FINANCIAL REGULATION: 2014 Q2

The author of this article is Juan Carlos Casado Cubillas of the Directorate General Economics, Statistics and Research.

Introduction

This article summarises the considerable amount of financial legislation adopted in 2014 Q2.

One of the most noteworthy pieces of legislation is the Law on regulation, supervision and solvency of credit institutions, which continues the process of adapting Spanish law to European Union legislation on the supervision and solvency of financial institutions.

The European Central Bank (ECB) brought in new regulations of some significance on: 1) the implementation of the framework for cooperation within the Single Supervisory Mechanism (SSM) between the ECB and national competent authorities (NCAs); 2) the amendment of regulations on the Eurosystem's monetary policy instruments and procedures; 3) domestic asset and liability management operations, and limits on the remuneration of deposits; 4) the updating of powers to impose sanctions as a central bank; 5) the implementation of the Rules of Procedure of the Supervisory Board and of the Administrative Board of Review, to supplement the Rules of Procedure of the ECB, and 6) the establishment of preparatory measures for the collection of granular credit data by the European System of Central Banks (ESCB).

Rules and regulations of some substance in the financial sphere were also published in the area of European legislation: 1) the updating of the deposit guarantee systems of credit institutions; 2) the implementation of a uniform framework of rules and procedures for the restructuring and resolution of credit institutions and investment firms; 3) a broad set of specific rules applicable to the own funds of financial institutions; 4) new regulations on markets in financial instruments which, among other aspects, strengthen investor protection; 5) the updating of the common regulatory framework in the area of operations involving market abuse and the establishment of a set of measures to punish this type of operation with criminal sanctions; 6) the amendment of European legislation on the taxation of savings income in the form of interest payments to resolve certain shortcomings of the previous legislation, and 7) the implementation of the regulations on European venture capital funds.

Two pieces of legislation were approved on the securities market. Firstly, a CNMV circular implements the European Union's legislation on the supervision and solvency of investment firms by using some of the regulatory options provided for therein; and secondly, another CNMV Circular sets out the requirements on internal organisation and control functions of entities providing investment services.

Finally, the changes in the new regulation on the prevention of money laundering and terrorist financing are discussed along with the temporary measures for the gradual adaptation of insurance and reinsurance companies to European Union legislation.

The contents of this article are set out in Table 1.

The Spanish version of this article discusses the same legislation in greater detail.

Regulation, supervision and solvency of credit institutions

Law 10/2014 of 26 June 2014 (BOE [Official State Gazette] of 27 June 2014) on the regulation, supervision and solvency of credit institutions was published and came into force on 28 June 2014 (hereinafter, the Law), except for certain specific provisions

CONTENTS

TABLE 1

referring to Securities Market Law 24/1988 of 29 July 1988 which will be enforceable from 31 October 2014. Its main purpose is to continue the transposition commenced by Royal Decree-Law 14/2013 of 29 November 2013[1], on urgent measures for the adaptation of Spanish law to EU supervisory and solvency regulations for financial institutions, especially, to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013[2], and to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013[3].

1 See "Financial Regulation: 2013 Q4", *Economic Bulletin,* January 2014, Banco de España, pp. 67-71.

2 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 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. See "Financial Regulation: 2013 Q2", *Economic Bulletin,* July-August 2013, Banco de España, pp. 53-66.

3 Directive 2013/36/EU of the European Council and of the European Parliament of 26 June 2013 (OJ L of 27 June 2013) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,

Inter alia, the Law regulates general aspects of the legal framework governing access to the status of credit institution; the functioning of its governing bodies, and the supervisory and disciplinary instruments that the authorities are to use.

The Law is subdivided into the following sections:

LEGAL FRAMEWORK FOR CREDIT INSTITUTIONS

The Law includes a set of general provisions concerning the legal framework applicable to credit institutions. It therefore defines what constitutes a credit institution, establishes the nature of the business reserved exclusively to them, and the sources of the legal rules governing them. It also regulates other points, which are inherently associated with the characteristics of credit institutions, such as the system for granting and revoking authorisation; the rules on significant shareholdings; the suitability of members of the board of directors or equivalent body and incompatibilities to which they are subject, the rules of corporate governance and remuneration policy.

amending Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, repealing Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, on the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

SOLVENCY OF CREDIT INSTITUTIONS

Although the regulations on solvency are determined by Regulation (EU) No 575/2013 of 26 June 2013, which has already been in force since 1 January 2014[4], the Law includes the provisions on the matter which are to be included in Spanish legislation. These include credit institutions' self-assessment of their capital relative to the risks they assume, to ensure that they have in place sound, effective and comprehensive strategies and processes to continuously assess and maintain the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

Additionally, it sets out a series of requirements additional to those for Common Equity Tier 1 – the so-called capital buffers – which allow supervisors to demand higher levels of capital than those established in Regulation (EU) No 575/2013 of 26 June 2013. Specifically, five types of buffer are defined:

1) Capital conservation buffer for unexpected losses, comprising Common Equity Tier 1 equivalent to 2.5% of the total amount of the risk exposure. Transitional arrangements are established according to the following timetable: 0.625% in 2016; 1.25% in 2017; 1.875% in 2018; and 2.5% as of 2019.

4 Under Regulation (EU) No 575/2013, Tier 1 capital is the sum of Common Equity Tier 1 (basically comprising ordinary capital and reserves), and additional Tier 1 capital (comprising hybrid instruments). The Regulation also establishes a series of own funds requirements for 2014 in the following ranges: 1) a Common Equity Tier 1 capital ratio of between 4% and 4.5%, and 2) a Tier 1 capital ratio of between 5.5% and 6% that must be specified by the competent authorities. In the case at hand, in CBE 2/2014, 31 January 2014, the Banco de España laid down that institutions must, at all times, comply with a Common Equity Tier 1 ratio of 4.5% with a Tier 1 capital ratio of 6%.

2) Specific counter-cyclical capital buffer, in terms of Common Equity Tier 1, calculated specifically for each institution or group, equivalent to the total amount of the risk exposure multiplied by a specific percentage. This percentage will be the weighted average of the percentages for counter-cyclical buffers applicable in the territories in which the institution's relevant credit exposures are located, such that up to 2.5% of the total weighted exposures may be required. The same transitional arrangements are established as for the capital conservation buffer.

3) Capital conservation buffer for global systemically important financial institutions (G-SIFIs) of between 1% and 3.5% of the total risk exposure, depending on the systemic importance of the institution concerned. As in previous cases, transitional arrangements are applicable to these percentages according to the following timetable: 25% in 2016; 50% in 2017; 75% in 2018; and 100% as of 2019.

4) Buffer for other systemically important financial institutions (SIFIs), giving the Banco de España a degree of discretion as to whether to require certain institutions to set aside this buffer, which may be as much as 2% of the total risk exposure, bearing in mind the criteria used to identify SIFIs.

5) Common Equity Tier 1 systemic risk buffer in order to prevent or avoid non-cyclical long-term systemic or macroprudential risks that could prompt a shock in the financial system with serious negative consequences for the system and the real economy.

To address possible non-compliance with the precepts regulating the capital buffer rules, a system based on restrictions on distributions has been devised, along with a capital conservation plan, applicable as of 2016.

The capital conservation plan must be approved by the Banco de España, which may require an increase in own funds, or impose stricter restrictions on distributions if it sees fit.

Criteria are also introduced that are to be taken into account by the Banco de España to set possible liquidity requirements in the framework of the review of strategies, procedures and systems implemented by institutions in compliance with the solvency rules, which will be enforced as of 2016.

In the event of breach of the solvency regulations, the Banco de España has been given the power and authority to intervene in the entity's business, such as introducing stricter capital or provisions requirements, or restricting the distribution of dividends. If the situation is exceptionally serious, the Banco de España may even take control of the institution and replace its governing bodies.

PRUDENTIAL SUPERVISION

Under the legislation currently in force the Banco de España has been designated as the supervisory authority for credit institutions. It has therefore been granted the powers and authority necessary to perform this role, the scope and aims of its supervisory activities have been defined, and it has been granted authority to take the necessary measures to ensure compliance with solvency regulations.

Moreover, given that credit institutions conduct their business in an increasingly integrated environment, particularly within Europe, the regulations also cover the Banco de España's

dealings with other supervisory authorities, and in particular the European Banking Authority (EBA). In this context, once the Single Supervisory Mechanism (SSM) has come fully into effect in the European Union, the Banco de España will have to perform its credit institution supervisory duties in cooperation with, and without prejudice to the competences directly assigned to, the ECB, by virtue of Regulation (EU) No 1024/2013 of the Council of 15 October 2013,[5] which entrusts the ECB with specific tasks concerning policies relating to the prudential supervision of credit institutions.

The Banco de España will draw up an annual programme of supervision for all the credit institutions subject to supervision, paying particular attention to the following institutions (among others): 1) those whose results in the stress tests or process of supervisory review and evaluation indicate the existence of significant risks to their financial soundness or reveal possible non-compliance with solvency regulations; and 2) those that represent a systemic risk to the financial system.

Additionally, a series of intervention measures or the replacement of the administrative and management body is provided for in certain cases: 1) in the cases envisaged in Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions; 2) when there are substantiated indications that the credit institution is in an exceptionally serious situation, that may jeopardise its stability, liquidity or solvency; and 3) when it acquires a significant stake in a credit institution without observing the rules provided for in this Law, or when there are substantiated grounds for believing that the influence exerted by its owners may be contrary to the institution's sound and prudential management, or seriously damage its financial situation.

Finally, the Law delimits the Banco de España's supervisory powers in relation to branches whose parent entities have been authorised and are supervised in another Member State.

INSTITUTIONS' REPORTING AND DISCLOSURE OBLIGATIONS

The Law details the information that institutions are to provide under the regulations currently in force, leaving for subsequent implementation a review of the accounting rules, standard form of financial statements, and the consolidated financial statements credit institutions are to comply with, in accordance with European regulations and other applicable company law.

Additionally, pursuant to Regulation (EU) No 575/2013, it is obligatory to submit the *Prudentially Relevant Information* document to the Banco de España at least once a year so as to enable monitoring of compliance with the minimum own funds requirements envisaged in the solvency regulations. This document therefore includes specific information on the institution's financial situation, risk control, internal organisation and situation, etc.

