FINANCIAL REGULATION: 2014 Q3

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

Introduction

The financial legislation adopted in 2014 Q3 is summarised below.

One of the main measures was the introduction of a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of the Single Resolution Mechanism (SRM).

The European Central Bank (ECB) enacted several pieces of legislation, the most important of which were: 1) new measures relating to collateral in monetary policy operations; 2) the regulation of targeted longer-term refinancing operations (TLTROs); 3) implementation of the framework for cooperation within the Single Supervisory Mechanism (SSM) between the ECB and the non-euro area Member States; 4) the procedures for submission to the ECB by the national competent authorities (NCAs) of data reported by their supervised banks; 5) the process for appointment of the representatives of the ECB to the Supervisory Board; 6) the introduction of certain oversight requirements for systemically important payment systems (SIPS); and 7) review of the statistical reporting requirements of monetary financial institutions (MFIs).

For its part, the Banco de España published two regulations, one updating the general clauses relating to the uniform conditions of participation in TARGET2 and the other amending its Internal Rules.

In the area of institutions and financial markets, several regulations were published: 1) implementing certain aspects of legislation relating to licensed appraisal companies and services; 2) establishing a series of temporary measures for the gradual adaptation of insurance and reinsurance companies to European legislation; 3) updating the securities settlement legislation and establishing the legal regime and requirements applicable to central securities depositories; 4) implementing the legislation on undertakings for collective investment in transferable securities (UCITS) in respect of depositaries and remuneration policies; 5) regulating certain aspects of internationalisation bond issues; and 6) introducing new regulations relating to payment accounts.

Lastly, several regulations are discussed relating to: 1) changes to insolvency law; 2) the creation of a Government Economic and Financial Information Office; and 3) the approval of urgent measures for growth, competitiveness and efficiency.

The contents of this article are set out in Table 12,8The Spanish version of the article discusses the legislation in greater detail.

SRM: uniform procedure for the resolution of credit institutions and certain investment firms in the European Union

Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 (OJ L of 30 July 2014) (hereafter, the Regulation) establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of the SRM was published. A Single Resolution Fund (hereafter, the Fund) was also created, and Regulation (EU) No 1093/2010 was amended.[1]

The Regulation came into force on 19 August and will be phased in from 1 January 2015.

1 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC. See "Financial regulation: 2010 Q4", *Economic Bulletin*, January 2011, Banco de España, pp. 150-152.

CONTENS

TABLE 1

PURPOSE AND SCOPE OF APPLICATION

Directive 2014/59/EU[2] harmonised the rules for banking resolution in the European Union and established cooperation among the national resolution authorities (NRAs)[3] for dealing with the failure of cross-border banks. The Directive laid down a minimum set of rules, however, without focusing on the decision-making process for resolution. It determined the common resolution powers and resolution tools available to the national competent authorities (NCAs) of each Member State, but left the application of the tools and the use of national financing arrangements in resolution procedures to the discretion of the NCAs.

To correct these failings, the Regulation establishes a uniform procedure for the resolution of groups of credit institutions (hereafter, banks) established in the SSM Member States.[4] This procedure will be applied in a centralised manner by the Single Resolution Board (hereafter, the Board), together with the NRAs in the framework of the SRM and will have the support of the Fund.

The main changes are discussed below.

SINGLE RESOLUTION BOARD

The Board will be an EU agency, with a specific structure in keeping with its functions. The chair and four other directors will be permanent, full-time, voting members, appointed on the basis of merit, qualifications, expertise in banking and financial matters and experience in financial supervision and regulation or bank resolution. The Board will also have one member appointed by each participating Member State, representing their NRAs. The Commission and the ECB will each appoint one representative, each with the right to

2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, 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. See "Financial regulation: 2014 Q2", *Economic Bulletin*, July-August 2014, Banco de España, pp. 52-54.

3 The NRAs shall be appointed by each Member State and shall be responsible for applying the resolution tools and exercising the corresponding powers. They may be the NCBs, the competent ministries or other public administrative authorities to which these tasks are assigned. In exceptional circumstances they may be the supervisory authorities, in which case the Member States shall ensure that there is operational independence between the resolution function and the supervisory function.

4 The SSM is a European system of financial supervision comprising the ECB and the NCAs of the participating Member States. Pursuant to Council Regulation (EU) 1024/2013, the participating Member States are the euro area countries and those other Member States that have established close cooperation. For that purpose, those Member States shall undertake, inter alia, to: 1) ensure that their NCA abides by any guidelines or requests issued by the ECB; 2) provide all information on the banks established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those banks; and 3) adopt any measure in relation to banks that may be requested by the ECB.

participate in the plenary and executive sessions as a permanent observer but without the right to vote. The Board will start its activities by 1 January 2015 at the latest.

DIVISION OF FUNCTIONS WITHIN THE SRM

The Board will be responsible for drawing up resolution plans and for adopting all kinds of decisions relating to the resolution of a set of banks, including those that are considered significant[5] or in respect of which the ECB has decided to directly exercise the relevant powers.

The NRAs are responsible for monitoring and for the preparatory work and even the resolution of the other banks. Nevertheless, the Board will issue guidelines and may claim for itself the exercise of any power.

RESOLUTION PLANS

The Board will draw up resolution plans after consulting with the ECB or with the corresponding NCAs and NRAs, including the group-level resolution authority.[6] For this purpose the Board may previously ask the NRAs to prepare and submit draft (individual and group) resolution plans, in accordance with the guidelines and instructions previously issued by the Board to those authorities. The Board may also ask the banks to help it draw up and update the plans. With the supervision of the Board, the NRAs will be responsible, where appropriate, for implementing the resolution schemes for all banks.

In turn, without prejudice to the responsibilities of the Board in view of the general guidance tasks assigned to it in the Regulation, the NRAs will draw up and adopt resolution plans for all the other banks and groups (that is, for the less significant banks and groups).

Significant banks supervised directly by the ECB or that make up a significant part of the financial system of a participating Member State will have individual resolution plans.

The Board, in collaboration with the NRAs, will assess the resolvability of any bank or group and, where necessary, may take measures to tackle or eliminate any obstacles to resolution at any bank of a participating Member State. Should it consider that a bank or group is not resolvable, the Board will notify the European Banking Authority (EBA) in a timely manner.

Resolution plans should take into account relevant scenarios, including that the failure may be idiosyncratic or may occur at a time of overall financial instability or against the backdrop of system-wide factors. They will not involve any extraordinary public financial support besides the use of the Fund, or any aid in the form of NCB emergency liquidity assistance or liquidity assistance provided under non-standard collateralisation, maturity and interest rate terms.

RESOLUTION PRINCIPLES AND OBJECTIVES

Resolution of a bank must meet certain conditions, such as, for example, that shareholders bear the first losses and that creditors' losses are limited to those which they would have borne had the bank been wound up under normal insolvency proceedings. The resolution objectives will be: 1) to ensure the continuity of essential functions; 2) to avoid significant

5 Pursuant to Council Regulation (EU) No 1024/2013, supervised banks shall be classed as significant on the basis of any of the following criteria: 1) size, i.e. if they have total assets over €30 billion or the ratio of their total assets to the GDP of the participating Member State exceeds 20%, unless in the latter case their total assets are below €5 billion; 2) their importance for the EU economy or for the economy of any participating Member State; 3) the significance of their cross-border activities; 4) if they have requested or received direct public financial assistance from the European Stability Mechanism (ESM); and 5) if they are one of the three most significant banks in a participating Member State.

6 The group-level resolution authority is the resolution authority in the participating Member State in which the bank or parent company subject to consolidated supervision at the highest level of consolidation within participating Member States is established.

adverse effects on financial stability, especially 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[7] and investors covered by Directive 97/9/EC;[8] 5) to protect customer funds and assets; and 6) to endeavour to minimise the resolution cost.

RESOLUTION PROCEDURE AND TOOLS

The resolution procedure will begin, following a communication from the bank itself or on the initiative of the supervisor or the Board, when the following conditions are met: 1) the bank is failing or is likely to fail; 2) there is no reasonable prospect that any alternative private sector measures, including early intervention measures or write-down or conversion of capital instruments, would prevent such failure within a reasonable timeframe; and 3) the resolution measure is necessary in the public interest.

