

**Banco de España Circular 5/2021 of 22 December 2021 amending Circular 2/2016 of 2 February 2016 to credit institutions on supervision and solvency, which completes the adaptation of Spanish law to Directive 2013/36/EU and to Regulation (EU) No 575/2013. (Official State Gazette (BOE<sup>1</sup>) of 23 December 2021) (Corrigendum, BOE of 30 December 2021)**

One of the main lessons learned from the financial crisis that hit the global economy more than a decade ago was that banking regulation and supervision need to adopt a macroprudential perspective that complements the traditional microprudential approach. Indeed, ensuring the safety and soundness of each individual institution does not suffice to safeguard a country's financial stability: the financial system as a whole needs to be stable and resilient. Thus, the fundamental objective of macroprudential policy is to protect the economy from systemic risk, as defined in the sole additional provision of Royal Decree-Law 22/2018 of 14 December 2018 establishing macroprudential tools.

Systemic risk is multidimensional and cannot be reduced to a single target that allows all of its dimensions to be addressed as efficiently as possible. Moreover, its dynamic nature means that it can undergo major changes over financial cycles. It is therefore essential to have a broad and sufficiently diverse macroprudential toolkit that makes it possible for these dimensions to be addressed as efficiently as possible and for macroprudential policy to adapt to temporary fluctuations in systemic risk.

Given these considerations, and bearing in mind the assessment of several international organisations, such as the International Monetary Fund (IMF) or the European Systemic Risk Board (ESRB), Royal Decree-Law 22/2018 introduced additional macroprudential tools into the Spanish legal system to address possible vulnerabilities for the financial system, thereby equipping the three Spanish financial supervisory authorities (the Banco de España, the National Securities Market Commission<sup>2</sup> and the Directorate General of Insurance and Pension Funds<sup>3</sup>) with the necessary instruments to help mitigate any shock with the potential for systemic impact. Royal Decree 102/2019 of 1 March 2019 creating the Spanish macroprudential authority (AMCESFI<sup>4</sup>), establishing its legal regime and implementing certain aspects relating to macroprudential tools, completed the institutional framework of macroprudential supervision.

Article 2 of Royal Decree-Law 22/2018 introduced a number of changes in Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions to include the new macroprudential tools in the legal framework for this sub-sector of financial institutions. Article 15.1 of Royal Decree 102/2019

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<sup>1</sup> Boletín Oficial del Estado.

<sup>2</sup> Comisión Nacional del Mercado de Valores (CNMV).

<sup>3</sup> Dirección General de Seguros y Fondos de Pensiones (DGSFP).

<sup>4</sup> Autoridad Macroprudencial Consejo de Estabilidad Financiera.

stipulates that the Banco de España may adopt the following macroprudential tools:

(a) The capital buffer requirements pursuant to Articles 43 to 49 of Law 10/2014.

(b) The setting of limits on sectoral concentration in accordance with Article 69 ter of Law 10/2014.

(c) The setting of conditions on the granting of loans and other transactions in accordance with Article 69 quater of Law 10/2014.

Likewise, paragraph 2 of the third final provision of Royal Decree 102/2019 empowers the Banco de España to issue, via circular and pursuant to Article 3 of Law 13/1994 of 1 June 1994 of Autonomy of the Banco de España, such legal provisions as may be necessary to develop, implement and comply with the macroprudential tools stipulated in Article 15(1)(b) and (c) of that Royal Decree, in addition to those laid down in Article 15(1)(a) where they are only required for exposures to a specific sector or class, and in the provisions of Articles 43 to 49 of Law 10/2014. For these purposes, the enabling regulation states that the circular shall detail the regulation of the content of the tool and the procedure for informing the general public and the parties concerned, among other aspects. These three macroprudential tools complement those already established in the aforementioned Law 10/2014, whose main objective was to transpose into Spanish law the regulatory changes relating to credit institutions introduced in the European Union (EU) by Directive 2013/36/EU of 26 June 2013.

As explained in the preamble of Royal Decree-Law 22/2018, in some instances exposures to specific sectors have accounted for most of the systemic risks. This was the case of the Spanish real estate sector in the last financial crisis, but other examples can be found in other countries. In such a situation, activating aggregate macroprudential tools could be counterproductive. Specifically, in the event of excessive credit growth in one sector, raising the capital requirements for all exposures could lead institutions to further increase their exposure to that sector, as that tool does not make it possible to alter the relative cost in terms of regulatory capital of lending to that sector to reflect its higher systemic risk. On the contrary, aggregate macroprudential tools would increase the cost in terms of regulatory capital of lending to all sectors without distinction. By contrast, if the measure affects a particular sector or group of sectors, the relative cost of lending to those sectors increases, and this alters the relative returns of the different portfolios, to the detriment of the sector(s) generating the systemic risk. In any event, the application of a sectoral tool should be accompanied by strict monitoring of its potential spillovers to the other sectors, to prevent the problem of excessive credit growth from spreading across sectors. Moreover, the sectors considered must have a systemic dimension to prevent the tool from being microprudential in nature. To this end, this Circular

allows the Banco de España to set a countercyclical buffer on institutions' exposures to a particular sector, in addition to on their total exposures.