Finally, another new feature is the obligation upon credit institutions to submit an annual banking report, the contents of which are described in the Law, which is to be included as an annex to its audited financial statements.

SYSTEM OF PENALTIES

The penalty system applicable to credit institutions follows the model defined by Law 26/1988 of 29 July 1988[6] on the discipline and intervention of credit institutions, repealed by this Law. The opportunity has also been taken to introduce the amendments necessary

5 See "Financial regulation: 2013 Q4", *Economic Bulletin,* January 2014, Banco de España, pp. 71-74.
6 See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 56-58.

to implement Directive 2013/36/EU of 26 June 2013 into Spanish law, basically as regards the inclusion of new types of penalties and the modification of the amount of the applicable infringements and the way in which they are calculated. It also covers public disclosure, given that, depending on the severity of the infringement, it will be reported in the administrative records on credit institutions and their senior officials, in the Mercantile Register, and even in the Official State Gazette (BOE) if the penalties are imposed for very serious infringements.

Finally, a number of technical modifications have been introduced in order to update some of the precepts to the rules on general administrative procedure currently in force.

CHANGES TO THE LEGAL RULES ON PREFERENCE SHARES

The classification in Regulation (EU) No 575/2013, 26 June 2013, of preference shares as additional Tier 1 capital for the credit institutions issuing them has been introduced into Spanish legislation, subject to the conditions established in the Regulation. Additionally, the requirements under Spanish legislation set out in Law 13/1985 on investment ratios, own funds and reporting requirements for financial intermediaries have been maintained and some new features added. These include the possibility of their being listed on multilateral trading facilities (MTFs) or other organised markets as well as on regulated markets. The applicable tax treatment is extended to preference shares issued by listed entities that are not credit institutions and companies resident in Spain or a territory of the European Union not considered a tax haven, and whose voting rights are held in full, directly or indirectly, by listed entities other than credit institutions, provided that certain requirements detailed in the regulation are met. This new framework will apply to issues as of the date of entry into force of the Law on 28 June 2014.

INTEGRATION OF THE BANCO DE ESPAÑA IN THE SINGLE SUPERVISORY MECHANISM

Pursuant to Regulation (EU) No 1024/2013 of the Council of 15 October 2013, the Banco de España, as the national competent authority, will form part of the SSM along with the ECB and other competent national authorities. In the SSM framework the Banco de España will act under the principle of loyal cooperation with the ECB and provide the assistance necessary for it to perform its role pursuant to the Regulation and its implementing provisions.

SAVINGS BANKS AND BANKING FOUNDATIONS

A number of amendments have been made to Law 26/2013, 27 December 2013,[7] on savings banks and banking foundations. Under the framework governing banking foundations, the rules for the banking foundations' 'protectorates' have been defined, assigning competence over them to either the State or the Autonomous Region depending on the scope of their principal activity and their share of ownership of the credit institution.[8]

On a separate issue, foundations originating in a savings bank that maintain a shareholding in a credit institution that reaches the levels envisaged in Law 26/2013 (i.e. that, directly or indirectly, it comes to 10% of the entity's capital or voting rights or allows it to appoint or dismiss any members of the governing body), will be converted into banking foundations within nine months (previously six months) of the entry into force of Law 26/2013, which was on 29 December 2013.

7 See "Financial regulation: 2013 Q4," *Economic Bulletin,* January 2014, Banco de España, pp. 83-89.

8 The protectorate is responsible for ensuring the legality of banking foundations' constitution and operations, without prejudice to the role assigned to the Banco de España. Depending on the foundation's scope of activity, the protectorate will be exercised by the Ministry of Economic Affairs and Competitiveness or the corresponding Autonomous Region.

The Law now stipulates that individuals who are simultaneously members both of the board of directors of a savings bank and of the board of directors of the banking institution through which the latter exercises its activity as a credit institution may continue to hold both posts simultaneously up to no later than 30 June 2016.[9]

LEGAL FRAMEWORK FOR THE INSTITUTIONAL PROTECTION SYSTEMS

As envisaged in Regulation (EU) No 575/2013, 26 June 2013, the Banco de España may exempt credit institutions forming part of an institutional protection system from compliance with individual solvency requirements under the Regulation when this system is constituted through a contractual agreement between various credit institutions and complies with the requirements of the Regulation,[10] and those of the national regulations.

DEPOSIT GUARANTEE FUND

The composition of the management board of the Deposit Guarantee Fund, regulated under Royal Decree Law 16/2011 of 14 October 2011[11], is amended to include representatives of the Ministries of Economic Affairs and Competitiveness, and of Finance and Public Administration, as the institution is included within the scope of fiscal consolidation. Specifically, it will comprise eleven members, a representative of the Ministry of Economic Affairs and Competitiveness, a representative of the Ministry of Finance and Public Administration, four members appointed by the Banco de España and five by the representative associations of member credit institutions (three by associations representing the banks, one by the savings banks and one by the credit cooperatives).[12]

SUPERVISION OF ENTITIES NOT ON ADMINISTRATIVE REGISTERS

In relation to individuals or legal entities which, not being registered in any of the legally required administrative registers of financial institutions, offer loans, deposits or financial services of any kind to the public, the Ministry of Economic Affairs and Competitiveness, ex officio or at the behest of the Banco de España or any other authority, shall be empowered to: 1) require them, directly or through the Banco de España, to provide any accounting or other information regarding their financial activities, with the level of detail and frequency considered appropriate; and 2) carry out, directly or through the Banco de España, any inspections deemed necessary for the purposes of clarifying any aspects of the financial activities of these persons or entities and their compatibility with the legal system or confirm the accuracy of the information referred to in the previous section.

AMENDMENTS TO SECURITIES MARKET LEGISLATION

The Law makes wide-ranging amendments to Law 24/1988 of 28 July 1988 on the securities market in order to bring investment firms within the scope of the prudential supervision system envisaged for credit institutions under Directive 2013/36/EU of 26 June 2013.

Solvency rules and supervision of investment firms

Thus, members of investment firms' boards of directors within the scope of application of Directive 2013/36/EU, 26 June 2013, are subject to the same rules on corporate governance and directors' suitability and incompatibilities as those for credit institutions.

9 The compatibility of each member was to be maintained until Law 26/2013 came into force at the banking institution, and in no case later than 30 June 2016.

10 The requirements under Article 10 of the Regulation (EU) No 575/2013 are the following: 1) the commitments of the central body and member entities constitute joint and several obligations or the commitments of the member entities are fully guaranteed by the central body; 2) the solvency and liquidity of the central body and all the member entities are supervised as a whole based on the consolidated accounts of these entities; and 3) the management of the central body is empowered to give instructions to the management of the member entities.

11 See "Financial regulation: 2011 Q4," *Economic Bulletin,* January 2012, Banco de España, pp. 126-128.

12 It previously comprised twelve members, six appointed by the Banco de España and six by the representative associations for the member credit institutions (two by associations representing the banks, two by the savings banks, and two by credit cooperatives).

Although the main legislative instrument concerning investment firms' solvency is Regulation (EU) No 575/2013 of 26 June 2013, certain special features of these institutions are regulated. As with credit institutions, the Law obliges investment firms to carry out a self-assessment of their levels of capital and liquidity in order to determine whether it is necessary to maintain levels of own resources or liquidity higher than those established in Regulation (EU) No 575/2013.

Additionally, the CNMV, like the Banco de España, is empowered to require that additional Common Equity Tier 1, so called capital buffers, be complied with. Nevertheless, the capital buffers system will not be applicable to investment firms that do not engage in proprietary trading, insurance of financial instruments or placing of financial instruments on a firm commitment basis. In the case of investment firms classed as small or medium-sized enterprises, the CNMV may opt not to apply the capital conservation buffer or counter-cyclical buffer if it considers it not to pose a threat to the stability of the financial system.

The appropriate exercise of these functions by the CNMV requires a degree of coordination with other supervisors both nationally and in other countries. Therefore, many of the amendments to Law 24/1988, of 28 July 1988, are in response to this need for closer coordination.

The system of penalties envisaged for investment firms has also been updated to include the relevant infringements and sanctions deriving from breach of the solvency rules.

Other amendments to the Securities Market Law

The Law updates the regulation of central counterparty entities to make it compatible with Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012[13] on OTC derivatives, central counterparties and trade repositories, and its implementing regulations.

Improvements have been made to the penalty system applicable to breaches of European Union rules on short selling. The rules on the information to be given to investment services customers have been broadened where other linked financial products are offered, including those, such as mortgage loans, for example, which already have their own rules on transparency and customer protection.

OTHER CHANGES

The levy charged by the Banco de España to cover tasks relating to the comprehensive assessment of credit institutions provided for in Regulation (EU) No 1024/2013 of the Council of 15 October 2013[14] has been established.

The Law has also been taken as an opportunity to make ad hoc amendments to a variety of other pieces of financial legislation, such as Law 13/1989, of 26 May 1989, on Credit cooperatives; Law 1/1994, of 11 March 1994, on the legal framework for mutual guarantee societies; Law 41/1999 of 12 November 1999 on payment and securities settlement systems; and Law 5/2005, of 22 April 2005, on supervision of financial conglomerates and amending other financial sector laws.

Lastly, it repeals a wide range of other regulatory provisions, including some that to date had been basic pillars of the regulation of credit institutions in Spain, such as the Banking

13 See "Financial regulation: 2012 Q3," *Economic Bulletin*, October 2012, Banco de España, pp. 96-100.
14 See "Financial regulation: 2013 Q4," *Economic Bulletin*, January 2014, Banco de España, pp. 71-74.

Law of 31 December 1946; Law 13/1985, of 25 May 1985, on investment ratios, own funds and reporting obligations of financial intermediaries; and Law 26/1988, of 29 July 1988, on Discipline and intervention in credit institutions.