The resolution tools are: 1) sale of the business or of assets and liabilities to a purchaser that is not a bridge bank; 2) creation of a bridge bank to which assets, rights or liabilities of one or more banks under resolution will be sold; 3) transfer of assets of a bank under resolution to an asset management vehicle (a "bad bank"); and 4) bail-in of the shareholders and/or creditors of the failing bank, to restore its capital to enable it to continue to operate as a going concern.

OBLIGATION TO COOPERATE AND INFORMATION EXCHANGE WITHIN THE SRM

The Board, the Council, the Commission, the ECB, the NRAs and the NCAs will cooperate closely, especially in the different stages of the resolution process, providing each other with all information necessary for the exercise of their functions and responsibilities under the Regulation.

The Board will endeavour to cooperate closely with any public financial assistance facility, such as the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM), where these have granted, or are likely to grant, direct or indirect financial assistance to banks established in a participating Member State.

Lastly, the penalty regime is envisaged, to ensure that decisions taken in the framework of the SRM are observed. In this respect, the Board is authorised to impose fines or penalties, which will be proportionate and dissuasive, on banks that have intentionally or negligently committed any of the infringements envisaged in the Regulation, such as failing to provide information requested or to submit to an investigation or on-site inspection. The amounts of the fines will be allocated to the Fund.

SINGLE RESOLUTION FUND

The Regulation provides for the creation of the Fund as an essential element without which the SRM could not function correctly. The Board will be the owner of the Fund and will use it only to ensure that the resolution tools are used efficiently. Under no circumstances will the EU budget or the national budgets be held liable for expenses or losses of the Fund.

The Fund shall be financed by bank contributions raised at national level and pooled at EU level in accordance with an intergovernmental agreement on the transfer and gradual mutualisation of the contributions (hereafter, the Agreement). Under the Agreement, the participating Member States will undertake to transfer the contributions they raise at national level to the Fund.

7 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast).

8 Directive 1997/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes.

Until the Fund reaches its target level, the contributions will be allocated to different compartments corresponding to each participating Member State. Those compartments will be gradually merged, until they cease to exist at the end of the transitional period. The Agreement will regulate the transfer of the contributions raised at national level to the Fund and the gradual merger of the national compartments. It will also determine how the Board may dispose of the national compartments that are gradually merged.

With respect to the target level, by the end of a period of eight years from 1 January 2016 the available financial means of the Fund should reach at least 1% of the amount of covered deposits of banks established in the participating Member States. As initial funding, the amounts for each of the national resolution systems in 2015 will be transferred to the Fund at the start of 2016.

Ex ante contributions

The contributions of the banks will be raised at least annually and will be calculated for the different banks as follows: 1) a flat-rate contribution in proportion to the amount of their liabilities, excluding own funds and covered deposits; and 2) risk-adjusted, taking into account the principle of proportionality, without creating distortions between financial sector structures of the Member States.

Extraordinary ex post contributions

Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the Fund in resolution measures, extraordinary ex-post contributions will be raised from the banks of the participating Member States to meet the additional requirements. These contributions will not exceed three times the annual amount of the ex ante contributions and will be calculated and allocated between banks in accordance with the rules established for such contributions.

If the amounts raised are not immediately accessible or do not cover the expenses incurred by the use of the Fund in relation to resolution measures, the Board may arrange borrowings or other forms of support from financial institutions or other third parties that offer better financial terms so as to optimise the cost of funding and preserve its reputation. It may also apply for loans from resolution financing mechanisms in other States.

Use of the Fund

As indicated above, the Board may only use the Fund to apply the resolution tools effectively for the relevant purposes, which may include: 1) guaranteeing the assets or liabilities of a bank under resolution, a bridge bank or an asset management vehicle; 2) making loans to a bank under resolution, its subsidiaries, a bridge bank or an asset management vehicle; 3) purchasing assets of a bank under resolution; 4) making contributions to a bridge bank or an asset management vehicle; and 5) making a contribution to a bank under resolution when the bail-in tool is used and it is decided to exclude certain creditors from the scope of the bail-in.

In the case of group-level resolutions involving banks established in non-participating Member States, the Fund will contribute to the financing of the group-level resolution in accordance with the provisions of Directive 2014/59/EU.

Use of deposit guarantee schemes (DGSs)

Participating Member States shall ensure that when the Board adopts a resolution measure, that measure ensures that depositors continue to have access to their covered deposits. To that end, the DGS to which the bank is affiliated will be liable up to the maximum amounts specified in Directive 2014/59/EU, becoming subrogated, where appropriate, to the rights and obligations of covered depositors in winding-up proceedings for an amount equal to its payment.

Where deposits at a bank under resolution are transferred to another bank using the sale of business tool or the bridge bank tool, depositors will have no claim against the DGS in respect of any part of their deposits at the bank under resolution that are not transferred, provided that the amount of the funds transferred is equal to or greater than the aggregate coverage level provided for in Directive 2014/49/EU.[9]

The liability of a DGS will be limited to 50% of the target level set by Member States in accordance with Article 10(2) of Directive 2014/49/EU, which is equal to 0.8% of the amount of covered deposits in each State. In any event, the participation of a DGS will not exceed the losses it would have incurred had the bank concerned been wound up under normal insolvency proceedings.

ECB: additional temporary measures relating to asset-backed securities and certain credit claims eligible as collateral in monetary policy operations

*Guideline ECB/2014/31 of 9 July 2014 (*OJ L of 13 August 2014) (hereafter, the Guideline) on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9, was published.[10]

The Guideline recasts into a single text Guideline ECB/2013/4,[11] together with its subsequent amendments relating to temporary measures of this kind, and adds new provisions. As on previous occasions, these measures will apply temporarily until the Governing Council considers that they are no longer necessary to ensure an appropriate monetary policy transmission mechanism.

The main change is that NCBs are allowed to accept certain short-term debt instruments[12] issued by non-financial corporations established in the euro area which, although they do not satisfy the Eurosystem eligibility criteria for marketable assets, comply with certain risk control measures and criteria specified by the Governing Council.

The Guideline came into force on 9 July and has applied since 20 August.

ECB: targeted longer-term refinancing operations

Decision ECB/2014/34 of 29 July 2014 (OJ L of 29 August 2014) (hereafter, the Decision) on measures relating to targeted longer-term refinancing operations (TLTROs) was published. The details of the Decision, which came into force on 29 August, were made public by the ECB in a press release on 3 July.

TLTROs are liquidity-providing reverse operations to be executed between 2014 and 2016 using fixed-rate tender procedures. The interest rate will be fixed over the life of each operation at the rate for main refinancing operations (MROs) prevailing at the time of the tender announcement in respect of the relevant TLTRO, plus a fixed spread of 10 bp. Outstanding TLTROs will mature on 26 September 2018.

The Eurosystem intends to conduct eight TLTROs on a quarterly basis: two in 2014 (on 18 September[13] and 11 December), four in 2015 (March, June, September and December)

9 Pursuant to Directive 2014/49/EU, Member States shall ensure that the coverage level for the aggregate deposits of each depositor is €100,000 per bank. Moreover, Member States may ensure that certain other deposits are also included up to that coverage level. Likewise, they may ensure that certain deposits above that level are protected, for at least three months and no longer than 12 months, including, for example, deposits resulting from real estate transactions relating to private residential properties or deposits that serve social purposes laid down in national law.

10 Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics.

11 Guideline ECB/2013/4 of 20 March 2013 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral.

12 Short-term debt instruments are debt instruments with a maturity not exceeding 365 days.

13 At the tender on 18 September, €82.6 billion was allotted at a fixed rate of 0.15% (0.05%, which is the rate for MROs, plus 10 bp).

and two in 2016 (March and June). The aim of the TLTROs is to support bank lending to the non-financial private sector, that is, to households and non-financial corporations, in Member States whose currency is the euro.

Participants in TLTROs on an individual basis or as the lead institution of a group will be subject to borrowing limits, calculated on the basis of data on outstanding amounts of eligible loans[14] and eligible net lending[15] to the non-financial private sector (non-financial corporations and households).

In the two TLTROs made in 2014 (September and December), each participant will be entitled to an initial cumulative borrowing allowance equal to 7% of its total outstanding eligible loans at 30 April 2014. Any initial allowance not used in the first two TLTROs will not be available in subsequent TLTROs.