Another macroprudential tool is the setting of limits on the sectoral concentration of institutions' exposures. Like the countercyclical capital buffer when applied to a specific sector, this tool focuses on overall exposures to a sector. Concentration is defined in terms of the ratio of sectoral exposure relative to Common Equity Tier 1 (CET1) capital. Therefore, it does not represent an absolute quantitative limit on exposures. Since this is also a sectoral tool, it seems logical to expect it to have the same effects as those outlined for the countercyclical capital buffer when it is set on one or more sectors, and the need to carefully analyse any potential spillover effects on other sectors should be stressed. Further, the sectors must have a systemic dimension and be as consistent as possible with those envisaged for the countercyclical capital buffer. The fundamental difference between this tool and the countercyclical capital buffer applied on one or several sectors is that its activation would curb the growth of sectoral concentration more directly, while the countercyclical capital buffer only provides a disincentive, making it more expensive, in relative capital terms, to increase credit exposure to the sector(s) targeted.

The ability to set conditions on lending and other transactions has the potential to directly affect credit – specifically, the flow of new credit. This instrument would set limits on credit standards for new loans and could therefore be applied where, for example, there is a degree of house price overvaluation such that potential future corrections could reduce the value of the collateral below that of the loan, where a borrower's financial situation is not sufficiently healthy or where lending indicators for a significant percentage of the credit portfolio are found to have reached levels of concern for the solvency of an institution or group of institutions.

Empirical evidence shows that loans granted under stricter standards in terms of their leverage, the effort required to make repayment or maturity (i.e. with shorter maturities) subsequently present significantly lower default rates. In fact, loans in which several of these credit standards are simultaneously tighter tend to have appreciably lower probabilities of default than loans in which only one of them is tighter. In this regard, credit standards are key to ensuring banks' safety and soundness and reducing systemic risk. Thus, assessing banks' lending policies is crucial for diminishing the impact of future shocks.

This tool can be applied to various loan characteristics. The decision to impose conditions on certain characteristics and not on others will therefore depend on the specific situation that needs to be addressed, i.e. the nature of the systemic risk and the most effective characteristic for its mitigation. However, setting conditions on one characteristic might prompt excesses in others. Accordingly, it may be necessary to act on several characteristics simultaneously. There could also be spillover effects to other credit portfolios not subject to the limits

introduced, e.g. from mortgage to non-mortgage loans, which could lead to the measures being extended to those segments. Regulation of this instrument should also provide for the possibility of adjusting the conditions according to the characteristics of the borrower and the lender, thus ensuring their efficacy.

In exercise of the powers conferred, this Circular regulates the setting of the countercyclical capital buffer on one or more sectors, limits on exposures to certain sectors and the possibility of establishing limits and conditions on lending and other transactions by institutions for transactions with the private sector in Spain.

In line with the provisions of Article 15(2)(d) of Royal Decree 102/2019, the regulation of the countercyclical buffer is based on international best practices as regards macroprudential objectives, instruments and indicators. Specifically, this Circular incorporates many of the guiding principles of the Basel Committee on Banking Supervision (BCBS), published in November 2019.

The setting of a countercyclical capital buffer on one or several sectors is a technical improvement to this tool, allowing its application both to overall exposures and to certain sectors, or even to both simultaneously.

To activate and determine the countercyclical buffer on specific sectors, a broad set of variables that have the ability to act as early warning indicators for sectoral imbalances in Spain, correlating with increases in systemic risk in the financial system, has been identified. In particular, on the basis of empirical evidence and the BCBS guidelines, the following categories of indicators are considered in the context of the countercyclical buffer: (i) sectoral credit volume indicators (credit growth, credit intensity and credit gap measures); (ii) asset price indicators (sector-specific developments and imbalance measures); and (iii) sectoral macro-financial imbalance indicators (indebtedness, net wealth, net lending/net borrowing, saving rate and consumption and investment gaps, inter alia).