ECB: framework for cooperation in the single supervisory mechanism

Regulation (EU) No 468/2014 (ECB/2014/17) of 16 April 2014 has been published (OJ L of 14 May 2014) (hereinafter the Regulation), establishing the framework of cooperation within the Single Supervisory Mechanism (SSM) between the ECB and the National Competent Authorities (NCAs). It also implemented certain aspects of Regulation (EU) No 1024/2013 of the Council of 15 October 2013 establishing the basis of the SSM comprising the ECB and the NCAs in the participating Member States.[15]

The Regulation came into force on 15 May 2014, with the following timetable of application: by 4 September 2014 the ECB will address a decision to each supervised entity regarding the assumption of its functions under the SSM Regulation to confirm their significant nature. In the case of entities belonging to a significant supervised group, the ECB will notify the supervised entity at the highest level of consolidation within the participant Member States and ensure that all the supervised entities in the significant supervised group are informed. These decisions will take effect as of 4 November 2014.

If the ECB starts to perform the functions entrusted to it before 4 November 2014 it will inform the entity concerned and the relevant NCAs of its decision. Unless otherwise stated, the decision will take effect as of the time of notification. The relevant NCAs will be informed in advance, as soon as possible, of the intention to adopt a decision of this kind.

Regulation (EU) No 1024/2013 stipulates that the ECB, in consultation with the NCAs and on the basis of a proposal from the Supervisory Board, is to adopt and publish a framework organising the practical arrangements for cooperation between the ECB and the NCAs within the SSM.

The respective supervisory responsibilities of the ECB of the NCAs in the SSM are assigned according to the degree of significance of the supervised institutions (hereinafter, the Institutions)[16] falling within their scope. Thus, the ECB has direct supervisory competences over significant institutions or groups of institutions established in participating Member States, including branches established in these States that belong to credit institutions from third countries. For their part, the NCAs are responsible for direct supervision of less significant entities, without prejudice to the power of the ECB to decide in specific cases to directly supervise these institutions when necessary in order to apply supervisory rules consistently.

The main features of the Regulation are enlarged upon below.

PURPOSE AND SCOPE

The Regulation develops and specifies in greater detail the cooperation procedures established in Regulation (EU) No 1024/2013 between the ECB and the NCAs within the

15 The participating Member States are the members of the euro area and those other Member States that have established close cooperation, in accordance with the provisions of Regulation (EU) No 1024/2013. Accordingly, the Member States concerned must undertake, *inter alia*, to: 1) ensure that the competent national authority complies with the guidance or requests issued by the ECB; 2) provide full information on credit institutions established in its territory that the ECB may require in order to conduct a comprehensive evaluation of these entities; and 3) adopt any measures requested by the ECB in relation to credit institutions.

16 All of the following are considered supervised entities in a participating Member State: 1) credit institutions; 2) financial holding companies; 3) mixed portfolio financial holding companies, when certain conditions are met; or 4) a branch established in a participating Member State belonging to a credit institution established in a non-participating Member State.

SSM, to ensure this mechanism works efficiently and consistently. To this end, it establishes a wide range of regulations, covering, among other points:

1) The framework provisions for organising the practical application of cooperation within the SSM, specifying the detailed procedure for evaluating and reviewing the extent to which a supervised entity is significant.

2) Cooperation and exchange of information between the ECB and the NCAs regarding the procedures concerning significant supervised entities and less significant supervised entities. In particular, the common procedures applying to authorisations to take up the business of a credit institution, withdrawals of such authorisations and the assessment of acquisitions and disposals of qualifying holdings.

3) The procedures for cooperation between the ECB, the NCAs and the national designated authorities (NDAs) regarding macro-prudential tasks and tools, and procedures for close cooperation between these institutions.

4) The procedures applicable to the ECB's and the NCAs' sanctioning powers within the SSM in relation to the tasks entrusted to the ECB.

Determining whether a supervised entity is significant or less significant

As indicated in Regulation (EU) No 1024/2013, a supervised entity will be classed as significant based on the following criteria: 1) its size; 2) its economic importance for the European Union or any participating Member State; 3) the significance of its cross-border activities; 4) any request for direct public financial assistance under the European Stability Mechanism (ESM) or its receiving such assistance; and 5) the fact that it is one of the three most significant credit institutions in the participant Member State. The Regulation now enlarges upon the methodology for the application of these criteria.

Supervision of significant and less significant supervised entities

Significant entities

In general, significant supervised entities will be supervised directly by the ECB, unless there are particular circumstances justifying their direct supervision by the NCA. For their part, NCAs will provide assistance to the ECB in the performance of its tasks, carrying out the following activities in particular: 1) they will submit draft decisions regarding significant supervised entities in their Member State to the ECB; 2) they will assist the ECB on the preparation and application of all acts regarding the exercise of the tasks conferred on the ECB, including assistance in verification activities and the daily evaluation of the situation of significant supervised entities; and 3) they will assist in the enforcement of its decisions.

If the ECB decides to assume the direct supervision of a supervised institution or supervised group, or decides to cease supervising it, the ECB and the relevant NCA will cooperate to ensure the smooth transition of supervisory competences. In particular, a report setting out the supervisory history and risk profile of the supervised entity will be prepared by the relevant NCA when the ECB assumes the direct supervision of a supervised entity, and by the ECB when the relevant NCA becomes competent to supervise the entity concerned.

Less significant entities

In general, competence for supervision of less significant supervised entities or groups lies with the NCA of the participating Member State, although the ECB may, at any time,

decide to directly supervise such entities when it considers this necessary in order to ensure the consistent application of strict supervision standards.[17]

In any event, NCAs must inform the ECB of their main supervision procedures applied to less significant supervised entities, in particular: procedures for the dismissal of members of the governing bodies of less significant supervised entities and the appointment of special executives assuming the management of such entities, and any other procedures they consider relevant, or which may have a negative effect on the SSM's reputation.

LIST OF SUPERVISED ENTITIES

The ECB will publish a list giving the name of each entity and group directly supervised by it. If the significance of an entity derives from its size, the list will include the total value of the assets of the supervised institution or group. It will also publish a list of those supervised entities which, although they meet some of the classification criteria for them to be considered a significant entity, are classed as less significant due to their specific circumstances and, consequently, are not directly supervised by the ECB. In this case, the name of each entity supervised by an NCA will be given, together with the name of the corresponding NCA.

By 4 August 2014, the NCAs will inform the ECB of the identity of the credit institutions and submit a report on these institutions in the form specified by the ECB.

COOPERATION AND INFORMATION EXCHANGE BETWEEN THE ECB AND NCAS

Regulation (EU) No 468/2014 provides for close cooperation and information exchange between the ECB and the NCAs through various common procedures applicable to supervised entities. These include most notably: request for authorisation to take up the activity of a credit institution, and its withdrawal; verification that the acquisition of qualifying shareholdings complies with the conditions laid down in national and European Union legislation; and the procedure for the exchange of information and cooperation in relation to the use of macroprudential instruments[18] by both the NCAs and ECB.

CROSS-BORDER ACTIVITY BY SUPERVISED INSTITUTIONS

The Regulation also envisages procedures for the freedom of establishment and provision of services by supervised institutions in other participating Member States or in third countries, and the procedure whereby entities belonging to third countries can conduct their business in Member States participating in the SSM.

To exercise the freedom of establishment and provision of services by supervised entities in other participating Member States or in third countries it is necessary only to inform the ECB (in the case of significant entities) or the corresponding NCA (in the case of less significant entities). If no decision to the contrary is made, the branch may be established

17 Before making this decision the ECB will take the following factors into account: 1) whether the less significant supervised entity or group is close to fulfilling any of the criteria for it to be classified as a significant entity; 2) the interconnection between the less significant supervised entity or group and other credit institutions; 3) if the less significant credit institution is a subsidiary of a supervised entity that has its head office in a non-participating Member State or a third country and has established one or a number of subsidiaries that are also credit institutions, or one or more branches in participating Member States of which one or more are significant; and 4) that the less significant supervised entity or group have directly or indirectly asked for or received financial assistance from the ESM or European Financial Stability Facility (EFSF).

18 Macroprudential instruments include any of the following: 1) capital buffers regulated in Directive 2013/36/EU, of the European Parliament and of the Council, of 26 June 2013, as capital conservation buffers; 2) each entity's specific countercyclical capital buffer and the buffer against systemic risks; 3) measures applicable to credit institutions authorised in the Member State itself, or a subset of these entities, in relation to the macroprudential or systemic risk observed in this State in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council, of 26 June 2013; and 4) any other measure intended to correct systemic or macroprudential risks adopted by NCAs under the terms of Regulation (EU) No 575/2013 and Directive 2013/36/EU and subject to its procedures in the cases expressly envisaged in the applicable European Union legislation.

and start business or the entity may exercise its freedom to provide services. In both cases, the ECB will perform the tasks of the competent authority of the Member State of origin in the case of significant institutions, and the corresponding NCAs shall do so in the case of less significant entities.

The procedure for the exercise of the freedom of establishment and provision of services in participating Member States by entities from third countries is similar to the above (notification is sufficient). In the case of establishment by the opening of branches, the ECB (in the case of branches of significant entities) or the NCA of the host Member State (for less significant entities) will have two months from the receipt of the notification to supervise the branch, and where necessary, the conditions under which the branch may conduct its business in the host Member State will be stated.

ADMINISTRATIVE SANCTIONS

The administrative sanctions envisaged are of two types: 1) financial penalties, which may be of up to twice the amount corresponding to the profits obtained or losses avoided as a result of the non-compliance, if these are quantifiable, or up to 10% of the total annual volume of business; and 2) the penalty payments established in Regulation (EC) No 2532/98 of the Council, of 23 November 1998 on the powers of the ECB to impose sanctions (the former have an upper limit of €500,000 and the latter are periodic penalty payments up to a maximum of €10,000 per day of infringement, for up to a maximum period of six months).

The ECB is empowered to impose penalty payments on significant entities, and on less significant supervised entities in those cases in which the relevant ECB regulations or decisions impose obligations upon these entities vis-à-vis the ECB. The penalty payments will be effective and proportionate up to the maximum limits specified in Regulation (EC) 2532/98.

The Regulation also establishes the procedures for the imposing of administrative sanctions on supervised entities other than penalty payments (financial penalties).

OTHER CHANGES

The Regulation also encompasses a variety of new features, such as: 1) a set of general provisions applicable to the operation of the SSM and in particular, those the ECB is to apply in order to conduct a supervision procedure, together with the obligations of NCAs to cooperate and exchange information; 2) the procedure for the additional supervision of financial conglomerates, in which the ECB will assume the task of coordinator in accordance with the criteria established in EU legislation regarding significant supervised entities and NCAs with regard to less significant entities; and 3) the powers of the ECB to access information, submission of information, on-site inspections and investigations of significant supervised entities, also including that of less significant entities if the ECB so decides in virtue of its prerogatives under the Regulation.