Whether or not they participated in the TLTROs made in 2014, in the period from March 2015 to June 2016 participants will be entitled to an additional TLTRO borrowing allowance, capped at three times the difference between their eligible net lending since 30 April 2014 and the benchmark on the date on which the request is made, calculated as follows:

— For institutions with positive eligible net lending in the 12 months to 30 April 2014, the benchmark will always be zero.

— For institutions with negative eligible net lending in the 12 months to 30 April 2014, different benchmarks will be used, established as follows: for the 12 months to 30 April 2015, by extrapolating the average net lending per month of each institution in the 12 months to 30 April 2014; for the 12 months between 30 April 2015 and 30 April 2016, the benchmark net monthly lending has been set at zero.

Once 24 months have elapsed after each TLTRO, participants will have the option to reduce or repay the TLTROs before maturity, on the dates set by the Eurosystem. For that purpose, participants will simply have to notify the relevant NCB, at least one week in advance, that they intend to make a payment under the early repayment procedure. Likewise, under the mandatory early repayment procedure, participants in the TLTROs that do not reach their benchmark by 30 April 2016 will be required to repay their TLTRO borrowings in full in September 2016.

ECB: refinancing operations and collateral in monetary policy operations

Decision ECB/2014/38 of 1 September 2014 (OJ L of 20 September 2014) (hereafter, the Decision), amending Decision ECB/2013/35 of 26 September 2013 on additional measures relating to Eurosystem refinancing operations and eligibility of collateral, which came into force on 19 September, was published.

Decision ECB/2013/35 strengthened, for private issuers, the eligibility of collateral used in Eurosystem credit operations and their corresponding haircuts. Thus, to determine compliance with the credit quality threshold applicable to marketable assets, an external credit assessment institution (ECAI) issue rating had priority over an ECAI issuer or guarantor rating. Now, however, the Decision stipulates that this criterion will not apply in

14 Eligible loans are loans to non-financial corporations and households (including non-profit institutions serving households) resident in Member States whose currency is the euro, except loans to households for house purchases.

15 Eligible net lending is gross lending in the form of eligible loans, net of repayments of outstanding amounts of eligible loans during a specific period.

the case of public issuers (central, regional or local governments, agencies and supranational bodies), as in this case issuer rather than issue ratings are considered the most appropriate measure of creditworthiness.

ECB: implementation of SSM legislation

Several ECB regulations, discussed below, have been published implementing various aspects of the SSM legislation contained in Council Regulation (EU) No 1024/2013 of 15 October 2013[16] and in Regulation (EU) No 468/2014 of the ECB[17] of 16 April 2014 (the SSM Framework Regulation).

COOPERATION WITH NON-EURO AREA MEMBER STATES

Decision ECB/2014/5 of 31 January 2014 (OJ L of 5 July 2014) implements Article 7 of Regulation (EU) No 1024/2013 which relates to close cooperation with the NCAs of participating Member States whose currency is not the euro.[18] Specifically the following procedures are detailed: 1) the request to enter into close cooperation, for which purpose the NCA will use the template provided in its Annex I; 2) assessment of the requests, for which purpose the ECB may ask for any additional information it considers appropriate, including information relating to the assessment of the significance of banks and the performance of the comprehensive assessment; and 3) the decision of the ECB in the event that close cooperation is established with the requesting Member State.

The Decision entered into force on 17 February 2014.

PROVISION TO THE ECB OF SUPERVISORY DATA REPORTED BY SUPERVISED BANKS TO NCAS

Decision ECB/2014/29 of 2 July 2014 (OJ L of 19 July 2014) establishes the procedures for submission to the ECB by the NCAs of data reported by their supervised banks.[19]

In particular, the formats, frequency and timing of the submission of information are specified, as well as the details of the data quality checks that the NCAs should perform before submitting information to the ECB.

The Decision entered into force on 19 July 2014.

APPOINTMENT OF REPRESENTATIVES OF THE ECB TO THE SUPERVISORY BOARD

Decision ECB/2014/4 of 6 February 2014 (OJ L of 3 July 2014) complements Regulation (EU) No 1024/2013 in relation to the procedure for appointment of the four ECB representatives to the Supervisory Board, the conditions applying to the persons appointed and the procedure for their removal.

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16 Council Regulation (EU) No 1024/2013 of 15 October 2013 confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions. See "Financial regulation: 2013 Q4", *Economic Bulletin*, January 2014, Banco de España, pp. 71-74.

17 Regulation (EU) 468/2014 (ECB/2014/17) of 16 April 2014 establishing the framework for cooperation within the SSM between the ECB and the NCAs. See "Financial regulation: 2014 Q2", *Economic Bulletin*, July-August 2014, Banco de España, pp. 42-45.

18 Pursuant to Article 7, close cooperation between the ECB and the NCA of a non-euro area Member State shall be established, by a decision adopted by the ECB, where the following conditions are met: 1) the Member State notifies its desire to enter into close cooperation with the ECB in relation to exercise of the tasks conferred by Regulation (EU) No 1024/2013 for prudential supervisory purposes; 2) in the notification, the Member State undertakes to ensure that its NCA or national designated authority (NDA) will abide by any guidelines or requests issued by the ECB, and to provide all information on the banks established in the Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those banks; and 3) the Member State has adopted relevant national legislation to ensure that its NCA will be obliged to adopt any measure in relation to banks requested by the ECB.

19 Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laid down a set of implementing technical standards with regard to supervisory reporting of institutions, in accordance with the guidelines established in Regulation (EU) No 1024/2013 and in the SSM Framework Regulation. Thus, both the ECB and the NCAs are bound by the obligation to exchange information. Without prejudice to the ECB's powers to directly receive information reported by banks and to have direct and ongoing access to that information, the NCAs shall provide the ECB with all the information necessary for it to carry out the tasks conferred on it by the SSM Regulation.

Specifically, the four representatives will be appointed from among persons of recognised standing and experience in banking and financial matters. Their term of office will be five years, non-renewable. By way of exception, the term of office of the first four ECB representatives will be between three and five years.

The ECB representatives will not be engaged in any other occupation, whether gainful or not, unless authorised by the Governing Council. No authorisation can be given for activities that may give rise to a conflict of interest with their positions as members of the Supervisory Board. In particular, they will not perform any duty for an NCA.

The Decision entered into force on 6 February 2014.

ECB: oversight for systemically important payment systems

Regulation (EU) No 795/2014 (ECB/2014/28) of 3 July 2014 (OJ L of 23 July 2014) on oversight requirements for systemically important[20] payment systems (SIPS),[21] which came into force on 12 August (hereafter, the Regulation), was published, as was *Decision ECB/2014/35 of 13 August 2014* (OJ L of 20 August 2014) on the identification of TARGET2 as a systemically important payment system pursuant to Regulation (EU) No 795/2014. The Decision came into force on 20 August 2014.

A payment system will be identified as a SIPS if it is eligible to be recognised as such pursuant to Directive 98/26/EC by a Member State whose currency is the euro or if its operator is established in the euro area, provided that at least two of the following conditions are met over a calendar year: 1) the total daily average value of euro-denominated payments processed exceeds €10 billion; 2) its market share amounts to at least 15% of the total volume of euro-denominated payments, or 5% of the total volume of euro-denominated cross-border payments, or 75% of the total volume of euro-denominated payments in a Member State whose currency is the euro; 3) its cross-border activity (arising from participants established in a country other than that of the SIPS operator or from cross-border links with other payment systems) involves five or more countries and generates at least 33% of the total volume of euro-denominated payments processed by the SIPS; and 4) it is used for the settlement of other financial market infrastructures (FMIs).

Most of the articles of the Regulation focus, in essence, on regulating the duties of the SIPS operator (hereafter, the operator), which is the entity legally responsible for operating a payment system. The key characteristics of the operator are described below.

GOVERNANCE

The operator will have governance arrangements, consisting of a Board and management, which will be known to the competent authority, owners and participants. The Board's duties include: 1) establishing clear strategic aims for the SIPS, as well as documented procedures for its functioning, such as, for example, procedures to identify, address and manage conflicts of interest of its members; 2) ensuring the effective selection, monitoring and, where appropriate, removal of members of management, with the exception of Eurosystem SIPS; and 3) establishing appropriate remuneration policies based on long-term achievements.