As regards the sectoral limits on the concentration of exposures, it seems necessary to establish a continuity with the countercyclical capital buffer on one or more sectors. That is why the only difference between these measures in terms of the sectoral segmentation of the credit portfolio is that two sectors have been added to reflect exposures to the financial sector. Moreover, as from a microprudential supervisory standpoint, concentration is defined as the ratio of exposures relative to own funds (in this case, an institution's CET1). Thus, the limit on exposures is not absolute, but depends on institutions' funds to cover potential losses. In this respect, another difference between these measures and the countercyclical capital buffer is that the exposures to which they refer are not weighted by risk. These limits may be established for one particular sector or jointly for several sectors, and may be applicable alongside other macroprudential tools.

Given that, at the time of introduction, there may be institutions that exceed the sectoral concentration limits, an adjustment period will be specified to allow them to rapidly converge towards these limits. To determine the concentration limits, the Banco de España will take into account any changes in the aggregate exposure to each sector, its historical share of total exposures and recent changes, its relevance in GDP and in sectoral value-added terms, and, naturally, its weight in aggregate CET1, among other criteria.

With regard to the setting of limits and conditions on lending and other transactions, this Circular lays down various conditions that may be activated. Thus, in accordance with the preamble of Royal Decree-Law 22/2018, the Banco de España may set limits on borrowers' maximum indebtedness, given the collateral provided (loan to value), the share of their disposable income that they can use to repay the debt (debt service to income), the level of debt as a percentage of income (debt to income) and the maturity of the loan, among other measures. These limits may be activated individually or jointly, and other macroprudential tools may be applicable at the same time. Moreover, these limits may be different for certain groups of both natural and legal persons. This may be so either because such distinctions contribute to financial stability, or because applying different limits to certain groups makes it easier to implement the measures and does not undermine their effectiveness in reducing systemic risk. Similarly, the measures may consider that a certain percentage of loans is exempt from the limits.

To determine whether these tools need to be activated, the Banco de España will analyse, among other criteria, recent developments in lending and real activity, credit standards and various solvency, income and indebtedness indicators for natural and legal persons.

The circular contains a single rule, a final provision and an annex. The sole rule introduces in Circular 2/2016 the new macroprudential framework described above.

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

With regard to the principles of necessity and efficacy, this Circular is the necessary instrument to implement the legal regime applicable to the new macroprudential tools available to the Banco de España, pursuant to Royal Decree-Law 22/2018 and Royal Decree 102/2019, whose ultimate aim is to identify, prevent and mitigate systemic risk and ensure that the financial system makes a sustainable contribution to economic growth.

Turning to the principles of proportionality, legal certainty and efficiency, this circular establishes the minimum essential regulation to fulfil its purposes, is consistent with the other Spanish and international legislation, and the only administrative burden it imposes refers to the requirement that entities report the necessary information so that it can be implemented. Lastly, with regard to the principle of transparency, the circular has undergone the pertinent public information and consultation process.

Accordingly, in exercise of the powers conferred on it, the Governing Council of the Banco de España, on the proposal of the Executive Commission and in accordance with the State Council, has approved this Circular, which contains the following rules:

**Sole rule.** *Amendment of Banco de España Circular 2/2016 of 2 February 2016 to credit institutions on supervision and solvency, which completes the adaptation of Spanish law to Directive 2013/36/EU and to Regulation (EU) No 575/2013.*

The following changes are made to [Circular 2/2016](#)<sup>5</sup>:

(a) A new paragraph 11 is added in Rule 2, which reads as follows:

“11. Chapters 10 and 11 of this Circular on sectoral concentration limits and other macroprudential tools, respectively, shall apply to credit institutions authorised in Spain and branches in Spain of credit institutions with head offices in EU Member States and non-EU countries.”

(b) Rule 3 is amended and shall read as follows:

“Rule 3. *Branches in Spain of credit institutions with head offices in EU Member States.*

The requirements laid down in this Circular shall not be generally applicable to branches in Spain of credit institutions with head offices in EU Member States; this exemption shall not apply to the provisions of Chapters 10 and 11 of this Circular. This without prejudice to the need to report to the competent authority the data on the Spanish immovable property market referred to in Article 430a of Regulation (EU) No 575/2013, in accordance with template C 15.00 set out in Annex VI of Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical

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<sup>5</sup> Texts incorporated into Circular 2/2016 of 2 February 2016.

standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014.

However, for financial stability reasons, the competent authority may require additional information from these branches on their activities.”

(c) Rule 8 is amended and shall read as follows:

“Rule 8. *Institution-specific countercyclical capital buffer.*

1. In accordance with the provisions of Article 45(1) of Law 10/2014, credit institutions shall maintain a countercyclical capital buffer consisting of Common Equity Tier 1 capital calculated specifically for each institution or group. This buffer shall be determined based on all the exposures of the institution or group or on the exposures to a specific sector.