ECB: amendment to the guidelines on monetary policy instruments and procedures of the Eurosystem

Guideline ECB/2014/10, 12 March 2014 (OJ L of 5 June 2014),[19] was published, coming into force on 26 May 2014; together with *Guideline ECB/2014/12, 12 March 2014* (OJ L 5 June 2014),[20] coming into force on 1 April 2014, and *Decision ECB/2014/11, 12 March 2014* (OJ L of 5 June 2014),[21] which came into force on 1 April 2014. *Resolution of 14 May 2014*

19 Guideline ECB/2014/10 of 12 March 2014 amending Guideline ECB/2011/14 on monetary policy instruments and procedures of the Eurosystem.

20 Guideline ECB/2014/12 of 12 March 2014 amending Guideline ECB/2013/4 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 of 1 August 2007, on monetary, financial institutions and markets statistics.

21 Decision ECB/2014/11 of 12 March 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral.

of the Executive Commission of the Banco de España (BOE of 23 May 2014) was published, amending the Resolution of 11 December 1998 approving the general conditions applicable to the Banco de España's monetary policy operations, in order to incorporate the changes introduced by Guideline ECB/2014/10, which came into force on 26 May 2014.

The main points are summarised below.

CORRESPONDENT CENTRAL BANKING MODEL

Guideline ECB/2014/10 introduces significant improvements to the Eurosystem's correspondent central banking model (CCBM). Firstly, it eliminates the repatriation requirement, which required Eurosystem counterparties to transfer assets due to be used as collateral for Eurosystem credit operations to the respective issuer's securities settlement system (SSS) prior to mobilising them. To replace this mechanism, a new channel for mobilisation combining the CCBM with links between SSSs[22] will be created, whereby any SSS or eligible link may be used by any Eurosystem counterparty to mobilise eligible assets as Eurosystem collateral. The elimination of this requirement was applicable from 26 May 2014, the date on which the Guideline came into effect.

TRIPARTY COLLATERAL MANAGEMENT SERVICES

Guideline ECB/2014/10 introduces the concept of triparty agents (TPAs), which provide triparty collateral management services. As of 29 September 2014, Eurosystem counterparties may use Eurosystem-approved TPAs to provide cross-border collateral. This type of service allows entities to increase or decrease the amount of collateral they supply to the National Central Bank (NCB) of which they are a counterparty. Where a Member State's central securities depositary (CSD) provides this service (TPA), the State's NCB will act as the Correspondent Central Bank (CCB) for the NCBs of other Member States whose counterparties have requested the use of these services.

ELIGIBLE ASSET-BACKED SECURITIES

The eligibility requirements for asset-backed securities to be used in monetary policy transactions include, *inter alia*, that they must be backed by cash-flow generating assets that the Eurosystem considers to be homogeneous, such as residential mortgages; commercial real estate mortgages; loans to small- and medium-sized enterprises; auto loans; consumer finance loans; or leasing receivables. Guideline ECB/2014/10 now also includes credit card receivables in this list of assets.

As regards the additional temporary measures concerning Eurosystem financing transactions,[23] certain asset-backed securities are allowed to be considered temporarily eligible if they have two ratings of at least triple B on their issue date and on any subsequent date, and they meet certain additional requirements. In line with Guideline ECB/2014/10, Guideline ECB/2014/12 now includes credit card receivables in its list of assets that serve as collateral for these bonds. Finally, it revises the mapping of certain credit ratings in the context of the Eurosystem harmonised rating scale.

ECB: internal assets and liabilities management operations and limits on deposit remuneration

A number of ECB Guidelines and Decisions were published, namely: *Guideline ECB/2014/9, 20 February 2014* (OJ L 28 May 2014), on domestic asset and liability management operations by the national central banks, amended by *Guideline ECB/2014/22, 5 June*

22 A link between two SSSs consists of a set of procedures and arrangements for the cross-border transfer of securities by means of a book-entry process. A link takes the form of an omnibus account opened by an SSS (the investor SSS) in another SSS (the issuer SSS). A direct link implies that no intermediary exists between the two SSSs. Relayed links between SSSs may also be used for the cross-border transfer of securities to the Eurosystem. A relayed link is a contractual and technical arrangement that allows two SSSs not directly connected to each other to exchange securities transactions or transfers through a third SSS acting as the intermediary.

23 The additional temporary measures regarding Eurosystem financing transactions were established by the Governing Council until it is considered they are no longer necessary to ensure the adequate transmission of monetary policy.

2014 (OJ L 7 June 2014); *Guideline ECB/2014/25, 5 June 2014* (OJ L 7 June 2014), amending Guideline ECB/2012/27, 5 December 2012, on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2), which came into force on 30 May 2014; *Decision ECB/2014/8, 20 February 2014* (OJ L 28 May 2014), on the prohibition of monetary financing and the remuneration of government deposits by national central banks, which came into force on 28 May 2014, and *Decision ECB/2014/23, 5 June 2014* (OJ L 7 June 2014), on the remuneration of deposits, balances and holdings of excess reserves, which came into force on 7 June 2014.

Guideline ECB/2014/9 and Guideline ECB/2014/22 are due to be adopted by National Central Banks (NCBs) by 1 December 2014. Guideline ECB/2014/25 is to be adopted by NCBs as of six weeks from 28 May 2014, when it came into force.

The main changes brought by these new instruments are summarised below.

DOMESTIC ASSET AND LIABILITY MANAGEMENT OPERATIONS

A general threshold of €200 million has been set for aggregate net daily operations above which euro area NCBs may not conduct operations without the prior authorisation of the ECB. Additionally, the ECB may set and apply other thresholds for cumulative purchases or sales of NCB assets and liabilities during a given period of time.

In relation to repurchase agreements (repos)[24] with non-Eurosystem national central banks, as well as being subject to the general threshold, they are subject to the prior approval of the Governing Council of the ECB, which will seek to fulfil the requests from NCBs on the basis of the principles of proportionality and non-discrimination.

LIMITS ON REMUNERATION OF DEPOSITS

The concept of *deposit facility* is defined to mean a Eurosystem standing facility which counterparties may use to make overnight deposits with an NCB at the pre-determined deposit rate. The remuneration on fixed-term deposits and the deposit facility may be a positive, negative or 0% interest rate.

Remuneration of government deposits

Remuneration of government deposits will be subject to the following limits: 1) the unsecured overnight market rate in the case of overnight deposits; and 2) the secured market rate or, if unavailable, the unsecured overnight market rate, in the case of fixed-term deposits.

A threshold of €200 million or 0.04% of the Member State's GDP is also set, above which all overnight or fixed-term government deposits will be remunerated at a rate of 0% or the deposit facility rate if lower, i.e. negative, if the Governing Council of the ECB[25] so decides.

Government deposits associated with the European Union and International Monetary Fund financial assistance programmes, and other analogous programmes, held in accounts with NCBs are not subject to the threshold but will be subject to the remuneration rates for overnight deposits and fixed-term deposits referred to above or 0% if the relevant threshold is exceeded.

24 In a repurchase agreement one party agrees to purchase from (or sell to) the other party securities denominated in euro against payment of an agreed price in euro on the trade date, with a simultaneous agreement to sell to (or purchase from) the other party equivalent securities against payment of another agreed price in euro at the maturity date.

25 On 5 June 2014 the Governing Council set a deposit facility rate of -0.1% applicable as of 11 June.

Other remuneration

TARGET2 balances, i.e. in the Payments Module accounts and their sub-accounts,[26] will be remunerated at 0% or at the deposit facility rate if lower, unless they are used to maintain minimum reserves. In such cases, remuneration of the holdings of minimum reserves will be governed by Regulation (EC) No 2531/98 of the Council of 23 November 1998 on the application of minimum reserves and Regulation (EC) No 1745/2003 (ECB/2003/9) of 12 September 2003, on the application of minimum reserves. Reserves that exceed the minimum required will be remunerated at 0% or at the deposit facility rate, if lower.

ECB: powers to impose sanctions as central bank

Regulation (EU) No 469/2014 (ECB/2014/18) of 16 April 2014 has been published (OJ L of 14 May 2014) (hereinafter the Regulation), amending Regulation (EC) No 2157/1999 (ECB/1994/4) on the competences of the ECB to impose sanctions.

Under Regulation (EC) No 2157/1999, the ECB is empowered to impose sanctions within the scope of its central bank competences, in particular, implementing euro area monetary policy, operating payment systems, and collecting statistical information. It should be noted that these powers have nothing to do with those established in Regulation (EU) No 1024/2013 of the Council and in Regulation (EU) No 468/2014 (ECB/2014/17), given that these derive from its supervisory tasks.

The aim of the Regulation is to establish a consistent framework for the imposing of sanctions in both areas of competences.

The main new feature is the creation of an investigation unit that will carry out its tasks in coordination with the Executive Board and the Governing Council of the ECB. Once the infringement proceedings have concluded, if the investigation unit or the NCB consider that a sanction should be imposed on the entity concerned, a proposal will be submitted to the Executive Board stating the amount of the sanction to be imposed. The Executive Board, having seen the complete dossier, will make its decision, stating whether or not the entity has committed an infringement, and if so, specify the sanction that is to be imposed, which may (or may not) be the same as that proposed.

The Regulation came into force on 15 May 2014.

ECB: Rules of procedure of the Supervisory Board and the Administrative Board of Review

The *Rules of Procedure of the Supervisory Board of the ECB* (OJ L 12 June 2014), and *Decision ECB/2014/16, of 14 April 2014* (OJ L of 14 June 2014), concerning the establishment of an Administrative Board of Review and its Operating Rules, complementing the ECB's Rules of Procedure.

SUPERVISORY BOARD

Inter alia, this regulates: 1) regular meetings of the Supervisory Board, which may be held by teleconferencing, unless three members are opposed; 2) attendance of meetings of the Supervisory Board, which will be limited to its members, and where the competent national authority is not the national central bank (NCB), a representative of the latter; 3) organisation of meetings of the Supervisory Board; 4) the voting system, such that representatives of the authorities in each participating Member State are jointly considered to have just one vote; 5) calling meetings in urgent cases, and 6) delegating powers of the Board to the chair or vice-chair to take clearly defined management or administrative measures.