20 Systemic risk is the risk that the failure by a participant or operator to meet their respective obligations in a systemically important payment system may cause other participants and/or the operator to be unable to meet their obligations when they fall due, with a potential spillover effect that might threaten the stability of or confidence in the financial system.

21 A payment system is a formal agreement between three or more participants, not including possible settlement banks, central counterparties, clearing houses or indirect participants, with common rules and standardised arrangements for execution of transfer orders between participants.

The Board will also establish and oversee a documented risk-management framework, including the operator's risk tolerance policy, assign responsibilities and accountability for risk decisions, and address decision-making in crises and emergencies and internal control functions.

COMPREHENSIVE RISK MANAGEMENT

The operator will establish and maintain a sound risk management framework allowing it to comprehensively identify, measure, monitor and manage the range of risks that arise, especially legal risk,[22] credit risk,[23] liquidity risk,[24] operational risk,[25] custody risk,[26] investment risk,[27] market risk[28] and general business risk.[29]

In addition, the operator will review, at least once a year, both the risk management framework and the material risks to which the SIPS may be exposed arising from other entities. The operator will also provide incentives to participants and, where relevant, to their customers, for them to manage and limit the risks they represent for the SIPS. With regard to participants, such incentives will include an effective, proportionate and dissuasive financial penalties regime and/or loss-sharing arrangements.

OTHER

Regarding collateral, the operator will only accept cash and assets with low credit, liquidity and market risks as collateral and will implement policies and procedures to monitor the credit quality, market liquidity and price volatility of all assets accepted as collateral. In respect of settlement of operations, the operator will establish rules and procedures to enable final settlement to take place no later than at the end of the intended settlement date. It will also establish clear rules and procedures to enable the SIPS to make same-day and, where appropriate, intra-day or multi-day settlement of payment obligations following the default of one or more of its participants.

Lastly, in connection with TARGET2, Decision ECB/2014/35 identifies TARGET2 as a SIPS, as it fulfils the above criteria, with the ECB being the competent authority for its oversight.[30]

ECB: statistical reporting requirements of monetary financial institutions

Regulation (EU) No 756/2014 (ECB/2014/30) of 8 July 2014 (OJ L of 12 July 2014) (hereafter, the Regulation), amending Regulation (EU) No 1072/2013 (ECB/2013/34) concerning

22 Legal risk is the risk arising from the application of laws and regulations, which can result in a loss for a SIPS.
23 Credit risk is the risk that a counterparty, whether a participant or other entity, will be unable to fully meet its financial obligations when they fall due or at any time in the future.
24 Liquidity risk is the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations when they fall due, even though it may have sufficient funds to do so on a future date.
25 Operational risk is the risk that deficiencies in information systems or internal processes, human error, management failures or disruptions caused by external events or outsourced services will result in the reduction, deterioration or breakdown of the services provided by a SIPS.
26 Custody risk is the risk of incurring a loss on assets held in custody in the event of a custodian's insolvency, negligence, fraud, poor administration or inadequate record-keeping.
27 Investment risk is the risk of loss faced by a SIPS operator or participant when the operator invests its own or its participants' resources, such as, for example, collateral.
28 Market risk is the risk of losses, both in on- and off-balance sheet positions, arising from fluctuations in market prices.
29 General business risk is any potential impairment of the financial position of a SIPS as a business concern arising from a decline in its revenues or an increase in its expenses, such that expenses exceed revenues, resulting in a loss that must be charged against capital.
30 Specifically, according to the public data for calendar year 2012, combined with responses to ECB surveys, TARGET2 fulfils all the conditions established in Regulation (EU) No 795/2014. Inter alia, it is recognised as a system pursuant to Directive 98/26/EC of the European Parliament and of the Council: its total daily average amount of euro-denominated payments exceeds €10 billion, its cross-border activity (arising from participants established in a country other than that of the SIPS operator or from cross-border links with other payment systems) extends across more than five countries, it generates at least 33% of the total volume of euro-denominated payments and it is used for the settlement of other FMIs.

statistics on interest rates applied by monetary financial institutions was published, to adapt it to Guideline ECB/2014/15 of 4 April 2014 on monetary and financial statistics.

The Regulation establishes the appropriate recording of renegotiated loans[31] in the reporting period during which the loans are granted, and the accurate reporting of new volumes of renegotiated loans in the case of loans that have not been fully drawn.

The Regulation entered into force on 1 August 2014.

TARGET2: amendment of legislation

The Resolution of 15 July 2014 of the Executive Commission of the Banco de España (BOE of 19 July 2014) was published, amending that of 20 July 2007 which approved the general clauses relating to the uniform conditions of participation in TARGET2-Banco de España, for the purpose of adapting it to Guideline ECB/2014/25.[32]

Provision has been made for "deposit facilities", i.e. Eurosystem standing facilities which counterparties may use to make overnight deposits with an NCB at the pre-specified interest rate.

Pursuant to Guideline ECB/2014/25, Payments Module accounts and their sub-accounts[33] will either be remunerated at 0% or at the deposit facility rate, whichever is lower, unless they are used to hold required minimum reserves. In the latter case, the calculation and payment of remuneration of holdings of minimum reserves will be governed by Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the ECB and by Regulation (EC) No 1745/2003 of the ECB of 12 September 2003 on the application of minimum reserves (ECB/2003/9).

The Resolution came into force on 19 July 2014.

Amendment of the Internal Rules of the Banco de España

The *Resolution of 27 June 2014 (BOE* of 2 July 2014) of the Governing Council of the Banco de España was published, approving the amendment of the Internal Rules of the Banco de España of 28 March 2000.

Specifically, the limitations on directors general for the exercise of private activities after their termination have been broadened to bring them into line with those set in the general rules for the public sector in Law 5/2006 of 10 April 2006 on the regulation of conflicts of interests of members of the Government and of general government senior officials.

Finally, for internal organisational purposes, the general secretary has been included as first substitute for the Deputy Governor in the event of vacancy, absence or illness, followed by the longest-serving director general of the relevant category or the oldest director general. This applies unless another person is expressly designated by the Governor.

The Resolution came into force on 3 July 2014.

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31 Renegotiated loans comprise all new loans, other than credit card debt and revolving loans and overdrafts, that are already recognised on the reporting agent's balance sheet at the end of the month prior to the reporting month.

32 Guideline ECB/2014/25 of 5 June 2014 amending Guideline ECB/2012/27 of 5 December 2012 on TARGET2.

33 The Banco de España has open and manages at least one payments module account for each participant. Moreover, at the request of a participant that acts as a settlement institution, the Banco de España will open one or more sub-accounts in TARGET2-Banco de España which will be used to settle payment orders in the payments module, in accordance with the rules established for that purpose.

Licensed appraisal companies and services

CBE 3/2014 of 30 July (BOE of 31 July 2014 and corrigendum in the *BOE* of 12 September 2014) to credit institutions and licensed appraisal companies and services was published, establishing measures to foster the independence of appraisal activities through the amendment of Circulars 7/2010,[34] 3/1998[35] and 4/2004,[36] and exercising regulatory options relating to the deduction of intangible assets by means of the amendment of CBE 2/2014.[37]

The Circular came into force on 31 July, except for the changes it makes to CBE 7/2010, which came into force three months later.

The main changes are as follows.

APPRAISAL COMPANIES AND SERVICES

The Circular implements the measures to ensure the professional independence of appraisal companies introduced by Law 41/2007 of 7 December 2007[38] in Law 2/1981 of 25 March 1981 on mortgage market regulation, and subsequently by Law 1/2013 of 14 May 2013,[39] to, inter alia, prohibit credit institutions from owning significant holdings in appraisal companies and tighten the requirements of the aforementioned measures to strengthen their independence.

Thus it specifies the minimum content of the internal code of conduct to be adopted by appraisal companies and appraisal services, which, among other things, includes the incompatibilities of their managers and boards of directors, as well as the measures adopted in this respect.

