions under Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions.	No significant changes.

SOURCES: BOE and Banco de España.

the instruments may only be used to acquire a limited range of goods or services, or because the instruments are used for payment transactions executed using telecommunications, digital or IT devices.

The issuance and redemption of electronic money is addressed, specifically in three basic respects: a) it is compulsory to issue electronic money at par value; 2) it is prohibited to grant interest or any other benefit unless those benefits are not related to the length of time during which the electronic money holder holds electronic money; and 3) it is provided that, upon request by the electronic money holder, electronic money issuers shall redeem,

at any moment and at par value, the monetary value of the electronic money held. The Law stipulates that redemption shall generally be free of charge, although it specifies certain cases in which the electronic money issuer may charge a fee proportionate and commensurate with the actual costs incurred in making that redemption.

Unlike the previous legislation, the Law restricts the activity of issuing electronic money to certain entities enumerated therein. They are as follows: credit institutions, ELMIs, Sociedad Estatal de Correos y Telégrafos, the Banco de España when not acting in its capacity as monetary authority, and general government agencies when acting in their capacity as public authorities.

A more appropriate legal regime is established for ELMIs in relation to the risks potentially deriving from their activity, the main new feature being the loss of credit institution status, given that they may shall not take deposits from the public or grant credit with the funds received from the public. From now on, they will have financial institution status.

The procedure for setting up ELMIs remains the same as under the previous legislation: authorisation and registration by the Ministry of Economic Affairs and Finance, upon prior reports of the Banco de España and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences; requirements for the incorporation of the entity; documents to be included in the incorporation applications, especially all those referring to the suitability and repute of the managers and of the shareholders or other equity holders that will have a qualifying holding, to the mechanisms for sound and prudent internal management, to an appropriate organisational structure and to effective procedures for identification, management, control and communication of the risks to which they are or may be exposed.

The minimum initial capital is reduced to €350,000 from €1 million previously. This will be supplemented by a sufficient volume of own funds in relation to the business indicators, as provided by law. For this purpose, the eligible own funds will be defined as provided in this respect for credit institutions.

ELMIs forming part of a consolidable group of credit institutions may be exonerated by the Banco de España from full individual compliance with capital requirements. Based on the assessment of risk management processes and internal control mechanisms, the Banco de España may require or permit ELMIs to hold up to 20% more or up to 20% less own funds.

Another new feature in the Law is that ELMIs may engage in economic activities other than the issuance of electronic money, which previously was their only activity. These other economic activities include: the provision of the payment services defined in Law 16/2009;[4] the granting of credit in connection with certain payment services provided that certain conditions are met and subject to the limitation that this credit is not granted from funds received in exchange for electronic money; the provision of operational and auxiliary services closely linked to the issuance of electronic money and to the provision of payment services; payment systems management; and, in general, any other economic activities different from the issuance of electronic money, in conformity with applicable EU and national legislation.

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4 These services, which are set out in Article 1.2 of Law 16/2009 of 13 November 2009, include services enabling cash withdrawals from payment accounts and all the operations required for operating a payment account; execution of payment transactions, including transfers of funds; issuance and acquisition of payment instruments; money remittance; etc.

The limitations on investments under the previous legislation are repealed, although the requirement to safeguard appropriately the funds received in exchange for electronic money issued and those received for the provision of payment services not linked to electronic money issuance remains in place. For this purpose, the Law provides for a guarantee regime equivalent to that for payment institutions, although it is limited to the procedure which requires, first, that these funds be completely separated from any others held by the entity, and, second, that they be invested in low-risk liquid assets or deposited in a separate account with a credit institution. The procedure of safeguarding funds through coverage by an insurance policy or some other comparable guarantee may only be used if expressly authorised by the Banco de España in response to a reasoned request from the entity.

In addition, the Law introduces a qualifying holdings regime[5] similar to that in place for credit institutions. Thus, anyone intending to purchase or assign such a holding must previously notify the Banco de España. This obligation also applies when qualifying holdings rise above or fall below certain thresholds (20%, 30%, 50% or where control is gained or lost).