26 The payments module account (PM account) means an account held by a TARGET2 participant in the PM with a Eurosystem CB which is necessary for such TARGET2 participant to: 1) process payment orders or receive payments via TARGET2, and 2) settle payments with the Eurosystem central bank.

Additionally, under Regulation (EU) No 1024/2013, the Steering Committee of the Supervisory Board is established, which will be in charge of preparing its meetings.

The Rules of Procedure came into force on 1 April 2014.

Administrative Board of Review

Under Regulation (EU) No 1024/2013 of 15 October 2013 the ECB will establish an Administrative Board of Review for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation, without prejudice to the right of appeal to the Court of Justice of the European Union, in accordance with the treaties.

To this end, any individual or legal entity may request that the Administrative Board of Review examine an ECB decision addressed to them, or which is of a direct and individual concern to them. A request for review shall not have suspensory effect. However, the Governing Council, on a proposal by the Administrative Board of Review may, if it considers that circumstances so require, suspend the application of the contested decision. After ruling on the admissibility of the review, the Administrative Board of Review will express an opinion and, where appropriate, remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board will take the opinion of the Administrative Board of Review into account and promptly submit a new draft decision to the Governing Council. Unless the Governing Council objects, the new draft decision will abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision.

The Decision came into effect on 15 June 2014.

ESCB: collection of granular credit data

Decision ECB/2014/6 of 24 February 2014 (OJ L of 8 February 2014), on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (ESCB), was published.

Granular credit data comprise individual items of information about the credit exposures of credit institutions or other loan-providing financial institutions vis-à-vis borrowers. Subject to adequate confidentiality safeguards, these data may be collected on a borrower-by-borrower or loan-by-loan basis from credit registers operated by the national central banks (NCBs) of the European System of Central Banks (ESCB) (hereinafter 'central credit registers' or 'CCRs'), or from other granular data sources or alternative statistical collections.

Granular credit data are necessary for: 1) the development and production of new ESCB statistics in areas such as statistics on impaired assets, provisioning for impaired assets and revaluation reserves, and statistics on loans to non-financial corporations, broken down by the size of the corporations concerned; and 2) enhancing the quality of existing ESCB statistics in areas such as statistics on credit lines broken down by counterparty sector, on loans to non-financial corporations, broken down by economic activity, and on loans backed by real-estate collateral.

These new or improved statistics are necessary for the performance of Eurosystem tasks including monetary policy analysis and monetary policy operations, risk management, financial stability surveillance and research, and the Eurosystem's contribution to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

The purpose of the Decision is to establish the necessary preparatory measures[27] so as to gradually implement a general long-term framework for the compilation of granular credit data based on harmonised ECB statistical reporting requirements. Before the end of 2016 this long-term framework will include: 1) national granular credit databases operated by all Eurosystem NCBs; and 2) a common granular credit database shared by all Member States whose currency is the euro.

The Decision came into effect on 8 April 2014.

European Union: deposit guarantee schemes

Directive 2014/49/EU of the European Parliament and of the Council, of 16 April 2014 (OJ L of 12 June 2014) has been published (hereinafter, the Directive), introducing a number of amendments to Directive 94/19/EC of the European Parliament and of the Council, of 30 May 1994, on deposit guarantee schemes, which it repealed (together with its successive amendments) in order to recast the legislation on the subject in a single text.

This Directive came into effect on 2 July 2014, and Member States have been given until 3 July 2015 to implement it in their legal systems. However, if, after an exhaustive review, the competent authorities decide that a deposit guarantee scheme (DGS) is not in a position to comply with the provisions of the Directive on this date (particularly as regards the contributions made by its members), the entry into force of the national provision by which the Directive's content is implemented may be postponed until 31 May 2016 at the latest.

The main changes are the following:

GENERAL OBJECTIVES OF THE DIRECTIVE

The Directive's main aim is to ensure that a uniform level of protection is provided for depositors throughout the European Union while ensuring DGSs have the same level of stability.[28] Each Member State is therefore required to ensure that one or more DGSs are implemented and officially recognised in their territory, and no credit institution authorised in one Member State may receive deposits unless it is a member of an officially recognised DGS in its Member State of origin.

Additionally, the Directive envisages the possibility of DGSs from different Member States merging or the creation of cross-border DGSs. Approval of such DGSs will be gained from the Member States in which the DGSs concerned are established. Cross-border DGSs will be supervised by representatives of the designated authorities of the Member States where the affiliated credit institutions are authorised.

Finally, the possibility of recognising institutional protection systems (IPSs) as DGSs is provided for if they meet the criteria set in the Directive.

LEVEL OF COVERAGE

As in the previous Directive, Member States are to guarantee that the first €100,000 of each depositor's aggregate deposits per entity are covered. As well as the deposits

27 The preparatory measures that are to be applied are to include, *inter alia*: 1) identifying relevant user needs and estimating related costs generated by proposals for the collection, quality assurance and data sharing procedures to be applied in the long term; 2) defining the bounds of layers or strata in the borrower population and the other possible breakdowns; 3) the level of detail of the data attributes and the quality of granular data collected; 4) organising the transmission of granular credit data and setting the quality standards which granular credit data obtained from CCRs or other credit registers need to comply with prior to the commencement of such transmission; and 5) developing detailed operational arrangements specifying transmission, compilation, storage and use of the granular credit data that are to be tested and fine-tuned in the preparatory phase with a view to their subsequent incorporation into the general framework.

28 Directive 94/19/EC was based on the principle of minimum harmonisation, which gave rise to DGSs with very different characteristics.

considered eligible by the Directive, Member States may guarantee that certain additional deposits are covered up to these levels of coverage. Similarly, they may guarantee amounts in excess of this level of coverage for a period of not less than three months, but not longer than twelve months, in the case of certain deposits, such as those from private transactions involving residential property or those which fulfil a social function established in the national legislation.

REIMBURSEMENT

The Directive establishes that DGSs will ensure that the reimbursed amount is available within seven days of the date on which: 1) a competent administrative authority has determined that the credit institution is, for reasons directly related to its financial situation, unable to repay deposits and does not appear to have prospects of being able to do so; or 2) a judicial authority has adopted a decision, for reasons directly related to the credit institution's financial circumstances, that have the effect of suspending depositors' right to make claims against the institution.

However, the Directive establishes a transitional period up to 31 December 2023 for compliance with the maximum reimbursement period.

FINANCING OF DGSS

DGSs will raise the available financial means by levying contributions from their members at least annually. This will not prevent them obtaining additional financing from other sources. Member States shall ensure that, by 3 July 2024 (although exceptionally, this could be extended for a further four years), the available financial means of a DGS shall at least reach a target level of 0.8 % of the value of its members' covered deposits.

If, after the target level has been reached for the first time, the available financial means have been reduced to less than two-thirds of the target level, the regular contribution shall be set at a level allowing the target level to be reached within six years.

USE OF FUNDS AND CROSS-BORDER ISSUES

DGSs' financial resources will be used primarily to repay depositors. However, Member States, may allow a DGS to use the available financial means for alternative measures in order to prevent the failure of a credit institution provided that certain conditions are met.

DGSs will cover the depositors at branches set up by their member credit institutions in other Member States. Such depositors will be reimbursed by a DGS in the host Member State on behalf of the DGS in the home Member State. The DGS of the home Member State will provide the necessary funding prior to payout and will compensate the DGS of the host Member State for the costs incurred.

Finally, the Directive authorises Members States to allow DGSs to lend to other DGSs within the European Union on a voluntary basis, provided that certain conditions are met.

DEPOSITOR INFORMATION

Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the DGSs of which the institution and its branches are members within the Union. They will also ensure that credit institutions inform actual and intending depositors of the applicable exclusions from DGS protection. Confirmation that deposits are eligible for coverage will be provided to depositors on their statements of account including a reference to the information sheet set out in Annex I of the Directive. The information sheet set out in Annex I is to be provided to depositors at least annually. The website of the DGS is to give the necessary information for depositors, in particular information concerning the provisions regarding the conditions of deposit guarantees and the procedures involved as envisaged under this Directive.

European Union: restructuring and resolution of credit institutions and investment firms

Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014 (OJ L of 12 June 2014) (hereinafter, the Directive), was published, creating a framework for the recovery and resolution of credit institutions and investment firms (hereinafter, the entities), amending Directive 82/891/EEC of the Council, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) no. 1093/2010 and (EU) no. 648/2012 of the European Parliament and of the Council.

Member States shall adopt and publish before 31 December 2014 the laws, regulations and administrative provisions necessary to comply with this Directive, which are to be applicable as of 1 January 2015.

The Directive establishes a uniform framework of rules and procedures for the recovery and resolution, *inter alia*, of the following types of entities: 1) entities established in the European Union; 2) financial holding companies, mixed financial holding companies and mixed activity holding companies established in the European Union; and 3) branches of entities established outside the European Union, in accordance with the specific conditions established in the Directive.

It establishes three levels of management: 1) preparation of recovery and resolution plans to restore the entity's financial position following a significant or sudden deterioration; 2) application of early intervention and recovery measures envisaged for viable entities that are breaching or are likely to breach the solvency, liquidity, organisational structure or internal control requirements, and 3) the orderly resolution of entities, envisaged for credit institutions that are failing or where it is reasonably foreseeable that they will fail in the near future.

RECOVERY AND RESOLUTION PLANS

Institutions must prepare and regularly update recovery plans that set out the measures they are to take to restore their financial situation following a significant deterioration. Institutions are to submit their plans to the competent authorities for a full assessment, including whether the plans are comprehensive and could feasibly restore an institution's viability, in a timely manner, even in periods of severe financial stress.

EARLY INTERVENTION MEASURES

These measures are envisaged so they can be applied by the competent authorities when an institution infringes the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU, or is likely to do so in the near future, as a consequence of a rapidly deteriorating financial situation, including deteriorating liquidity, increasing leverage, non-performing loans or exposure concentration, as assessed on the basis of a set of triggers.