Also, credit institutions which have issued mortgage securities that remain outstanding and which have in-house appraisal services must set up a technical committee to check compliance with the independence requirements specified in the internal code of conduct and draft an annual report to be sent to the board of directors or equivalent body of the institution and to the Banco de España. In this respect, the Circular spells out the minimum content of this report, which must include the independence requirements assumed by the institution, listing in detail each of the individual rules and conditions.

OTHER CHANGES

New provisions have been added to CBE 4/2004 of 22 December 2004, first to gather together all references to the compulsory content of the annual report, specifying the minimum content of the note referred to in Article 29 (1) of Sustainable Economy Law 2/2011

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34 CBE 7/2010 of 30 November 2010 of the Banco de España to credit institutions, developing certain aspects of the mortgage market. See "Financial regulation: 2010 Q4", *Economic Bulletin,* January 2011, Banco de España, pp. 140-141.

35 CBE 3/1998 of 27 January 1998 of the Banco de España to licensed appraisal companies and services on reporting to the Banco de España.

36 CBE 4/2004 of 22 December 2004 of the Banco de España to credit institutions on public and confidential financial reporting rules and formats. See "Financial regulation: 2004 Q4", *Economic Bulletin,* January 2005, Banco de España, pp. 3-7.

37 CBE 2/2014 of 31 January 2014 of the Banco de España to credit institutions on the exercise of various regulatory options contained in 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. See "Financial regulation: 2014 Q1", *Economic Bulletin,* April 2014, Banco de España, pp. 59-60.

38 Law 41/2007 of 7 December 2007 amending Law 2/1981 of 25 March 1981 on mortgage market regulation and other mortgage and financial system rules, regulating reverse mortgages and dependency insurance and establishing certain tax rules. See "Financial regulation: 2007 Q4", *Economic Bulletin,* January 2008, Banco de España, pp. 177-182.

39 Law 1/2013 of 14 May 2013 on measures to strengthen the protection of mortgagors, debt restructuring and rented social housing. See "Financial regulation: 2013 Q2", *Economic Bulletin,* July-August 2013, Banco de España, pp. 84-89.

of 4 March 2011,[40] and second to complete implementation of the recommendations of the European Systemic Risk Board of 21 September 2011 on lending in foreign currencies.

Also, amendments have been made to CBE 2/2014 of 31 January 2014 in relation to the deduction in tier 1 capital items of the various types of intangible assets, unifying their treatment for all intangible assets, to which certain percentages will be applied during the transition period (2014-2017). The residual amounts up to 100% will be deducted from tier 1 capital items.

Finally, amendments have been made to CBE 6/2010 of 28 September 2010 to credit and payment institutions on the advertising of banking services and products, to properly reference the APR calculation methods to the rules set out in CBE 5/2012 of 27 June 2012 on transparency of banking services and responsible lending.

Adaptation of insurance and reinsurance companies to European Union legislation

The *Resolution of 16 June 2014 of the Directorate General of Insurance and Pension Funds* (DGSFP) *(BOE* of 4 July 2014) was published on temporary measures for the gradual adaptation of insurance and reinsurance companies to the new regime governed by 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 (hereafter, the Solvency II Directive), which will be applicable in the Member States from 1 January 2016.

The purpose of the Resolution is to specify the applicable principles to allow for a smooth transition to the regime envisaged in the Solvency II Directive, which include: 1) a governance system encompassing the risk management system and the internal prospective assessment of risks; 2) the establishment of time periods, conditions and procedures to be followed for submitting to the DGSFP the supervision report on the internal prospective assessment of risk; and 3) the making public of the guidelines and recommendations published by the European Insurance and Occupational Pensions Authority up to the date of the Resolution.

The Resolution came into force on 5 July 2014.

European Union: amendment of legislation on securities settlement and regulation of central securities depositories

Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ L of 28 August 2014) on improving securities settlement in the European Union and on central securities depositories (CSDs)[41] and amending Directives 98/26/EC[42] and 2014/65/EU[43] and Regulation (EU) No 236/2012[44] (hereafter, the Regulation) was published.

The Regulation establishes uniform requirements for the settlement of financial instruments in the European Union, as well as a number of common requirements for CSDs, particularly rules on their organisation and conduct with a view to promoting safe, efficient and smooth settlement.

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40 Pursuant to Sustainable Economy Law 2/2011 of 4 March 2011, credit institutions have to include in their individual financial statements a note referring to the document setting out their responsible lending practices. See "Financial regulation: 2011 Q1", *Economic Bulletin,* April 2011, Banco de España, pp. 159-163.

41 A CSD is a legal person that operates a securities settlement system as defined in EU legislation and that provides at least one of the following two services: initial recording of securities, and providing and maintaining securities accounts at the top tier level.

42 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

43 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

44 Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

SECURITIES SETTLEMENT

Any issuer, established in the European Union, of transferable securities which are admitted to trading shall arrange for such securities to be represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form.

Also, if transactions in transferable securities are executed on trading venues regulated by Directive 2014/65/EU, such securities must be recorded in a CSD book-entry system. Transactions must be settled on the intended settlement date, which shall be no later than the second business day after the trading takes place. This requirement will not apply to: 1) transactions which are negotiated privately but executed on a trading venue, and 2) transactions which are executed bilaterally but reported to a trading venue, or the first transaction where the transferable securities concerned are subject to initial recording in book-entry form.

Along with these measures, the Regulation establishes penalty mechanisms for settlement fails which must be commensurate with the scale and seriousness of such fails. These mechanisms will include cash penalties, which must, where possible, be credited to the non-failing clients as compensation and may not, in any event, become a source of revenue for the CSD concerned.

CENTRAL SECURITIES DEPOSITORIES

Authorisation and supervision

CSDs are to be authorised and supervised by the competent authority of their home Member State, which has to inform the European Securities and Markets Authority (ESMA) thereof. The relevant authorities[45] will also be involved where this is expressly envisaged. The Regulation describes the procedure for authorising a CSD before it commences its activity. The authorisation has to specify the core services[46] and non-banking-type ancillary services[47] enumerated in the annex to the Regulation which can be provided by CSDs. For the provision of banking-type ancillary services,[48] a special procedure for their authorisation is established which complies with certain conditions set out in the Regulation.

Regarding the supervision of CSDs, at least once a year the competent authority has to review the arrangements, strategies, processes and mechanisms implemented with respect to compliance with this Regulation and evaluate the risks to which CSDs are, or might be, exposed or which they create for the smooth functioning of securities markets.

The competent authority will require each CSD to submit to it an adequate recovery plan to ensure continuity of its critical operations and will ensure that an adequate resolution plan is established and maintained for each CSD so as to ensure continuity of at least its

45 The relevant authorities are: 1) the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system; 2) the European Union NCBs issuing the most relevant currencies in which settlement takes place; and 3) where appropriate, the NCB in whose books the cash leg of a securities settlement system operated by the CSD is settled.

46 The core services a CSD can provide are: 1) initial recording of securities in a book-entry system ("notary service"); 2) providing and maintaining securities accounts ("central maintenance service"); and 3) operating a securities settlement system ("settlement service").

47 Non-banking-type ancillary services include but are not restricted to: 1) services related to the settlement service, such as organising a securities lending mechanism or providing collateral management services, as agent, among the participants in a securities settlement system; 2) services related to the notary and central maintenance services, such as those related to shareholders' registers; 3) processing of corporate actions, such as tax, general meetings and information services, and new issue services, such as the allocation and management of ISIN and similar codes; and 4) establishing CSD links, providing, maintaining or operating securities accounts in relation to the settlement service, collateral management and other ancillary services.

48 Banking-type ancillary services include but are not restricted to: 1) providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts; 2) payment services involving processing of cash and foreign exchange transactions; 3) guarantees and commitments related to securities lending and borrowing; and 4) treasury activities involving foreign exchange and transferable securities related to managing participants' long balances.

core functions, having regard to the size and systemic importance of the CSD concerned and to the nature, scale and complexity of its activities.

General requirements applicable to CSDs

CSDs are to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures. The management body will be composed of suitable members of sufficiently good repute with an appropriate mix of skills, experience and knowledge of the entity and of the market.