The Law regulates the cross-border activity of ELMIs, which, if not subject to regulatory exceptions,[6] are granted a "Community passport", such that their intra-EU activity is based on the system of communication between supervisors (analogous to that of credit institutions). The prior authorisation system remains in place where the authorisation encompasses third countries.

The Law provides that ELMIs may delegate to third parties the performance of certain activities such as the distribution and redemption of electronic money or the provision of operational functions. They are also allowed to distribute and redeem electronic money through agents (i.e. natural or legal persons acting on their behalf) and, where applicable, to provide payment services, but in no case may they issue electronic money through agents.

The Banco de España is entrusted with the supervision of ELMIs: control and inspection, cooperation with EU authorities, exercise of competence under the ELMI qualifying holdings regime, etc., notwithstanding the powers already exercised by the Banco de España in respect of credit institutions. The penalty regime applicable to ELMIs is basically as provided in Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions, as regulatorily adapted.

The Law includes a transitional provision under which existing ELMIs do not need new authorisation, although, to be able to continue their activity, they have to accredit compliance with the new requirements for engaging in this activity under the Law.

Finally, the Law amends certain legislation (Legislative Royal Decree 1298/1986 of 28 June 1986 on the adaptation of current law on credit institutions to the law of the European Communities and Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions) to adapt them to the loss of credit institution status by ELMIs and to the

5 A qualifying holding is defined as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights. Also considered to be a qualifying holding is an ownership interest which, although not reaching this percentage, makes it possible to exercise a significant influence over the management of that undertaking. A natural or legal person is presumed to be able to exercise such significant influence if said person can appoint or remove one or more board members.

6 In the transposition of Directive 2009/110/EC, use was not made of the power granted to the Member States in Article 9 to authorise Spanish ELMIs subject to regulatory exceptions, in which case they would not have qualified for the Community Passport.

application thereto of Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing.

The Law came into force on 28 July 2011.

Government debt book-entry system: new account holders

Ministerial Order EHA/2288/2011 of 2 August 2011 (BOE of 18 August 2011) amended the Ministerial Order of 19 May 1987[7] which implemented Royal Decree 505/1987 providing for the creation of a government debt book-entry system.

This reason for this amendment is to provide for the granting of the status of account holder in the government debt book-entry system to the general government agencies that did not have this status.[8] Accordingly, the agencies which have or wish to purchase State government debt can carry out the transactions in the government debt market without having to act through an intermediary or financial institution.

The new account holders' participation in the government debt market will be subject to the operating rules for this market and to those established for cash settlement in TARGET2-Banco de España.

The Ministerial Order came into force on 19 August 2011.

European Central Bank: amendment of rules on accounting and monetary statistics

Regulation ECB/2011/12 of the European Central Bank of 25 August 2011 (OJ L of 3 September 2011) amended Regulation ECB/2008/32 of the European Central Bank of 19 September 2011 concerning the balance sheet of the monetary financial institutions (MFI) sector,[9] and *Guideline ECB/2011/13 of the European Central Bank of 25 August 2011* (OJ L of 3 September 2011) amended Guideline ECB/2007/9 of the European Central Bank of 1 August 2007 on monetary, financial institutions and markets statistics.

The Regulation contains two new developments. First, it sets out the new identification conditions or criteria[10] that money market funds (MMFs)[11] have to meet in full, some of which were already included in Regulation ECB/2008/32. The net conditions include most notably the following: 1) they pursue the investment objective of maintaining a fund's principal and providing a return in line with the interest rates of money market instruments; 2) they ensure that the money market instruments they invest in are of high credit quality;[12] 3) they ensure that their portfolio has a weighted average maturity of no more than six months and a weighted average life of no more than 12 months; 4) they limit investment in securities to those with a residual maturity until the legal redemption

7 See "Regulación financiera: segundo trimestre de 1987", *Boletín Económico*, July-August 1987, Banco de España, pp. 46-48.

8 Until now the only entities recognised by the Spanish general government as having this status were itself, acting through the Treasury, and the Social Security System General Treasury.