In cases where the early intervention measures are insufficient to halt the institution's deterioration, the competent authorities may require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals. The competent authorities may also appoint one or more temporary administrators to the institution, either to work temporarily with the management body of the institution or to replace it.

RESOLUTION OF INSTITUTIONS.

General rules

The framework the Directive puts in place provides for timely entry into resolution before a financial institution is balance-sheet insolvent. Resolution should be initiated when a competent authority (NCA),[29] after consulting a national resolution authority (NRA),

29 Exceptionally, this capacity is also conferred upon NRAs.

determines that an institution is failing or likely to fail[30] and alternative measures as specified in this Directive would not prevent such a failure within a reasonable timeframe, and there would be a public interest in placing the institution under resolution and applying resolution tools rather than resorting to normal insolvency proceedings.

The objectives of resolution are: 1) to ensure the continuity of critical functions; 2) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; 3) to protect public funds by minimising reliance on extraordinary public financial support; 4) to protect depositors covered by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 (discussed above) and investors covered by Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes; and 5) to protect customers' funds and assets.

Resolution tools

The resolution tools envisaged in the Directive are: 1) sale of the business, i.e. the transfer to a purchaser of the set of assets, liabilities, shares or other equity instruments of the institution being resolved; 2) creation of a bridge bank or one or more asset management vehicles[31] by the timely separation of balance sheet items—these bridge asset management companies will administer the assets that have been transmitted in such a way as to maximise their value when they are ultimately sold or undergo orderly liquidation— and, 3) internal recapitalisation through the repayment of capital or conversion of debt instruments into capital. Together with this, additional recovery and resolution measures will be developed to complement the internal recapitalisation, and the participation of Member States in an institution's internal recapitalisation by providing it with capital will be limited.

EUROPEAN SYSTEM OF FINANCING ARRANGEMENTS

In order to ensure that all institutions operating in the European Union can access equally effective resolution financing mechanisms and that the stability of the internal market is preserved, the establishment of a European system of financing arrangements is envisaged. This will consist of:

National financing mechanisms for resolution procedures

Member States will establish one or more financing mechanisms to ensure the effective application by NRAs of the resolution tools and powers provided in the Directive, which must have appropriate financial resources available. In this regard, Member States are to ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1% of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.

30 An institution is considered to be failing or likely to fail if one or more of the following circumstances arise: 1) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to the institution's having incurred or being likely to incur losses that will deplete all or a significant amount of its own funds; 2) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities; 3) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due; 4) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms: a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions; a State guarantee of newly issued liabilities; or an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution.

31 For the purposes of asset separation, an asset management vehicle is a legal person that meets the following requirements: 1) it is wholly or partly owned by one or more public authorities (which may include the resolution authority or the resolution financing arrangement) and is controlled by the resolution authority; and 2) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

This initial period of time may be extended for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0.5% of covered deposits[32] of all the institutions authorised in their territory.

Borrowing between financing arrangements

Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the European Union if the amounts raised are not sufficient to cover losses or the extraordinary ex-post contributions are not immediately accessible. The rate of interest, repayment period and other terms and conditions of the loans will be agreed between the borrowing financing arrangement and the other financing arrangements which have agreed to participate. The loan of every participating financing arrangement will have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

Mutualisation of national financing arrangements in the case of a group resolution

Member States are to ensure that, in the case of a group resolution, the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution. Accordingly, Member States are to establish rules and procedures in advance to ensure that each national financing arrangement can effect its contribution to the financing of group resolution. Member States must also ensure that group financing arrangements are allowed to contract borrowings or other forms of support, from institutions, financial institutions or other third parties. Finally, any proceeds or benefits that arise from the use of the group financing arrangements are to be allocated to national financing arrangements in accordance with their contributions to the financing of the resolution.

USE OF DEPOSIT GUARANTEE SCHEMES IN THE CONTEXT OF RESOLUTION

Deposits covered by deposit guarantee schemes should not bear any losses in the resolution process. In this regard, deposit guarantee schemes to which an institution under resolution is affiliated should be required to make a contribution not greater than the amount of losses that they would have had to bear if the institution had been wound up under normal insolvency proceedings.

Where deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Directive 2014/49/EU.

OTHER CHANGES

The negotiation of agreements with third countries regarding the means of cooperation between the resolution authorities and the relevant third-country authorities, *inter alia*, for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, financial institutions, parent undertakings and third-country institutions is envisaged.

Finally, a set of administrative sanctions and other administrative measures applicable in the case of noncompliance with the provisions of the Directive is envisaged, without prejudice to the criminal sanctions that may be provided for in Member States' national law.

32 Those guaranteed under Directive 2014/49/EC of the European Parliament and of the Council of 16 April 2014 on deposit-guarantee schemes.

European Union: specific rules applicable to financial institutions' own funds

A number of European Union delegated regulations have been published implementing the technical rules under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and Directive 2013/36/EU of the European Parliament and of the Council.[33] These are: *Commission Delegated Regulation (EU) No 523/2014 of 12 March 2014;*[34] *Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014;*[35] *Commission Implementing Regulation (EU) No 620/2014 of 4 June 2014;*[36] *Commission Delegated Regulation (EU) No 525/2014 of 12 March 2014;*[37] *Commission Delegated Regulation 526/2014 of 12 March 2014;*[38] *Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014;*[39] *Commission Delegated Regulation (EU) No 528/2014 of 12 March 2014;*[40] *Commission Delegated Regulation (EU) No 529/2014 of 12 March 2014;*[41] *Commission Delegated Regulation (EU) No 530/2014 of 12 March 2014;*[42] *Commission Implementing Regulation (EU) No 591/2014 of 3 June 2014;*[43] and *Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014.*[44]

European Union: financial instrument markets

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 (OJ L of 12 June 2014), on markets in financial instruments and amending Regulation (EU) No 648/2012,[45] and *Directive 2014/65/EU of the European Parliament and of the*

33 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

34 Commission Delegated Regulation (EU) No 523/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for determining what constitutes the close correspondence between the value of an institution's covered bonds and the value of the institution's assets.

35 Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another.

36 Commission Implementing Regulation (EU) No 620/2014 of 4 June 2014 (OJ L of 12 June 2014) laying down implementing technical standards with regard to information exchange between competent authorities of home and host Member States, according to Directive 2013/36/EU of the European Parliament and of the Council.

37 Commission Delegated Regulation (EU) No 525/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the definition of market.

38 Commission Delegated Regulation (EU) No 526/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for determining proxy spread and limited smaller portfolios for credit valuation adjustment risk.

39 Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

40 Commission Delegated Regulation (EU) No 528/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach.

41 Commission Delegated Regulation (EU) No 529/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach.

42 Commission Delegated Regulation (EU) No 530/2014 of 12 March 2014 (OJ L of 20 May 2014) supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards further defining material exposures and thresholds for internal approaches to specific risk in the trading book.

43 Commission Implementing Regulation (EU) No 591/2014 of 3 June 2014 (OJ L of 4 June 2014) on the extension of the transitional periods set in Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 of the European Parliament and of the Council.

44 Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 (OJ L of 13 June 2014) supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk.

45 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 June 2012 on OTC derivatives, central counterparties and trade repositories.

Council of 15 May 2014 (OJ L of 12 June 2014) have been published, on markets in financial instruments (commonly known as MiFID2),[46] and amending Directive 2002/92/EC,[47] and Directive 2011/61/EU.[48]

The Regulation came into force on 2 July 2014, as of which date certain sections of it are applicable. The remainder will come into effect as of 3 January 2017, except in the case of non-discriminatory access to benchmark indices and the obligation to grant a licence, which will be applied as of 3 January 2019.

For its part, the Directive is to be implemented in Member States' domestic legislation by 3 July 2016 and is to be in force by 3 January 2017, with certain exceptions, which will apply as of 3 September 2018.

MAIN FEATURES OF REGULATION (EU) NO 600/2014

The Regulation applies to investment firms, credit institutions when they provide investment services or perform one or more investment activities, and market operators, including the trading venues they manage.

It establishes uniform requirements on the following points: 1) public disclosure of data on trading in financial instruments; 2) reporting of transactions to the competent authorities; 3) trading of derivatives in organised venues; 4) non-discriminatory access to mechanisms for clearing and trading involving benchmarks; 5) intervention powers and powers on position management and position limits for the European Securities Markets Authority (ESMA) and the European Banking Authority (EBA); and 6) provision of investment services or activities by third-country firms following an applicable equivalence decision by the Commission with or without a branch.

MAIN FEATURES OF DIRECTIVE 2014/65/EU (MiFID2)

Drawing on Regulation (EU) No 600/2014 discussed above, the Directive introduces a number of new features to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 (MiFID),[49] which it will repeal when it comes into effect on 3 January 2017.

The Directive establishes a series of requirements on: 1) authorisation and operating conditions for investment firms; 2) provision of investment services or activities by third-country firms through the establishment of a branch; 3) authorisation and operation of regulated markets; 4) authorisation and operation of data reporting services providers; 5) the supervisory powers of the competent authorities; 6) cooperation between the competent authorities in the Member States and the ESMA; and 7) cooperation with third countries.

The main features of the Directive include new operating conditions for investment firms to bolster investor protection. In particular, investment firms are to act honestly, fairly and professionally in accordance with the best interests of their customers. Another change

46 The name MiFID comes from the initials of the Markets in Financial Instruments Directive.

47 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

48 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

49 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC of 10 May 1993.

with respect to the previous legislation is that when investment firms provide investment advisory services they are to inform customers: 1) whether or not the advice is provided on an independent basis; 2) whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided; and 3) whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client.

Another feature in relation to investor protection is the assessment of suitability and appropriateness and customer information, so as to enable the investment firm to recommend to clients or potential clients the investment services and financial instruments that are suitable for them and, in particular, are in accordance with their risk tolerance and ability to bear losses.

The Directive also establishes the option for the operator of a MTF to apply to its home competent authority to have the MTF registered as an SME growth market, which will be granted if certain conditions are met, one of which being that at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs. When an issuer's financial instrument has been admitted to trading on an SME growth market, the financial instrument may only be traded on another market of this type when the issuer has been informed and has not raised objections.

European Union: new market abuse legislation

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)[50] (OJ L of 12 June 2014), and *Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014* (OJ L of 12 June 2014) on criminal sanctions for market abuse (market abuse directive) were published.