2. The countercyclical capital buffer calculated specifically for each institution or group shall be determined as the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, with the qualifications set out in this rule and in Rules 9 to 12 bis of this Circular, multiplied by the rates referred to in paragraphs 3 and 4 of this rule, in accordance with the following formula:

*Capital requirement* =

$$\left( \sum_{\text{country } i}^N CCyB_i \frac{OFR_{i \text{ relevant}}}{OFR_{\text{Total relevant}}} \right) \times RWA_{\text{Total}}$$

(total risk exposure amount component)

+

$$\left[ \sum_{\text{Sector } j}^M \sum_{\text{Country } i}^N \left( \max\{SCCyB_{i,j} - CCyB_i, 0\} \times \frac{OFR_{i,j \text{ relevant}}}{OFR_{\text{Total relevant}}} \right) \times RWA_{\text{Total}} \right]$$

(sectoral risk exposure amount component)

Where:

– CCyB<sub>i</sub> is the countercyclical capital buffer rate set for the total risk exposure amount in country i.

–  $OFR_{i \text{ relevant}}$  is the total amount of own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures, in accordance with paragraph 5 of this rule, for country i.

–  $OFR_{\text{Total relevant}}$  is the total amount of own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to all of its relevant credit exposures, in accordance with paragraph 5 of this rule.

–  $RWA_{\text{Total}}$  is the total risk exposure amount, in accordance with Article 92(3) of Regulation (EU) No 575/2013.

–  $SCCyB_{i,j}$  is the countercyclical capital buffer rate set for the risk exposure amount for sector j in country i.

–  $OFR_{i,j \text{ relevant}}$  is the total amount of own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures, in accordance with paragraph 5 of this rule, for sector j in country i.

The countercyclical buffer rates applicable to the total risk exposure amount and to the risk exposure amount for one or several sectors may have equal or different values, where some may be zero and some may be positive but not necessarily equal. Therefore, if the rate applicable to the risk exposure to one or several sectors is different from zero, and the rate applicable to the total risk exposure is zero (or no rate has been determined), this does not imply that the countercyclical buffer rate applicable to the institution or group's total risk exposure amount has been set for the first time, or increased.

The Banco de España may set the rates referred to in the previous paragraph simultaneously or at different points in time. To this end, it shall take into account, inter alia, the existence of risks of transmission of imbalances to other relevant sectors or classes.

Countercyclical buffer rates will be set for the risk exposure to one or several sectors, instead of or in addition to the countercyclical buffer rate applicable to the total risk exposure, when the analyses performed, in accordance with the methodology set out in Rule 12 bis of this Circular, find evidence of imbalances attributable to a specific sector or exposure class.

3. The countercyclical capital buffer rate applicable to the total risk exposure amount component shall consist of the weighted average of the

countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution or group, as defined in paragraph 5 of this rule, are located, or that are applied by virtue of Rules 9 to 12 of this Circular.

In order to calculate the weighted average referred to above, a credit institution shall multiply each applicable countercyclical buffer rate set for the total risk exposure amount by its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relate to the relevant credit exposures in the territory in question, and divide the result by its total own funds requirements for credit risk that relate to all of its relevant credit exposures.

4. In order to calculate the requirement for the risk exposure amount for sector j in country i, a credit institution shall multiply the total risk exposure amount, in accordance with Article 92(3) of Regulation (EU) No 575/2013, by the countercyclical capital buffer rate set for sector j in country i minus the rate set for the total risk exposure amount for country i, if it is positive, and by its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relate to the relevant credit exposures for sector j in country i, and divide the result by its total own funds requirements for credit risk that relate to all of its relevant credit exposures.

5. Relevant credit exposures shall include all those exposures that, due to their characteristics, cannot be classified in any of the exposure classes referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, irrespective of the credit risk method applied by the institution to calculate the related own funds requirements, that are subject to:

(a) The own funds requirements for credit risk under Part Three, Title II of that Regulation.

(b) Where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation.

(c) Where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

6. Credit institutions shall identify the geographical location of a relevant credit exposure in accordance with the regulatory technical standards referred to in Article 140(7) of Directive No 2013/36/EU, set out in Commission Delegated

Regulation (EU) No 1152/2014 or in any other instrument repealing or amending it.

7. The countercyclical buffer rate applicable to exposures located in Spain shall be determined in accordance with Rules 9 and 12 bis of this Circular.

8. The countercyclical buffer rate applicable to exposures located in other EU Member States shall be determined in accordance with Rules 10 and 12 bis of this Circular.

9. The countercyclical buffer rate applicable to exposures located in non-EU countries shall be determined in accordance with Rules 11 and 12 bis of this Circular.

10. In accordance with the provisions of Article 60 of Royal Decree 84/2015, for the purposes of the calculation under paragraph 3 of this rule:

(a) Where the countercyclical buffer rate applicable to the total risk exposure amount for exposures located in Spain is increased, that rate shall apply from the date specified in the information published in accordance with Rule 9 of this Circular.