9 To carry out its functions, the European System of Central Banks requires the consolidated balance sheet of the MFI sector to be prepared. The main purpose of this balance sheet is to provide the ECB with a complete statistical picture of monetary developments in the participating Member States, which is considered to be a single economic territory.

10 In accordance with the guidelines issued on 19 May 2010 by the Committee of European Securities Regulators (CESR), the predecessor of the European Securities and Markets Authority.

11 MMFs are defined as those collective investment undertakings the shares/units of which are, in terms of liquidity, close substitutes for deposits and which primarily invest in money market instruments and/or in MMF shares/units and/or in other transferable debt instruments with a residual maturity of up to and including one year, and/or in bank deposits, and/or which pursue a rate of return that approaches the interest rates of money market instruments.

12 The money market instrument shall be considered to be of high credit quality if it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the management company's internal rating process.

date of less than or equal to two years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 days; and 5) they do not take direct or indirect exposure to equity or commodities, including via derivatives. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged.

Under the Regulation, ELMIs are excluded from the MFI group because they cease to have credit institution status,[13] now being classified in the "other MFIs" category. This means that certain provisions of Regulation ECB/2008/32 have to be changed. Among these changes, the exemption of ELMIs from statistical reporting obligations for which small MFIs qualify was deleted because ELMIs ceased to belong to this category.

Also, in relation to the foregoing point, Guideline ECB/2011/13 amends the scope, frequency and deadline of reporting by electronic money institutions to ensure the appropriate collection of statistics on electronic money. Previously, national central banks submitted to the ECB statistical information on electronic money issued by the MFIs that were electronic money issuers (credit institutions and ELMIs) at least twice a year. That same obligation remains in place for credit institutions, but ELMIs now have to report once a year on a smaller number of statistical items.

The Regulation and the Guideline came into force on 23 September 2011.

Euro banknote information system

Guideline ECB/2011/9 of 30 June 2011 (OJ L of 23 August 2011) amended Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2.[14]

On 12 May 2010 the Governing Council endorsed daily reporting functionalities additional to the monthly and semi-annual reporting functionalities already provided for in Guideline ECB/2008/8. They must thus be included in the guideline.

The ECB shall activate the daily reporting of data (collection of data on euro banknotes submitted daily) if any of the following applies: 1) more than one national central bank (NCB) reports unusual developments in the cash cycle and at least one of those NCBs is likely to request an ad hoc bulk transfer of euro banknotes; 2) the data reported on a monthly basis show that the gross issue of euro banknotes at Eurosystem level exceeds certain thresholds approved by the Governing Council; and 3) the Banknote Committee gives reasons for its activation.

Notwithstanding the above, for contingency testing reasons daily reporting of data shall be activated each year in June for a one-month period.

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13 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC excluded ELMIs from the credit institutions category because they cannot receive deposits from the public or grant credit from funds received from the public. They are thus included in the financial institutions category. See the section above on ELMIs (second section of this article).

14 Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes replaced from 1 January 2011 the framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers. Decision ECB/2010/14 obliges cash handlers to report statistical data to their national central Banks (NCBs) by 1 January 2012. NCBs must furnish the ECB with the aggregate statistical data referred to by Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2.

Upon activation of this requirement, NCBs shall report on a daily basis to the ECB the data relating to euro banknotes, i.e. the banknote data items specified in Annex VII of the Guideline.

The Guideline came into force on 2 July 2011.

Directive on alternative investment fund managers

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 (OJ L of 1 July 2011) on alternative investment fund managers[15] amended Directives 2003/41/EC of 3 June 2003 and 2009/65/EC of 13 July 2009 and Regulations 1060/2009 of 16 September 2009 and 1095/2010 of 24 November 2010.

The Directive lays down the rules for the authorisation, ongoing operation and transparency alternative investment fund managers (AIFMs) which manage and/or market alternative investment funds (AIFs) in the Union.

It aims to provide for an internal market for AIFMs and a harmonised and stringent regulatory and supervisory framework for the activities within the Union of all AIFMs, including those which have their registered office in a Member State and those which have their registered office in a third country.