The Regulation entered into force on 2 July and will apply from 3 July 2016. The Directive came into force on 2 July and must be transposed by Member States by 3 July 2016.

NEW DEVELOPMENTS IN REGULATION (EU) NO 596/2014

The Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information (which is a new development) and market manipulation (market abuse), as well as measures to prevent all the foregoing, to ensure the integrity of financial markets in the European Union and to enhance investor protection and confidence in those markets.

It applies to all financial instruments that are admitted to trading on a regulated market, on MTFs, on OTFs or only over the counter (OTC), and to any other conduct or action that can have an effect on those financial instruments, whether or not it takes place on a trading venue.[51]

Inside information

The concept of inside information has been extended to refer to any of the following types of information: 1) information of a precise nature, which has not been made

50 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), repealing Directive 2003/6/EC of the European Parliament and of the Council, of 28 January 2003, on insider dealing and market manipulation, and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

51 Directive 2003/6/EC focused mainly on financial instruments admitted to trading on regulated markets or for which a request for admission to trading on such markets had been made.

public, relating directly or indirectly to one or more issuers or to one or more financial instruments or derivatives thereof, or relating directly to a related spot commodity contract, and which, if it were made public, could have a significant impact on the prices of those financial instruments or the related derivatives; and 2) information conveyed by a client, relating to its pending orders in financial instruments, which is of a precise nature, relating to one or more issuers or to one or more financial instruments and which, if it were made public, could have a significant impact on the prices of those instruments.

Unlawful disclosure of inside information

Unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of their employment, profession or duties. This conduct will also apply to any person who possesses inside information as a result of: 1) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant; 2) having a holding in the capital of the issuer or emission allowance market participant; 3) having access to the information through the exercise of their employment, profession or duties; or 4) being involved in criminal activities.

Market manipulation

Market manipulation shall comprise, among others, the following activities: 1) entering into a transaction that may give false or misleading signals as to the demand for or the supply or price of a financial instrument or a related spot commodity contract, or that may secure the price of one or several financial instruments or of a related spot commodity contract at an abnormal or artificial level; 2) entering into a transaction that may affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, employing a fictitious device or any other form of deception or contrivance; and 3) disseminating information through the media, including the internet, or by any other means, which may give false or misleading signals as to the demand for or the supply or price of a financial instrument.

Prevention and detection of market abuse

Market operators and investment firms that operate a trading venue shall establish effective arrangements, systems and procedures to prevent and detect insider dealing, market manipulation and attempted insider dealing and market manipulation and shall report orders and transactions, including any cancellations or modifications thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue.

Other new developments

Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuers of all transactions conducted on their own account relating to shares or debt instruments of those issuers or to derivatives or other financial instruments linked thereto. They shall also notify market participants of all transactions conducted on their own account relating to emission allowances, auction products based on those allowances or derivatives relating thereto. The notification threshold established for these transactions is €5,000 in any calendar year; the competent authority may raise this threshold to €20,000, but this decision must be justified with ESMA.

Lastly, the new regulation describes in great detail the powers of the competent authorities, which may even suspend trading of the financial instrument concerned, and lays down a broad range of administrative sanctions and other administrative measures, without prejudice to any criminal sanctions and to the supervisory powers of the competent authorities of the Member States relating to any transactions or conduct that involves market abuse as described above.

NEW DEVELOPMENTS IN DIRECTIVE 2014/57/EU

The Directive complements Regulation (EU) No 596/2014, which requires Member States to ensure that the appropriate administrative measures will be taken or administrative sanctions imposed against any persons responsible for market abuse violations. It will apply to: 1) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; 2) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made; 3) financial instruments traded on an OTF; and 4) conduct and transactions relating to auctions on platforms authorised as regulated markets of emission allowances or other auctioned products based thereon, including when the auctioned products are not financial instruments.

The Directive establishes minimum rules for criminal sanctions for market abuse, to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

European legislation on the taxation of savings income in the form of interest payments

Council Directive 2014/48/EU of 24 March 2014 (OJ L of 15 April 2014) was published, amending Directive 2003/48/EC on taxation of savings income in the form of interest payments. This Directive came into effect on 15 April 2014, and Member States have been given until 1 January 2016 to implement it in their legal systems.

The aim of Directive 2003/48/EC was that income on savings in the form of interest paid in one Member State be taxable in another Member State in which the natural person who is the beneficial owner has his/her normal residence. To achieve this end, a general automatic information exchange mechanism has been set up between Member States, which, on a transitional basis, will make withholdings against interest payments and pay part of the withheld amount to the Member State in which the natural person concerned is resident for tax purposes. The general scheme for this automatic information exchange mechanism implies that so-called paying agents are obliged to supply the tax authorities in their Member State with certain information on these earnings, which will subsequently be forwarded to the tax authorities of the Member State in which the beneficial owner of the interest payments is resident.

Directive 2014/48/EU now aims to solve a number of the shortcomings in the preceding directive, such as the fact that it was possible to avoid taxation by resorting to an intermediary entity or legal instrument, in particular, those established in territories in which the taxing of the income paid is not guaranteed. It was also possible to avoid taxation by channelling interest payments through an economic operator established outside of the European Union. It also failed to cover certain financial instruments equivalent to securities yielding interest, or certain indirect means of holding these securities.

The main changes are set out below: 1) information regarding the identity of the beneficial owner has been enhanced, as the paying agent can require his/her name, address, date and place of birth, and also his tax identification number or equivalent allocated by the Member State in which he is resident for tax purposes; 2) the concept of paying agents is extended to other economic operators, legal entities or instruments effectively administered in a Member State; the concept of interest payment is expanded to include other forms of remuneration, such as certain categories of life insurance contracts containing a guarantee of income return or whose performance is at more than 40% linked to income from debt claims or equivalent income, and income from collective investment institutions (CIIs) established in the European Union or European Economic

Area (EEA)[52] that are not harmonised under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009.

Supervision and solvency of investment firms

CNMV Circular 2/2014 of 23 June 2014 (BOE of 28 June 2014) was published, on the exercise of various regulatory options regarding the solvency of investment firms and their consolidable groups, contained in Regulation (EU) No 575/2013, of the European Parliament and of the Council of 26 June 2013,[53] on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, which came into force on 29 June 2014. The opportunity was also taken to repeal CNMV Circular 12/2008 of 30 December 2008[54] on the solvency of investment firms and their consolidable groups.

For its part, Royal Decree Law 14/2013 of 29 November 2013 on urgent measures to adapt Spanish law to European Union standards on the supervision and solvency of financial institutions, empowered the CNMV to use the options conferred on competent national authorities in Regulation (EU) No 575/2013 in the field of investment firms, which is the purpose of the Circular.

OWN FUNDS REQUIREMENTS

In relation to the applicable own funds requirements, pursuant to Article 465 of Regulation (EU) No 575/2013, as of 1 January 2014 investment firms must, at all times, comply with a Common Equity Tier 1 capital ratio of 4.5% and a Tier 1 capital ratio of 6%.[55]

The Regulation establishes a transitional period between 1 January 2014 and 31 December 2017 in which to apply certain deductions to the components of Common Equity Tier 1, Additional Tier 1 and Tier 2 Capital, applying similar rules to those established for credit institutions by the Banco de España in CBE 2/2014 of 31 January 2014.

In the case of the capital requirements for investment firms, the exceptions envisaged in Article 93 of Regulation (EU) No 575/2013 will not be taken into account, such that the own funds of an investment firm cannot be less than the amount of the initial capital required at the time of its authorisation.

The treatment institutions are to apply for the purposes of assessing whether the activity has varied significantly with respect to the previous year is defined, up until the entry into force of the technical regulations on the topic pending approval by the European Commission. Certain discretionary areas associated with the calculation of own funds requirements for credit risk are also covered, more specifically, those relating to advanced calculation methods for these requirements, credit risk reduction techniques and securitisations.

ADJUSTMENTS AND PRUDENTIAL FILTERS IN OWN FUNDS

As of 1 January 2014 investment firms are to include 100% of unrealised losses on assets or liabilities in the calculation of their Common Equity Tier 1. These losses are to be measured at fair value and registered on the balance sheet, excluding those deriving from

52 The EEA comprises the 28 countries of the European Union plus Liechtenstein, Norway and Iceland.

53 Regulation (EU) No 575/2013 envisages a multitude of options to be decided by the competent authorities, on topics as varied as its scope, the definition of own funds, the own funds requirements for various risks, major exposures, liquidity coverage, and transitional provisions. See "Financial regulation: 2013 Q2," *Economic Bulletin,* July-August 2013, Banco de España, pp. 53-66.

54 See "Financial regulation: 2009 Q1," *Economic Bulletin,* April 2009, Banco de España, pp. 188-193.

55 Under Regulation (EU) No 575/2013, Tier 1 capital is the sum of Common Equity Tier 1 (basically comprising ordinary capital and reserves), and additional Tier 1 capital (comprising hybrid instruments). It also establishes a series of own funds requirements for 2014 in the following ranges: 1) a Common Equity Tier 1 capital ratio of between 4% and 4.5%, and 2) a Tier 1 capital ratio of between 5.5% and 6% that must be specified by the competent authorities.

changes in the investment firm's own credit rating, and all other unrealised losses recorded in the income statement.

As of 1 January 2015 investment firms may include 100% of their unrealised gains measured at fair value in their calculation of Common Equity Tier 1. However, until the European Commission adopts the relevant regulatory technical standards, investment firms are allowed to continue applying the arrangements provided in CNMV Circular 12/2008 of 30 December 2008 on the solvency of investment firms and their consolidable groups. If they have opted not to include any realised gains, and these gains are from debt securities with central government recorded at fair value as available-for-sale assets, they will have the option of continuing to exclude unrealised gains from these securities in their own funds.

OTHER ASPECTS OF THE CIRCULAR

Certain investment firms and their consolidated groups are temporarily exempted from compliance with the liquidity requirements established in Regulation (EU) No 575/2013; the method investment firms are to use to determine the value of certain exposures in relation to counterparty risk coverage is defined; the treatment entities are to continue applying to stock market indices until the relevant regulatory technical standards come into effect, which are due to be prepared by the EBA, is defined; certain aspects of large exposures are regulated: firstly, the treatment of positions held in collective investment undertakings (CIU), and exemptions for the purposes of complying with the limits on large exposures when certain conditions are met are regulated, and secondly the place and deadline for investment firms' publication of the solvency report, with the content envisaged in Regulation (EU) No 575/2013 is specified.