(b) Where the countercyclical buffer rate applicable to the total risk exposure amount for exposures located in other EU Member States is increased, that rate shall apply from the date specified in the information published in the relevant Member State in accordance with its respective legislation, unless the rate exceeds 2.5% and the Banco de España recognises that rate in accordance with Rule 12 of this Circular; in that case regard shall be had to what is envisaged in said recognition.

(c) Without prejudice to the provisions of point (d) below, if a countercyclical buffer rate applicable to the total risk exposure amount for exposures located in a non-EU country is increased, that rate shall apply 12 months after the date on which the increase in the buffer rate was announced by that country's relevant authority, irrespective of whether that authority requires institutions incorporated in that country to apply the change within a shorter period. A change in the countercyclical buffer rate for a non-EU country shall be considered to have been announced on the date that it is published by that country's relevant authority in accordance with the applicable national rules.

(d) Where the Banco de España sets the countercyclical buffer rate for a non-EU country pursuant to Rule 11 of this Circular, or recognises the countercyclical buffer rate for a non-EU country pursuant to Rule 12 of this

Circular, if the buffer rate is increased, that rate shall apply from the date specified in the information published in accordance with paragraph 3 and point (b), respectively, of said rules.

(e) A countercyclical buffer rate shall apply immediately where it is reduced.

11. For the purposes of the calculation under paragraph 4 of this rule:

(a) Where the countercyclical buffer rate for exposures located in Spain to a sector is increased, that rate shall apply from the date specified in the information published in accordance with Rule 12 bis of this Circular.

(b) Where the Banco de España recognises a countercyclical buffer rate for exposures located in other EU Member States or non-EU countries to a sector, that rate shall apply from the date determined by the Banco de España in accordance with Rule 12 bis of this Circular.

(c) A countercyclical buffer rate shall apply immediately where it is reduced, except as provided for in Rule 12 bis(11) of this Circular.”

(d) Rules 12 bis and 67 are introduced, which read as follows:

*“Rule 12 bis. Countercyclical buffer rate for risk exposure to one or several sectors applicable to exposures located in Spain and possibility of recognising countercyclical buffer rates for risk exposure to a sector applicable to exposures located in other countries.*

1. In order to determine the rate applicable to the risk exposure amount for one or several sectors, the Banco de España shall assess and monitor the quantitative relevance of the different sectors or classes of credit institutions’ credit exposures and a number of indicators for each of the sectors or classes.

2. For the purposes of paragraph 1 of this rule, risk exposures to the following sectors are identified, irrespective of the credit risk method applied by the institution to calculate the related own funds requirements:

(a) Non-financial corporations and sole proprietorships (business activity), as defined in Rule 66(6)(b) and Rule 66(6)(c)(ii) of Circular 4/2017, respectively, pursuing an economic activity classified as “real estate development” or “real estate activities”, in accordance with the Annex to Royal Decree 475/2007 of

13 April 2007, approving the National Classification of Economic Activities (CNAE-2009<sup>6</sup>). With respect to sole proprietorships (business activity), transactions performed by sole proprietors shall only be taken into account where they are for the purpose of their business activity.

(b) Non-financial corporations and sole proprietorships (business activity), as defined in Rule 66(6)(b) and Rule 66(6)(c)(ii) of Circular 4/2017, respectively, pursuing an economic activity not classified as “real estate development” or “real estate activities”, in accordance with the Annex to Royal Decree 475/2007. With respect to sole proprietorships (business activity), transactions performed by sole proprietors shall only be taken into account where they are for the purpose of their business activity.

(c) Households, as defined in Rule 66(6)(c) of Circular 4/2017, in receipt of a housing loan, in accordance with Rule 69(2)(e)(i) of Circular 4/2017, exclusively for the amount of that housing loan, save where the institution knows that such housing is predominantly used for purposes relating to the owners’ business activities, whether as a sole proprietorship or via an entity without independent legal status.

(d) Households, as defined in Rule 66(6)(c) of Circular 4/2017, for any financing not included in point (c) of this paragraph, and not including the sole proprietorships (business activity) listed in points (a) and (b) above. Thus, only transactions granted to sole proprietorships that the institution knows are used predominantly for personal consumption shall be included.

Exposures secured by any type of personal guarantee shall be attributed to the sector of the principal obligor, without prejudice to the determination of their own funds requirements for credit risk in accordance with Rule 8 of this Circular.

3. In particular, the following indicators will be used by the Banco de España for the assessment, monitoring and determination of the rate applicable to the risk exposure amount for one or more sectors for exposures located in Spain:

(i) Loans to the sectors considered, in absolute value, both in nominal terms and deflated by the related price indicator, and in relative terms as a percentage of GDP, disposable income and gross value added in each sector.