AIM AND SCOPE OF APPLICATION

Its scope of application is: a) EU AIFMs which manage one or more AIFs irrespective of whether such AIFs are EU AIFs or non-EU AIFs; b) non-EU AIFMs which manage one or more EU AIFs; and c) non-EU AIFMs which market one or more AIFs in the Union irrespective of whether such AIFs are EU AIFs or non-EU AIFs.

The Directive shall not apply to AIFMs in so far as they manage one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

The Directive provides for a lighter regime for AIFMs where the cumulative AIFs under management fall below a threshold of €100 million and for AIFMs that manage only unleveraged AIFs[16] that do not grant investors redemption rights during a period of 5 years where the cumulative AIFs under management fall below a threshold of €500 million.

AUTHORISATION OF AIFMs

The Directive sets out the conditions for authorising AIFMs. This include: information on the identities of the persons effectively conducting the business of the AIFM and on the identities of the AIFM's shareholders or members that have qualifying holdings, who must have sufficient repute and experience; and a programme of activity setting out the organisational structure of the AIFM, including information on remuneration policies and practices.

Authorisation shall be valid for all Member States. The competent authorities shall, on a quarterly basis, inform the European Securities and Markets Authority (ESMA)[17] of au-

15 Alternative investment funds (AIFs or hedge funds) entered Spanish law under the name of *fondos de inversión libre*, regulated by Law 35/2003, which in turn was implemented by the Regulations of Law 35/2003 of 4 November 2003 on collective investment institutions.

16 The Directive defines leverage as any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.

17 The ESMA was created by Regulation 1095/2010 of the European Parliament and of the Council of 24 October 2010.

thorisations granted or withdrawn. The ESMA shall keep a central public register identifying each AIFM authorised, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM.

Depending on their legal form, AIFs may be managed externally or internally. In the first case, the external manager must be an AIFM, which shall be responsible for ensuring compliance with the Directive. If the legal form of the AIF permits internal management and the AIF's governing body chooses not to appoint an external AIFM, the AIF itself must meet all the requirements set by the Directive for AIFMs. However, this internal AIF will not be authorised to carry out the functions of external manager of any other AIF.

INITIAL CAPITAL AND OWN FUNDS

Member States shall require that an AIFM which is an internally managed AIF has an initial capital of at least €300,000. Where an AIFM is appointed as external manager of AIFs, the AIFM shall have an initial capital of at least €125,000.

Where the value of the portfolios of AIFs managed by the AIFM exceeds €250 million, the AIFM shall provide an additional amount of own funds. That additional amount of own funds shall be equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds €250 million but the required total of the initial capital and the additional amount shall not, however, exceed €10 million. Member States may authorise AIFMs not to provide up to 50% of that additional amount of own funds if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking.

OPERATING CONDITIONS FOR AIFMs

AIFMs must perform at least the function of AIF investment management, which includes portfolio management and risk management, subject to certain limits. Thus, in no case may AIFMs provide portfolio management without also providing risk management or vice versa. They should not, however, be prevented from engaging in the activities of administration and marketing of an AIF or from engaging in activities related to the assets of the AIF. They are also allowed to provide: the service of management of portfolios of investments with mandates given by investors on a discretionary, client-by-client basis, including portfolios owned by pension funds and institutions for occupational retirement provision; and the non-core services of investment advice, safe-keeping and administration in relation to units of collective investment undertakings and reception and transmission of orders.

Also, the operating requirements for the proper conduct of their activity are exhaustively enumerated. Specifically, AIFMs have an express obligation to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of AIFs they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should at least include senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

Further, AIFMs shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors. Also, AIFMs shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. AIFMs shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

Finally, AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed. The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be laid down in the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation. The process for valuation of assets and calculation of the net asset value shall be independent from the portfolio management and the remuneration policy of the AIFM and other measures should ensure that conflicts of interest are prevented. Subject to certain conditions, AIFMs may appoint an external valuer to perform the valuation function.

DELEGATION OF AIFM FUNCTIONS

AIFMs which intend to delegate to third parties the task of carrying out functions on their behalf shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced.