Cross-border activity

An authorised CSD may provide services within the territory of the European Union, including through setting up a branch, provided that those services are covered by the authorisation. An authorised CSD that intends to provide core notary and central maintenance services in relation to financial instruments constituted under the law of another Member State will be subject to a specific authorisation procedure provided for in the Regulation. Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State will cooperate closely in the performance of their duties. The competent authority of the home Member State and of the host Member State may, in the exercise of their responsibilities, carry out on-site inspections in branches. Third-country CSDs may provide services in the European Union, including through setting up a branch.

Extension and outsourcing of activities

The extension of most activities or outsourcing of services or activities must be authorised by the competent authority of the CSD's home Member State. Where a CSD outsources services or activities to a third party, it will remain fully responsible for discharging all of its obligations under this Regulation and, in addition, must comply at all times with certain conditions.

Sanctioning regime

The Regulation sets out the sanctioning regime applicable to CSDs and all other persons responsible for infringements of the provisions of this Regulation. Under this regime, the competent authorities of Member States shall take all measures necessary to ensure that it is applied. Such sanctions must be effective, proportionate and dissuasive. Notwithstanding, Member States may impose criminal sanctions.

The Regulation came into force on 17 September 2014, except in respect of the obligation to represent transferable securities in book-entry form, which will apply from 1 January 2023 for those issued after that date and from 1 January 2025 for all others, and in respect of the obligation that transactions in transferable securities traded on trading venues must be settled no later than the second business day after the trading takes place, which will apply from 1 January 2015 or from 1 January 2016 if they are settled in a CSD that outsources services to a public entity in accordance with the Regulation.

Undertakings for collective investment in transferable securities: legislative changes

Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 (OJ L of 28 August 2014) amending Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, was published.

The most noteworthy aspects are described below.

REMUNERATION POLICIES

Management companies of UCITS are now obliged to establish, for categories of staff whose professional activities can have a material impact on the risk profiles of the UCITS they manage, remuneration policies and practices that are consistent with effective and responsible risk management. These rules also apply to investment companies that have not designated a management company.

The remuneration policy will be adopted by the management body of the management company in its supervisory function, and that body will lay down the general principles of the remuneration policy. Both the prospectus and the annual report of UCITS will include detailed information on the remuneration policy, together with a statement to the effect that details of the remuneration policy are available on a website.

Management companies that are significant in terms of their size, the size of the UCITS they manage or the nature, scope and complexity of their activities will have a remuneration committee, which will be organised in a way that enables it to exercise independent judgment on remuneration policies and practices and the incentives created for managing risk. The remuneration committee will be chaired by a member of the management body who performs no executive functions in the management company. Likewise, the other members of the remuneration committee will be members of the management body who perform no executive functions in the management company.

FUNCTIONS OF DEPOSITARIES

The Directive adopts additional rules which define the tasks and duties of depositaries, determine the legal entities that may be appointed as depositaries and clarify the liability of depositaries in the event that the assets of the UCITS are lost in custody or that depositaries fail to correctly exercise their oversight duties.

Each UCITS should appoint a single depositary having general oversight over its assets. In the performance of their duties, depositaries should act honestly, fairly, professionally and independently and in the interest of the UCITS and its investors.

A uniform list of oversight duties incumbent on depositaries in relation to UCITS has been introduced, to harmonise the way in which depositaries perform their duties in the different Member States.

In turn, the conditions for delegation of a depositary's safekeeping duties to a third party have been reviewed. Both delegation and sub-delegation should be objectively justified and should be subject to strict requirements as to the suitability of the third party.

Additionally, an exhaustive list of entities eligible to act as depositaries has been drawn up, namely: 1) NCBs; 2) credit institutions; and 3) other legal entities authorised under Member States' legislation to carry out depositary activities that are subject to prudential supervision and capital adequacy requirements in accordance with the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Lastly, a sanctions regime has been established, determining the type of administrative penalties or measures and the level of pecuniary penalties. In order to strengthen their dissuasive effect, sanctions will be publicly disclosed, save in certain very specific circumstances, and will be simultaneously reported to ESMA, which will publish an annual report on all sanctions imposed.

The Directive came into force on 17 September and shall be transposed by Member States by 18 March 2016 at the latest.

Internationalisation bonds

Royal Decree 579/2014 of 4 July 2014 (*BOE* of 16 July 2014) implementing certain aspects of Law 14/2013 of 27 September 2013[49] on support for entrepreneurs relating to internationalisation bonds and internationalisation covered bonds (hereafter, the Royal Decree) was published and came into force on 17 July.

Besides implementing certain aspects of internationalisation bond and internationalisation covered bond issues, the Royal Decree regulates secondary market transactions in these bonds and the supervisory powers of the National Securities Market Commission (CNMV) and the Banco de España.

INTERNATIONALISATION BOND ISSUES

The information that internationalisation bonds and internationalisation covered bonds must include is stipulated, along with general issuance rules which, without prejudice to the provisions of the Royal Decree, shall conform to Securities Market Law 24/1988 of 28 July 1988.[50]

The Royal Decree also regulates the way in which the maximum issue limits should be calculated, and the way in which they should be restored if they are exceeded. If the limits are exceeded owing to higher repayments of the loans affected or for any other reason, various measures[51] are envisaged whereby issuers should restore the balance in the shortest time possible.

Moreover, issuers of these bonds are now obliged to keep a special accounting record of the loans that act as collateral for the issues, of the replacement assets and of the financial derivative instruments linked to each issue.

SALE AND TRADING OF INTERNATIONALISATION BONDS IN THE SECONDARY MARKET

Internationalisation bonds and internationalisation covered bonds are admitted to trading in regulated markets or multilateral trading facilities in accordance with the provisions of Securities Market Law 24/1988 of 28 July 1988. Both types of bonds may be transferred by any lawfully accepted means, with no need for the intervention of a public authenticating official or for notification of the debtor. In the case of non-bearer bonds, they may be transferred by a declaration written on the certificates themselves.

Issuers may trade in their own internationalisation bonds or internationalisation covered bonds to regulate the correct functioning of their liquidity and market price or to restore the maximum issue limits. They may also acquire and hold own internationalisation bonds and internationalisation covered bonds in portfolio, up to a limit, in the case of issues offered to the general public, of 50% of each series.

SUPERVISORY POWERS OVER INTERNATIONALISATION BONDS

The Banco de España will be responsible for control and inspection of the conditions required of assets acting as collateral for internationalisation bond and internationalisation covered bond issues and of the above-mentioned accounting record.

In turn, the CNMV will be responsible for supervising all matters relating to public offerings of internationalisation bonds and internationalisation covered bonds and to secondary

49 See "Financial regulation: 2013 Q3", *Economic Bulletin*, October 2013, Banco de España, pp. 68-76.

50 See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico*, October 1988, Banco de España, pp. 61 and 62.

51 These measures include in particular: 1) creating a deposit of cash or public funds at the Banco de España; 2) purchasing their own internationalisation bonds and internationalisation covered bonds in the market for subsequent redemption; 3) extending new loans with similar characteristics; 4) assigning new eligible loans to the payment of the internationalisation bonds, by means of a public deed; 5) assigning new replacement assets to the payment of the internationalisation bonds or internationalisation covered bonds; and 6) redeeming internationalisation bonds and internationalisation covered bonds in the amount necessary to restore the balance.

market transactions in these bonds, all the foregoing without prejudice to the powers entrusted to the CNMV in the rules on securitisation of all kinds of securities. Moreover, the CNMV may request information from the Banco de España on compliance with the proportions established in the Royal Decree between the assets and liabilities of internationalisation bond and internationalisation covered bond issuers.

European Union: new regulations relating to payment accounts

Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 (OJ L of 28 August 2014) on the comparability of fees related to payment accounts,[52] payment account switching and access to payment accounts with basic features was published.

The Directive came into force on 17 September and shall be transposed by Member States by 18 March 2016.

The most noteworthy aspects are described below.

SCOPE OF APPLICATION

The Directive lays down rules on the transparency and comparability of fees charged to consumers on payment accounts held in the EU, on the switching of payment accounts within a Member State and on cross-border account-opening. It also establishes the rules and conditions whereby Member States will guarantee the right of consumers to open and use payment accounts with basic features.

Member States will establish a provisional list of at least ten and no more than 20 of the most representative services linked to a payment account and subject to a fee, provided by at least one payment service provider[53] at national level. That list will be sent to both the Commission and the EBA by 18 September 2015. Moreover, powers are delegated to the Commission to adopt technical standards implementing the Directive and to publish the resulting final list of the most representative services linked to a payment account, which will be updated every four years.