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<sup>6</sup> CNAE-2009 is the Spanish implementation of NACE Rev. 2.

(ii) Growth and changes in the measures considered in (i) above, together with the estimated deviation of these measures from their long-term trends.

(iii) Indicators on the degree of financial imbalance in the sectors analysed, including variables such as the saving rate, net lending/net borrowing, and the debt-to-disposable income and debt-to-gross value added ratios.

(iv) Level of, changes in, and deviation from the long-term trend of asset prices relevant for monitoring cyclical imbalances in each sector, including purchase and rental prices in the real estate market.

(v) Any other quantitative or qualitative information deemed relevant by the Banco de España.

4. The Banco de España shall periodically assess the changes in the indicators set out in paragraph 3 of this rule. On the basis of that assessment, the Banco de España shall, where applicable, set the appropriate countercyclical buffer rate for the risk exposure to one or several sectors when the indicators set out in paragraph 3 of this rule point to cyclical sectoral imbalances that it considers may entail serious damage to the Spanish financial system and real economy. In doing so, it shall bear in mind the following:

(i) The countercyclical buffer rate calculated in accordance with Rule 9 of this Circular.

(ii) The recommendations issued by the ESRB.

(iii) Any other variables deemed relevant by the Banco de España.

In the event that the Banco de España deems it necessary to set a countercyclical buffer rate for the risk exposure amount for one or several sectors, it shall notify the institutions affected, which shall have ten working days in which to file such submissions as may be appropriate.

5. The Banco de España may decide to set a countercyclical buffer rate for the risk exposure amount for one or several sectors or classes simultaneously when it is deemed to be a more effective macroprudential tool.

6. The Banco de España, in accordance with paragraph 4 of this rule, shall determine the countercyclical buffer rate, expressed as a percentage of the

risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 for the sector or class under paragraph 2 of this rule and corresponding to credit exposures in Spain. This rate will be between 0% and 5%, calibrated in steps or multiples of 0.25 percentage points. Where justified on the basis of the considerations set out in paragraph 1, the Banco de España may set a countercyclical buffer rate in excess of 5%.

7. Where the Banco de España decides to set for the first time a countercyclical buffer rate for the risk exposure to one or several sectors simultaneously that is higher than zero, or where it subsequently increases the existing buffer rate, it shall also decide the date from which institutions shall apply that rate for the purposes of calculating their respective countercyclical buffer for the risk exposure to the sector(s) in question. That date shall be six months after the date when a buffer or buffer increase is announced in accordance with paragraph 9 of this rule, save in duly justified exceptional circumstances when a shorter deadline may apply.

8. If the Banco de España reduces the countercyclical buffer rate set for the risk exposure amount for a sector, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer rate is expected. However, that indicative period shall not be binding.

9. Without prejudice to the notification to the institutions affected of the resolution adopted under paragraph 4, the Banco de España shall announce on its website the countercyclical buffer rate applicable to the risk exposure amount for one or several sectors, together with the sectors or exposure classes affected. The announcement shall include the following information:

(a) The applicable countercyclical buffer rate.

(b) The sectors or classes of credit exposures in Spain to which it will apply.

(c) A justification for that buffer rate.

(d) The guidance needed to properly apply the requirement.

(e) Where the buffer rate is set for the first time or increased, the date from which the institutions must apply that rate for the purposes of calculating their countercyclical capital buffer requirements.

(f) Where the date referred to in point (e) is less than six months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(g) Where the buffer rate is reduced, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

(h) Any other information that the Banco de España may deem appropriate in light of the recommendations issued by the ESRB in accordance with Article 135(1) of Directive 2013/36/EU or by other international organisations.

10. The decision to set a countercyclical buffer rate applicable to the risk exposure to one or several sectors shall apply until, in the opinion of the Banco de España, the systemic risk ceases to exist.

11. Where the Banco de España decides to reduce the countercyclical buffer rate applicable to the risk exposure amount for one or several sectors, whether or not it is reduced to zero, and in turn decides to set for the first time a countercyclical buffer rate on the total risk exposure amount that is above zero, or increase the existing rate, it may set the effective date of the decrease in the countercyclical buffer rate applicable to the risk exposure amount for one or several sectors as the date on which the first or increased countercyclical buffer rate becomes effective.

12. Without prejudice to compliance with the statutory confidentiality obligations, the Banco de España shall provide the designated authorities of other Member States and the relevant authorities of third countries with the necessary information for them to recognise, where appropriate, the determination of the countercyclical buffer for risk exposure to the sector(s) in question and apply it to institutions authorised in their respective territories that have branches or exposures in Spain.