Where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision or, where that condition cannot be met, only subject to prior approval by the competent authorities of the home Member State of the AIFM.

DEPOSITARY

The Directive requires that a single depositary be appointed for each AIF, different from the AIFMs. The depositary should have its registered office or a branch in the same country as the AIF. It should be possible for a non-EU AIF to have a depositary established in the relevant third country only if certain additional conditions are met.

The depositary may be a credit institution, an investment firm or another entity subject to prudential regulation and ongoing supervision.[18]

Amongst its functions, the depositary shall in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been duly booked. The assets of the AIF or the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safe-keeping.

The safe-keeping of assets may be delegated to a third party which, in turn, may delegate that function. However, delegation and sub-delegation should be objectively justified and subject to strict requirements in relation to the suitability of the third party entrusted with the delegated function, and in relation to the due skill, care and diligence that the depositary should employ to select, appoint and review that third party.

18 In accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

TRANSPARENCY REQUIREMENTS

An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request. The annual report shall be made available to the competent authorities of the home Member State of the AIFM, and, where applicable, the home Member State of the AIF.

AIFMs shall make available to AIF investors, before they invest in the AIF, certain information set out in detail in the Directive. AIFMs shall periodically disclose to investors other information such as: the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature; any new arrangements for managing the liquidity of the AIF; the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks; and the level of and change in the leverage of leveraged AIFs.

An AIFM has certain obligations to report information to the competent authorities of its home Member State. Among these, it has to provide information on the principal markets and instruments in which it trades on behalf of the AIFs it manages and/or markets.

OBLIGATIONS OF AIFMS FOR SPECIFIC TYPES OF AIF

Other notable features of the Directive are the obligations it sets for the AIFMs managing specific types of AIF. Specifically, for *leveraged AIFMs*, special requirements are imposed in respect of the overall level of leverage employed. This information must be gathered by the competent authorities of the home Member State and shared with other EU authorities, with the ESMA and with the European Systemic Risk Board (ESRB). Also, where the stability and integrity of the financial system may be threatened, the competent authorities of the home Member State of the AIFM should impose limits to the level of leverage that an AIFM can employ in AIFs under its management.

In addition, certain obligations are imposed on AIFMs managing AIFs which acquire *control of non-listed companies and of issuers*.[19] Included here is the requirement that when an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF must notify the competent authorities of its home Member State of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%. Also, certain specific provisions are laid down regarding the annual report of AIFs exercising control of non-listed companies.

OTHER FEATURES OF THE DIRECTIVE

Certain conditions are set for the pursuit of cross-border activities by AIFMs. Specifically, conditions are laid down for the marketing of shares/units of EU AIFs in Member States other than the home Member State of the AIFMs; for EU AIFMs managing non-EU AIFs not marketed in Member States; and for the management of AIFs established in Member States by non-EU AIFMs, among other cases.

Member States may allow AIFMs to market to retail investors in their territory all or some types of the AIFs managed by them. In such cases, Member States may impose stricter requirements on the AIFM or the AIF than the requirements applicable to the AIFs marketed to professional investors in their territory, regardless of whether those AIFs are marketed domestically or on a cross-border basis. Where a Member State allows the market-

19 For the purpose of the Directive, control of a non-listed company shall mean more than 50% of the voting rights of the company.

ing of AIFs to retail investors in its territory, this possibility should be available regardless of the Member State where the AIFM managing the AIFs is established, and Member States should not impose stricter or additional requirements on EU AIFs established in another Member State and marketed on a cross-border basis than on AIFs marketed domestically.

Member States shall lay down rules on penalties applicable to infringements of this Directive and ensure that they are implemented. The penalties should be effective, proportionate and dissuasive.

The Directive came into force on 21 July 2011 and shall be applicable from 22 July 2013, the deadline for Member States to write it into law.

Support to mortgagors, control of public spending, settlement of debts incurred by local government and other measures

Royal Decree Law 8/2011 of 1 July 2011 (BOE of 7 July 2011) was published, enacting measures relating to support for mortgagors, to the control of public spending and settlement of debts incurred by local government with corporations and the self-employed, and to the fostering of business activity, real estate renovation and more simplified administrative procedures.