COMPARABILITY OF FEES APPLICABLE TO PAYMENT ACCOUNTS

Payment service providers should provide consumers with a fee information document containing: 1) the standardised terms in the final list of the most representative services linked to the payment account; 2) a glossary explaining those standardised terms; and 3) the fees applicable to each of the services offered by the provider.

In order to be able to compare the fees charged by several payment service providers, consumers should have access, free of charge, to at least one website comparing the fees charged for at least the services included in the final list at national level. The comparison websites may be operated either by a private operator or a public authority.

52 Payment accounts are accounts held in the name of one or more consumers that are used to make payment transactions, which may consist in placing, transferring or withdrawing funds. In Spanish law, payment accounts are regulated in Payment Services Law 16/2009 of 13 November 2009, implemented by Royal Decree 712/2010 of 28 May 2010 on the legal regime governing payment services and payment institutions. Payment accounts have certain operational restrictions and must be linked, from the outset and throughout their lifetime, to a cash deposit account opened by one of their holders at a credit institution authorised in the EU.

53 The following are payment service providers: 1) credit institutions; 2) electronic money institutions; 3) post office giro institutions authorised under national law to provide payment services; 4) the ECB and the NCBs when not acting in their capacity as monetary authority or other public authorities; 5) Member States and their regional and local authorities, when not acting in their capacity as public authorities; and 6) payment institutions regulated in Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007.

54 A payment account switching service entails, at a consumer's request, transferring the information on all or some standing orders, direct debits and direct credits executed on a payment account from one payment service provider to another, and/or transferring any credit balance from one payment account to another, with or without closing the old payment account.

PAYMENT ACCOUNT SWITCHING

Payment service providers shall provide consumers with a switching service between payment accounts held in the same currency.[54] Time windows are established for the receiving payment service provider to request transactions linked to the payment account (such as standing orders and direct debits) from the transferring payment service provider.

In connection with cross-border (i.e. in another Member State) opening of payment accounts, payment service providers shall provide consumers with certain assistance, such as providing them, free of charge, with a list of all currently active standing orders and direct debits, transferring any remaining credit balance on their payment account and closing the payment account opened by the consumer.

ACCESS TO PAYMENT ACCOUNTS WITH BASIC FEATURES

Member States shall ensure that consumers legally resident in the EU, including consumers with no fixed address, asylum seekers and consumers who are not granted a residence permit but whose expulsion is impossible for legal or factual reasons, have the right to open and use a payment account with basic features[55] in banks located in those Member States. This right will apply irrespective of the consumer's place of residence. Likewise, Member States will endeavour to ensure that payment accounts with basic features are not only offered by banks, but also by other payment service providers.

SUPERVISION, DISPUTE RESOLUTION AND PENALTY REGIME

Member States will designate the NCAs empowered to ensure the application and enforcement of this Directive and will grant them the investigation and enforcement powers and the resources necessary for the effective performance of their duties. Member States' NCAs will exchange information and will cooperate in all investigations and supervisory activities.

Urgent insolvency measures

Royal Decree-Law 11/2014 of 5 September 2014 (*BOE* of 6 September 2014) on urgent insolvency measures (hereafter, the Royal Decree-Law) was published, with the aim, inter alia, of extending the reforms brought in by Royal Decree-Law 4/2014[56] for the pre-insolvency stage (refinancing agreements) to the insolvency agreement itself, with the main objective being to promote agreements that will enable economically viable companies to survive insolvency proceedings.

The key changes ushered in by the Royal Decree-Law, which came into force on 7 September 2014, are as follows.

GENERAL CHANGES TO INSOLVENCY AGREEMENTS

Certain changes have been made to proposals for agreements, aimed at helping companies to survive. Thus, the Royal Decree-Law provides that assets and rights can only be transferred to creditors in payment if they are not essential for the continuation of the professional or business activity and if their fair value is equal to or less than that of the claim being discharged. If their fair value is higher, the difference should be included in the assets available to creditors. In no event will there be an obligation to transfer assets or rights in payment to public sector creditors.

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55 Payment accounts with basic features should at least include services enabling: 1) all the operations required to open, operate and close a payment account; 2) cash payments into a payment account; 3) cash withdrawals from a payment account; and 4) payment transactions (such as direct debits, transactions using a payment card, including online payments and transfers of funds, including standing orders).

56 Royal Decree-Law 4/2014 of 7 March 2014 adopting urgent measures on the refinancing and rescheduling of corporate debt. See "Financial regulation: 2014 Q1", *Economic Bulletin*, April 2014, Banco de España, pp. 67-70. Royal Decree-Law 4/2014 was subsequently enacted as a law, through Law 17/2014 of 30 September 2014 (*BOE* of 1 October 2014) adopting urgent measures on the refinancing and rescheduling of corporate debt.

For the first time, persons acquiring their claims after an insolvency order is made will be entitled to vote at the creditors' meeting, unless they are persons especially related to the debtor, in which case their claims would be classed as subordinated claims (which grant no entitlement to vote and remain subject to the agreement).

Moreover, the quorums needed for proposals for agreements relating to ordinary claims to be accepted have been changed. Previously, a favourable vote of at least 50% of the ordinary claims was sufficient, while there was an overall limit on proposals for reduction or deferral (specifically, proposals for reduction could not exceed 50% of the amount of each ordinary claim and proposals for deferral could not exceed five years). The Royal Decree-Law has now removed this limit, while establishing different majorities – between 50% and 65% – according to the terms of the agreement.

Lastly, an arrangement has also been introduced to allow the measures contained in this Royal Decree-Law to be applied, on a one-off basis, to agreements adopted under the previous legislation, provided that they are adopted by enhanced majorities (higher than those required for approval of the agreements) and that this is approved by the court.

CHANGES RELATING TO PREFERRED CREDITORS

Provisions similar to those relating to refinancing agreements, as established by Royal Decree-Law 4/2014, have been introduced in respect of the valuation of preferred collateral. Accordingly, the special preference will only affect the portion of the claim that does not exceed the value of the collateral included in the list of creditors. Any portion of the claim exceeding that value will not receive special treatment and will be classed according to the nature of the claim.

As in the case of pre-insolvency agreements, the value of the collateral will be calculated as follows: the fair value[57] of the asset or right secured by the collateral will be reduced by 10% and then the amount of any outstanding claims secured by preferred collateral over that same asset will be subtracted from the remainder.

In addition, the Royal Decree-Law groups preferred creditors into the following classes (with no distinction between generally or specially preferred[58] creditors): 1) labour law creditors; 2) public law creditors; 3) financial creditors, that is, holders of any financial debts whether or not they are subject to financial supervision; and 4) all others, including trade creditors.

Under the previous legislation, preferred claims were only bound by the content of the agreement if the creditors concerned had voted for the proposal or if the fact of their signing up to the proposal was classed as a vote for it, but in no circumstances could the terms of the agreement be imposed on them. Now, the Royal Decree-Law establishes, as a new development, that they will also be bound by the agreements where there are certain majorities within their class.

CHANGES RELATING TO WINDING-UP PROCEEDINGS

In respect of winding-up, the aim is to ensure, insofar as possible, the continuation of the business activity, basically facilitating the sale of the establishments and operations, and of any other production units, of the debtor.

57 The calculation of the fair value depends on the nature of the asset: for transferable securities traded on an official secondary market it will be their average price in the quarter before the insolvency order was made; for real estate assets it will be the value estimated by an appraisal company registered with the Banco de España; and for other types of assets it will be the value calculated by an independent expert.

58 Specially preferred creditors are those whose claims are secured by the company's assets. Generally preferred creditors are mainly employees and public sector creditors, in addition to the part of the new funding granted to the insolvent company that is not included in the claims against the assets.

The Royal Decree-Law has introduced a new provision relating to the winding-up plan, consisting in granting the court the power to retain 10% of the assets available to creditors to be used to meet future challenges, such as legal rulings issued in any appeals lodged against winding-up proceedings. This sum will be released when the appeals have been settled or the deadline for appeal has passed. Any amount remaining once appeals have been settled or the appeal deadline has passed will be allotted in accordance with the order of priority of claims established in law, taking into account the part of any claims that have already been met.