13. Where a designated authority of another EU Member State or the relevant authority of a non-EU country has set a countercyclical buffer rate applicable to a risk exposure to a sector or an equivalent measure, the Banco de España may recognise such measure for the purposes of the calculation by all of the institutions authorised in Spain of their countercyclical buffer requirements, in line with the formula set out in Rule 8(2) of this Circular.

In the event that the Banco de España recognises a countercyclical buffer rate for a risk exposure to a sector set by another designated or relevant authority, it shall announce such recognition on its website, without prejudice to the notification to all of the institutions affected by the decision adopted under

paragraph 4. The announcement shall include at least the following information:

(i) The applicable countercyclical buffer rate and the exposures on which the calculation must be based.

(ii) The Member State or non-EU country to which it applies.

(iii) Where the buffer rate is set for the first time or increased, the date from which the institutions authorised in Spain must apply that increased rate for the purposes of calculating their countercyclical capital buffer requirements.

(iv) Where the date referred to in (iii) above is less than six months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that warrant that shorter deadline for application.”

“Rule 67. *Periodic information to be reported on the risk exposure to the sectors detailed in Rule 12 bis(2).*

1. Institutions must submit to the Banco de España template SCCyB1, included in Annex IX of this Circular, to provide a breakdown of the relevant sectoral exposures located in each particular territory, determined in line with Rule 8(6) of this Circular, adding the sectoral dimension to the breakdown by countries, as provided for in Rule 12 bis(2) of this Circular.

Template	Name	Frequency
SCCyB1	Breakdown of credit exposures for calculating the sectoral component of the countercyclical capital buffer by country and sector, and percentage thereof.	Quarterly

2. Template SCCyB1 must be submitted to the Banco de España, in accordance with the scope of the requirement established in Rule 8(1) of this Circular, by any institutions obliged to report on prudential requirements, pursuant to the provisions of Article 430(1)(a) of Regulation (EU) No 575/2013, as well as by the branches of credit institutions with head offices in non-EU countries obliged to report that same information, and having regard to the following:

(a) Consolidated groups of credit institutions, as defined in Regulation (EU) No 575/2013, whose parent meet any of the definitions in Article 4(1), points (28), (29c), (29d) and (30) to (33), of Regulation (EU) No 575/2013, or those referred to in Article 11(2) of the same Regulation, must submit such information on a consolidated basis. Institutions submitting sub-consolidated information per

the provisions of Article 11(6) or Article 22 of Regulation (EU) No 575/2013 must also submit this template on a sub-consolidated basis.

(b) Individual credit institutions incorporated in Spain, whether forming part of a consolidated group of credit institutions or otherwise, must submit such information on an individual basis, provided they have not been exempted from individual compliance with the obligations laid down in Article 430(1)(a) of Regulation (EU) No 575/2013, in line with the provisions of Articles 7 and 10 of the above Regulation.

(c) Branches of credit institutions with head offices in non-EU countries must submit such information at branch level, provided they have not been exempted from compliance with the obligations laid down in Rule 4(1) of this Circular.”

(e) A new Chapter 10 is added, which reads as follows:

## “CHAPTER 10

### **Sectoral concentration limits**

Rule 68. *Aims.*

The Banco de España shall adopt the measures envisaged in this chapter where the establishment of concentration limits for an economic sector helps to safeguard financial stability, bolstering the solvency of the financial system and reducing the build-up of systemic risk, thereby ensuring that the financial system makes a sustainable contribution to economic growth.

Rule 69. *Definitions.*

1. The terms and concepts used in this chapter shall be understood in line with the definitions set out in Regulation (EU) No 575/2013, Law 10/2014 and its implementing regulations, and the provisions of paragraph 2 of this rule.

2. For the purposes of this chapter, the following definitions apply:

(a) “Concentration”: The ratio between an institution’s total credit exposure to an economic sector and its Common Equity Tier 1 capital.

(b) “Aggregate concentration”: The ratio between the aggregate credit exposure of all institutions to an economic sector and their aggregate Common Equity Tier 1 capital.

(c) “Credit exposure”: an institution’s exposure to any financial instruments, as defined in Rule 19 of Circular 4/2017 and valued by their gross carrying amount, in line with Rule 12(11) of Circular 4/2017. Regard shall be had only to credit exposures that, due to their characteristics, cannot be classified in any of the exposure classes referred to in points (a) to (e) of Article 112 of Regulation (EU) No 575/2013, irrespective of the credit risk method used by the institution to calculate the relevant own funds requirements. Moreover, only credit exposures located in Spain shall be taken into account. The geographical location of credit exposures shall be determined in accordance with the regulatory technical standards referred to in Article 140(7) of Directive 2013/36/EU, set out in Commission Delegated Regulation (EU) No 1152/2014 or in any other instrument repealing or amending it.