The key measures of this legislation are briefly detailed below.

SUPPORT TO MORTGAGORS

The unforeclosability threshold increases when the price obtained on the sale of the mortgaged habitual dwelling in a mortgage enforcement procedure is insufficient to cover the mortgage loan. Previously, the unforeclosable minimum was equivalent to the minimum wage. Henceforth, it increases to 150% of this minimum wage with an additional 30% for each core household member[20] who does not receive income greater than the minimum wage.

The amount for which creditors can request the foreclosure of property rises from 50% to 60% of the appraised value of said property if there should have been no bidder at the attendant auction of the property, irrespective of the amount of the total debt.

Further, the deposit required of bidders to participate in an auction is reduced from 30% to 20% in order to encourage the presence of bidders and improve the allocation of the mortgaged assets.

CONTROL OF PUBLIC SPENDING AND SETTLEMENT OF DEBTS INCURRED BY LOCAL GOVERNMENT

Certain financial and spending-control measures have been introduced. The growth of the spending of certain general government units is thus limited, and these may not exceed the Spanish economy's benchmark growth rate. This spending rule shall be applied to central government and its agencies, and to local governments that participate in the assignment of State taxes. In the case of the remaining local governments, the balanced or surplus budget rule envisaged in the current budgetary stability regulations shall continue to be applicable.[21] Complementing this measure is the objective of budgetary stability over the course of the business cycle, so that computable[22]

20 Core household members are understood to be the spouse or de facto partner and the first-degree relatives living with the owner-occupier of the foreclosable dwelling.

21 See Royal Legislative Decree 2/2007 of 28 December 2007, approving the consolidated text of the General Budgetary Stability Law, and the consolidated text of the Law Regulating Local Government Finances, approved by Royal Legislative Decree 2/2004 of 5 March 2004.

22 Computable expenditure is understood as non-financial expenditure defined in terms of the European System of National and Regional Accounts, excluding debt interest payments and non-discretionary spending on unemployment benefits.

SPECIFIC ADMINISTRATIVE PROCEDURES IN THE FINANCIAL ARENA IN WHICH "ADMINISTRATIVE SILENCE" IS NOW CONSTRUED AS TACIT AUTHORISATION

TABLE 2

Procedure	Legislation	Article	Resolution
Credit cooperative merger, takeover, spin-offs.	Law 13/1989 of 26 May 1989 on Credit Cooperatives.	Art. 1 of Law 13/1989 of 26 May 1989.	6 months.
Mutual guarantee company merger, takeover, spin-offs.	Law 1/1994 of 11 March 1994 on the Legal Regime for Mutual Guarantee Companies.	Art. 5 of Law 1/1994 of 11 March 1994.	6 months.
Investment services company merger, spin-off, takeover.	Law 24/1988 of 28 July 1988 on the Securities Market.	Art. 7 of Law 24/1988 of 28 July 1988.	3 months.
Authorisation for the merger and spin-off of pension fund management companies.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art 20.7 of the consolidated text.	3 months.
Communication of the replacement of a pension fund management company or depository.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art. 11.5 and 2nd Additional Provision of the consolidated text.	3 months.
Amendment of registration data of pension fund depositories.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	2nd Additional Provision of the consolidated text of Economy and Finance Ministerial Order 407/2008 of 7 February 2008.	3 months.
Amendment of registration data of pension fund management companies.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002. Implementing regulations approved by R.D. 304/2004 of 20 February 2004.	2nd Additional Provision of the consolidated text of Economy and Finance Ministerial Order 407/2008 of 7 February 2008.	3 months.
Amendment of pension fund registration data.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art. 11.5 and 2nd Additional Provision of the consolidated text.	3 months.
Revocation of authorisation of pension funds.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002. Implementing regulations approved by R.D. 304/2004 of 20 February 2004.	2nd Additional Provision of the consolidated text.	3 months.
Application for authorisation and inscription as a pension fund management company for an insurer.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art. 20.2 of the consolidated text.	3 months.
Application for authorisation and inscription of a pension fund depository.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art. 2 of the consolidated text.	3 months.
Application for authorisation and inscription of a pension fund management company in the strict sense of the term.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art. 2 of the consolidated text.	3 months.
Application for authorisation and inscription of pension funds.	Consolidated text of the Law regulating pension plans and funds, approved by RLD 1/2002 of 29 November 2002.	Art.1 and 11 bis of the consolidated text.	3 months.
Authorisation to companies to provide certification services.	Law 30/1992 of 26 November 1992. Finance Ministerial Order 1181/2003 of 12 May 2003.	Disposición Adicional 5.1.	6 months.
Conversion of credit cooperatives into other types of cooperatives.	Royal Decree 84/1993 of 22 January 1993, approving the implementing regulations of Law 13/1989 of 26 May 1989 on Credit Cooperatives.	Art. 31 and 36 of RD 84/1993 of 22 January 1993.	6 months.
Amendment of investment services companies' programmes of operations.	Royal Decree 217/2008 of 15 February 2008 on the legal regime governing investment services companies.	Art. 11 and 12 of RD 217/2008 of 15 February 2008.	3 months.
Amendment of articles of incorporation of securitisation fund management companies.	Royal Decree 926/1998 of 14 May 1998, regulating asset securitisation funds and securitisation fund management companies.	Art. 13 and 17 of RD 926/1998 of 14 May 1998.	3 months.
Creation of a securitisation fund management company.	Royal Decree 926/1998 of 14 May 1998, regulating asset securitisation funds and securitisation fund management companies.	Art. 13.2 of RD 926/1998 of 14 May 1998.	3 months.