Certain changes have also been made to the supplementary legal rules applicable in the event that the winding-up plan is not approved. Thus, if the entire company or some of its production units are sold through a tender process, a period will be set for the submission of bids to acquire the company, and the court will award it, from among those bids whose price is no more than 10% higher than the lowest bid, to the bidder that it considers provides the most assurance of continuity of the business or, where appropriate, of the production units and jobs, and the best satisfaction of creditors' claims.

OTHER CHANGES

Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution[59] notes that credit claims transferred to the asset management company for assets resulting from bank restructuring (Sareb) will be taken into consideration for calculating the majorities needed to adopt the legally recognised agreements regulated in Royal Decree-Law 4/2014 of 7 March 2014, even if Sareb is considered to be especially related to the debtor.

An electronic access portal will be created, containing a list of companies subject to winding-up proceedings and any information required to facilitate their sale. A committee will also be established to monitor refinancing practices and reduce debt overhang.

Civil Procedure Law 1/2000 of 7 January 2000 has been amended to adapt it to the ruling of the Court of Justice of the European Union of 17 July 2014. In consequence, mortgagors may file an appeal against any decision dismissing their objection to foreclosure if it was based on the existence of unfair terms that constitute the basis of the foreclosure or the amount payable.

Lastly, the stay of application of the provisions of the consolidated text of the Share Capital Companies Law, approved by Royal Legislative Decree 1/2010 of 2 July 2010, relating to exit rights in the event of no distribution of dividend,[60] has been extended from 31 December 2014 to 31 December 2016.

General government economic and financial information

Royal Decree 636/2014 of 25 July 2014 (BOE of 30 July 2014) setting up the General Government Economic and Financial Information Office (*Central de Información Económico-Financiera de las Administraciones Públicas*, CIEF) and regulating the sending of information by the Banco de España and financial institutions to the Ministry of Finance and Public Administration was published.

The most important aspects of this Royal Decree, which entered into force on 31 July 2014, are summarised below.

59 See "Financial regulation: 2012 Q4", *Economic Bulletin*, January 2013, Banco de España, pp. 42-47.

60 Pursuant to Article 348 bis, from the fifth year from the date of recording of a company in the Mercantile Register, any shareholder that has voted for the distribution of corporate profits shall have exit rights in the event that the general meeting has not resolved to distribute as dividend at least one-third of the profits corresponding to the pursuit of the corporate purpose obtained during the previous year and which are distributable by law.

ECONOMIC AND FINANCIAL INFORMATION OFFICE

The CIEF is set up, as provided for by Organic Law 2/2012 of 27 April 2012 on budgetary stability and financial sustainability, to provide information to the public on the economic and financial activity of government bodies through the web portal of the Ministry of Finance and Public Administration.

The agency attached to the Ministry of Finance and Public Administration to be responsible for managing the CIEF will be specified in the implementing regulations. Among other functions, this agency will be responsible for providing and coordinating the economic and financial information of the various government bodies that must be published by the CIEF, and for the filing and safekeeping of such information.

Information will be supplied on a monthly basis by the ministerial departments that make up central government, as well as by their subsidiary and related entities and agencies.

REPORTING OBLIGATIONS OF THE BANCO DE ESPAÑA AND FINANCIAL INSTITUTIONS

The Banco de España will send, each month, to the Ministry of Finance and Public Administration the information that financial institutions have supplied to the Central Credit Register (CIR) on the credit transactions that they have entered into with government bodies, including the guarantees, counter-guarantees or any other kind of collateral/guarantee granted in relation to such credit transactions. It will also notify the debit position of government bodies or other specific data relating to their indebtedness or certain credit transactions.

For its part, the Ministry of Finance and Public Administration may request of financial institutions other information relating to credit transactions and information on guarantees, counter-guarantees or any other kind of collateral/guarantee entered into with government bodies or their subsidiary entities or agencies, in addition to that supplied to the CIR, when the latter is insufficient or more detailed information on certain credit transactions is required.

Urgent measures for growth, competitiveness and efficiency

Royal Decree-Law 8/2014 of 4 July 2014 (BOE of 5 July 2014) approving urgent measures for growth, competitiveness and efficiency was published and entered into force on 5 July 2014.

The most important changes from a financial and fiscal viewpoint are summarised below:

FINANCING AND INTERNATIONALISATION OF SPANISH FIRMS

The functions of the *Fondo para Operaciones de Inversión en el Exterior de la Pequeña y Mediana Empresa* (FONPYME, Fund for Foreign Investment by SMEs)[61] to promote the internationalisation of the activity of SMEs are enhanced. Thus, FONPYME may acquire temporary, minority and direct holdings in "capital expansion funds" (*fondos de capital expansion*) or through any officially supported equity instruments that already exist or that may be established, and in private investment funds, which foster the internationalisation of firms.

At the same time, the Official Credit Institute (ICO) will launch a programme of guarantees and collateral in favour of multilateral agencies and international financial institutions in order to promote the financing and internationalisation of Spanish firms.

61 FONPYME, created by Law 66/1997 of 30 December 1997 on fiscal, administrative and social measures, is designed to promote the internationalisation of the activity of SMEs, through temporary, minority and direct holdings in the share capital of Spanish firms for their internationalisation or of firms located abroad, and, in general, in the own funds of the firms, through any equity instruments.

CARD PAYMENT TRANSACTIONS

Ceilings for the interchange fees applicable to payment transactions entered into at point of sale terminals in Spain using debit or credit cards,[62] irrespective of the sales channel used, to which payment service providers established in Spain are party, are regulated.[63]

In the case of debit card transactions, the interchange fee per transaction may not exceed 0.2% of the transaction value, subject to a maximum amount of €0.07. For transactions of €20 or less, this fee may not exceed 0.1% of the transaction value. In credit card transactions the fee may not exceed 0.3% of the transaction value. When the amount of the transaction is €20 or less, the fee may not exceed 0.2% of the transaction value. These restrictions on interchange fees have been in force since 1 September 2014.

FISCAL MEASURES

The rate of the tax on deposits with credit institutions, regulated in Law 16/2012 of 27 December 2012,[64] was raised, with effect from 1 January 2014, from 0% to 0.03%. The revenue raised will be divided among the regional governments in accordance with the location of the taxpayers' head office or branches at which the taxed third-party funds are held. For this purpose, credit institutions must give details of the amount of taxed third-party funds held in each region. They must also give details of the amount corresponding to funds held through electronic marketing systems (remote).

In relation to personal income tax (IRPF), three relevant changes were introduced:

1) With effect from 1 January 2014 and in prior years for which the limitation period has not yet expired, capital gains arising as a result of deeds in lieu of foreclosure or mortgage execution procedures in relation to the principal residence of a mortgage debtor or the guarantor thereof for the payment of debts secured by a mortgage thereon are, with the odd exception, declared exempt.

2) With effect from 1 January 2014, negative taxable savings income arising on subordinated debt or preference debt-instruments, or on securities received in exchange for these instruments, generated prior to 1 January 2015, can be set off against positive taxable savings income, or general taxable income arising from the transfer of assets. If after this set-off a negative balance remains, its amount may be set off against positive amounts over the following four years.

3) As from 5 July 2014 (the date this Royal Decree-Law enters into force), the percentage of withholdings and prepayments is reduced from 19% to 15% in the case of income arising from professional activities, when certain conditions are fulfilled.

OTHER MEASURES

The Royal Decree-Law permits local authorities to enter into new borrowing transactions in 2014, in order to pay off all or part of their outstanding debts with the *Fondo para la Financiación de los Pagos a Proveedores* (Fund for the Financing of Payments to Suppliers), provided that certain requirements established therein are fulfilled.

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62 Transactions carried out with corporate cards and cash withdrawals from ATMs are excluded. These limits will not apply to tripartite schemes (such as PayPal, American Express or Diners) either, unless the latter grant licences to other payment service providers for the issuance or acquisition of payment cards.

63 In this way, the future European Union regulation on interchange fees for card-based payment transactions, the purpose of which is to regulate and limit interchange fees in the area of payment services in the European Union, is applied early.

64 Law 16/2012 of 27 December 2012 adopting various tax measures to consolidate public finances and boost economic activity.