Entities providing investment services: internal organisation requirements and control functions

CNMV Circular 1/2014, of 26 February 2014 (BOE of 3 April 2014) has been published, on the internal organisation requirements and control functions of institutions providing financial services, coming into force on 4 April 2014.

Making use of the powers granted by Royal Decree 217/2008 of 15 February 2008,[56] on the legal framework governing financial services firms and other institutions providing investment services, the Circular implements and clarifies the internal organisation requirements and control functions of institutions providing investment services. It also represents a thorough update to CNMV Circular 1/1998, of 10 June 1998, on internal systems for ongoing risk control, monitoring and assessment, which it repeals.

Institutions covered by the Circular have until 31 December 2014 to adapt their organisational structures and internal control procedures to the provisions of the circular.

European venture capital funds: implementation of the regulations

Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013,[57] on European venture capital funds (EuVECAs), requires, *inter alia*, that the competent authority of the EuVECA's home Member State notify the competent authorities of the host Member States and the European Securities and Markets Authority (ESMA) of the circumstances relating to the passport of EuVECA managers. It must also notify them when an EuVECA manager is removed from the register.

Commission Implementing Regulation (EU) No 593/2014 of 3 June 2014,[58] which came into force on 7 June 2014, now determines that the competent authority in the EuVECA's

56 See "Financial regulation: 2008 Q1," *Economic Bulletin,* April 2008, Banco de España, pp. 11-13.

57 See "Financial regulation: 2013 Q2," *Economic Bulletin,* July-August 2013, Banco de España, pp. 81-84.

58 Commission Implementing Regulation (EU) No 593/2014 of 3 June 2014 (OJ L of 4 June 2014) laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation (EU) No 345/2013 of the European Parliament and of the Council on European venture capital funds.

home Member State is to notify the competent authorities in host Member States, and the ESMA, by e-mail, completing the form included in the annex to this Regulation.

Preventing money laundering and the financing of terrorism

Royal Decree 304/2014, of 5 May 2014 (BOE of 6 May 2014) has been published, enacting the regulations for Law 10/2010, of 28 April 2010, on preventing money laundering and the financing of terrorism (hereinafter, the Regulation), repealing the previous Regulation enacted by Royal Decree 925/1995, of 9 June 1995. The Regulation came into force on 6 May 2014, with the exception of certain points, which will be detailed below.

In particular, the Regulation specifies, *inter alia*, some of the obligations upon subjects under Law 10/2010;[59] institutional organisation in relation to the prevention of money laundering and terrorist financing; international sanctions and financial countermeasures, and establishes the structure and functioning of the register of financial ownership.

More details of the main changes are given below:

NORMAL DUE DILIGENCE MEASURES

Supervised entities will identify and confirm, using reliable documents, the identity of any legal or natural persons who attempt to establish business dealings or intervene in any occasional transactions for amounts of more than €1,000 (previously €3,000), except in certain cases.

The Regulation lists the documents considered reliable for the purposes of identification in more detail. In the case of Spanish-registered legal persons, submission by the client of a certificate from the Mercantile Register will be admissible for the purposes of formal identification.

IDENTIFICATION OF BENEFICIAL OWNERS

The definition of the beneficial owner introduced by Law 10/2010 is further developed, and further obligations relating to the identification of these beneficial owners added.

Independently from their customer identification obligations, supervised entities must also identify the beneficial owner before commencing business dealings in the case of: 1) electronic transfers of sums of over €1,000; and 2) other occasional transactions for sums exceeding €15,000.

SIMPLIFIED DUE DILIGENCE MEASURES

The simplified measures consist of the application of one or more of the following: 1) checking the identity of the customer or beneficial owner when a quantitative threshold is passed; 2) reducing the frequency of document reviews; 3) reducing the monitoring of the business relationship and scrutiny of operations that do not exceed the quantitative threshold; and 4) inferring the nature or purpose of the transactions from their type or the business relationship established rather than collecting information on the customer's

59 Entities obliged to supervise transactions or legal acts with signs or solid evidence of involving assets of illicit origin are: financial institutions, payment institutions, property developers, auditors, notaries, registrars, casinos, lawyers and attorneys, dealers in jewels and artworks, individuals engaged in the business of acting as intermediaries for loans and credit, persons who, without having obtained authorisation as a credit finance establishment, carry out any of these activities, and persons dealing professionally with goods where the collections or payments are made using means of payment with values of over €15,000 and are made as a single transaction or a number of transactions which appear to be related in some way. Foreign exchange activities, among others, are excluded from the scope where they are conducted as a secondary activity to the owner's main business, and when the following conditions are met: 1) the foreign exchange activity is verified to be solely a service provided to customers of the main activity; 2) the amount exchanged per customer does not exceed €1,000 in each calendar quarter (previously, €3,000); 3) that the foreign exchange activity is limited, in absolute terms, and may not exceed the figure of €100,000 a year; and 4) the foreign exchange activity is secondary to the main business, such that it does not exceed 5% of the annual business turnover.

professional or business activity. The regulation also specifies what customers simplified due diligence measures are applicable, based on their risk.[60] It also specifies the products or transactions to which simplified measures may be applied.[61]

ENHANCED DUE DILIGENCE MEASURES

In addition to the normal due diligence measures, supervised entities are to apply enhanced measures in relation to any of their business, activities, products, services, distribution or marketing channels, business relationships and transactions that represent a higher money laundering or terrorist financing risk.[62]

REPORTING OBLIGATIONS

Supervised entities are required to have suspicious transaction alerts in place. In the case of entities conducting over 10,000 transactions a year, automated alert generating and prioritising models must be implemented and subject to periodic review. Additionally, supervised entities should establish internal control procedures for their executives, employees and agents to detect operations potentially linked to money laundering or terrorist financing.

With regard to the monthly transactions report, supervised entities are to inform the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC, in its Spanish initials) of all the operations listed in Law 10/2010, with the new addition of aggregate information on electronic funds transfers broken down by country of origin and destination and by agent or centre of activity, together with aggregate information on overseas electronic funds transfers by credit institutions, also broken down by countries of origin and destination.

INTERNAL CONTROL MEASURES

Another of the new features brought in by the Regulation is the broad implementation of the internal control procedures, based on an *ex ante* risk assessment, which will be documented by the entity, in order to identify and evaluate the entity's risks by customer type, country, geographical area, products, services, operations and distribution channels, taking into consideration variables such as the purpose of the business relationship, the customer's asset level, volume of operations, and the regularity or duration of their business dealings.

---

60 These include the following: 1) public law entities in Member States of the European Union or equivalent non-EU countries; 2) corporations or legal persons controlled or majority owned by public law entities in Member States of the European Union or equivalent non-EU countries; 3) financial institutions, excluding payment institutions, established in the European Union or equivalent non-EU countries subject to supervision, whose purpose is to guarantee compliance with anti-money laundering and terrorist finance obligations; and 4) listed companies whose securities are admitted to trading on a regulated market in the European Union or an equivalent non-EU country, and their branches or majority-owned subsidiaries.

61 These include the following: 1) life insurance policies whose annual premium does not exceed €1,000 or single premium does not exceed €2,500; 2) life insurance policies solely covering the risk of death; 3) electronic money when it cannot be recharged and the stored amount does not exceed €250 or when, if rechargeable, the total amount available in a year is limited to €2,500; 4) postal giros by public administrations or their dependent organisations and official postal giros for postal service payments with their origin and destination in the postal service; 5) collections or payments deriving from the commissions generated by reservations in the tourism sector that do not exceed €1,000; 6) consumer credit contracts for amounts less than €2,500 provided the reimbursement is solely by means of a current account debit; and 7) credit card contracts whose limit does not exceed €5,000, when the reimbursement of the amount drawn down can only be made from a current account in the customer's name.

62 This applies, *inter alia*, to the following cases: 1) private banking services; 2) electronic funds transfer services for amounts of over €3,000 per quarter; 3) foreign currency exchange services for amounts of over €6,000 per quarter; 4) business dealings and transactions with corporations with bearer shares; 5) business dealings and transactions with customers in high risk countries, territories or jurisdictions or which involve the transfer of funds to or from such territories or jurisdictions, including, in all cases, those countries for which the FATFF requires the application of enhanced diligence measures; and 6) transmission of shares or holdings in pre-established corporations, i.e. those established without a real economic activity for subsequent transfer to third parties.

REGISTER OF FINANCIAL OWNERSHIP

The register of financial ownership has been established as an administrative registry with the purpose of preventing and deterring money laundering and terrorist financing. The State Secretariat for Economic Affairs and Support to Enterprise will be responsible for the register, with the SEPBLAC tasked with processing it on the latter's behalf. The register will be supplied with information from the monthly reports[63] from credit institutions on the opening and closing of all current accounts, savings accounts, securities accounts or fixed-term deposits, irrespective of the commercial name used.

Adaptation of insurance and reinsurance entities to European Union regulations

Ministerial Order ECC/730/2014, of 29 April 2014 (BOE of 7 May 2014), on temporary measures to facilitate the progressive adaptation of insurance and reinsurance entities to the new framework under Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009,[64] on the taking-up and pursuit of the business of Insurance and Reinsurance. The Order came into effect on 8 May 2014 and will be in force until 31 December 2015.

During the initial preparatory phase of application of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), insurance and reinsurance entities must adopt the necessary measures for their progressive adaptation to the guidelines on the system of governance, prospective internal evaluation of risks, the supply of information to the supervisor and prior application to use internal models, and they must submit a schedule, duly approved by the governing body, for the progressive implementation of its content to the Directorate-General for Insurance and Pension Funds (DGSFP, in its Spanish initials).

63 The report will contain details identifying account holders, beneficial owners, and where applicable, representatives or authorised signatories and any other persons authorised to operate the account, together with the date of opening or closure, and type of account or deposit. The identification details will be the full name or company name with the identity document type and number.

64 See "Financial regulation: 2009 Q4," *Economic Bulletin,* January 2010, Banco de España, pp. 162-166.