SOURCES: BOE and Banco de España.

spending growth may not exceed the Spanish economy's benchmark medium-term growth rate.[23]

Furthermore, regulations provide for a credit facility for the settlement of local governments' debts with corporations and the self-employed. These debts shall have arisen from the acquisition of supplies, the carrying out of construction and other work and the provision of services. In this way, exceptionally, local governments may arrange credit transac-

23 The Spanish economy's benchmark medium-term growth rate is defined as average GDP growth, expressed in nominal terms, over nine years.

tions, under the limits, conditions and requirements laid down in the Royal Decree Law. To this end, the government's Standing Committee for Economic Affairs will instruct the ICO to set up the attendant financial facility.

Local governments should, before 1 December 2011, apply to the ICO for authorisation to arrange debt operations. Having obtained this, local governments may enter into the attendant financial transactions with the cooperating credit institutions. The latter shall act, on behalf of the ICO, to directly satisfy suppliers' outstanding debts.

The settlement term for debt operations may not exceed three years, and nor may these be arranged with grace periods. The financial facility shall be closed on 31 December 2014.

OTHER MEASURES

The number of administrative procedures under which approval may be assumed not to be tacit becoming procedures whereunder authorisation may be assumed to have been granted[24] has increased. Table 2 shows those procedures affected in the financial arena.

Certain measures to boost business activity have been adopted. These include most notably the change in personal income tax to report as exempt[25] the capital gains obtained on the transfer of shares or equity holdings arising from individuals' investments in projects promoted by entrepreneurs, fostering business start-ups that provide for progress in the change in production model and employment generation.

Lastly, other types of measures have been introduced, such as those aimed at promoting property renovation, more simplified administrative procedures, environmental accountability, etc.

The Royal Decree Law came into force on 7 July 2011.

4.10.2011.

24 Tacit authorisation occurs when, in the absence of an express administrative decision, the law per se assumes this discretion, assuming that, for certain purposes, authorisation has come about on a "silence is consent" basis, thereby granting authorisation for the relevant request for permission.

25 This exemption is subject to a series of prerequisites: specifically, the investment must have been made directly by the individual through the subscription of shares or equity holdings in new or recently created entities engaged in a business activity. The capital gain exemption will be applicable in respect of capital gains obtained on the transfer of shares or equity holdings whose acquisition value, for the group of entities invested in, does not exceed €25,000 per annum, or €75,000 per entity during the three years following their incorporation, and the time over which the securities have been part of the taxpayer's assets shall be greater than three and less than 10 years.