(d) “Total credit exposure of an institution”: An institution’s total credit exposures located in Spain.

(e) “Aggregate credit exposure”: The total credit exposure of all institutions.

(f) “Aggregate Common Equity Tier 1 capital”: The total Common Equity Tier 1 capital of all institutions.

(g) “Economic sector”: One of the following sectors:

(i) Other financial corporations, as identified in Rule 66(6)(a) of Circular 4/2017.

(ii) Non-financial corporations and sole proprietorships (business activity), as defined in Rule 66(6)(b) and Rule 66(6)(c)(ii) of Circular 4/2017, respectively, pursuing an economic activity classified as “real estate development” or “real estate activities”, in accordance with the Annex to Royal Decree 475/2007 of 13 April 2007, approving CNAE-2009<sup>7</sup>. With respect to sole proprietorships (business activity), transactions performed by sole proprietors shall only be taken into account where they are for the purpose of their business activity.

(iii) Non-financial corporations and sole proprietorships (business activity), as defined in Rule 66(6)(b) and Rule 66(6)(c)(ii) of Circular 4/2017, respectively, pursuing an economic activity not classified as “real estate development” or “real estate activities”, in accordance with the Annex to Royal Decree

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<sup>7</sup> CNAE-2009 is the Spanish implementation of NACE Rev. 2.

475/2007. With respect to sole proprietorships (business activity), transactions performed by sole proprietors shall only be taken into account where they are for the purpose of their business activity.

(iv) Households, as defined in Rule 66(6)(c) of Circular 4/2017, in receipt of a housing loan, in accordance with Rule 69(2)(e)(i) of Circular 4/2017, exclusively for the amount of that housing loan, save where the institution knows that such housing is predominantly used for purposes relating to the owners' business activities, whether as sole proprietors or via an entity without independent legal status.

(v) Households, as defined in Rule 66(6)(c) of Circular 4/2017, for any financing not included in (iv) above, and not including the sole proprietorships (business activity) listed in (ii) and (iii) above. Thus, only transactions granted to sole proprietorships that the institution knows are used predominantly for personal consumption shall be included.

(vi) Credit institutions, as defined in Article 4(1)(1) of Regulation (EU) No 575/2013.

Exposures secured by any type of personal guarantee shall be assigned to the sector of the principal obligor. Nonetheless, in the case of exposures whose principal obligor belongs to any of the sectors referred to in point (g) above, guaranteed by parties also belonging to one of the above sectors:

– Where the principal obligor and the guarantor belong to the same sector to which the measure applies, the exposure shall be assigned to the principal obligor.

– Where the principal obligor and the guarantor belong to different sectors, and the concentration limits apply only to a sector to which one of them belongs, the exposure shall be assigned to the sector to which the measure has been applied, whether that of the principal obligor or that of the guarantor, in the latter case for the guaranteed amount. Where both the sector to which the principal obligor belongs and the sector of the guarantor are affected by (identical or different) sectoral concentration limits, the exposure shall be assigned to both sectors. In the case of partial guarantees, the exposure to the guarantor shall be for the amount guaranteed.

*Rule 70. Setting of a concentration limit for an economic sector.*

1. The Banco de España shall calculate the institutions' concentration in an economic sector based on the confidential financial information reported to it by institutions pursuant to Title II of Circular 4/2017, Title II of Circular 4/2019 and Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014.

2. Based on the information obtained in accordance with the preceding paragraph, the Banco de España shall periodically assess whether a concentration limit should be set for an economic sector, based on the indicators envisaged in Rule 12 bis(4) and, additionally, on the following:

- (a) Aggregate concentration, and how it changes over time.
- (b) The concentration for sets of institutions, and how it changes over time.
- (c) The credit exposure as a share of the nominal gross domestic product published by the National Statistics Institute<sup>8</sup> and how it has changed, as well as of the components of gross domestic product most directly related to the economic sector involved.
- (d) An assessment of the existing systemic risk in Spain.
- (e) The phase of the credit cycle in which the financial system finds itself.
- (f) The potential effects on the real economy of the adoption of measures relating to concentration in an economic sector.
- (g) Any criteria that may be established by the ESRB, the European Banking Authority (EBA), the European Central Bank, the IMF, the Financial Stability Board or the BCBS, or any other European or international bodies or authorities, in relation to macroprudential goals, instruments or indicators.

3. Based on the results obtained from the analysis referred to in the preceding paragraph, the Banco de España may decide to set a concentration limit for an economic sector, or to maintain, modify or end the application of an existing limit. The Banco de España shall notify its decision to the institutions

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<sup>8</sup> Instituto Nacional de Estadística (INE).

affected, which shall have ten working days in which to file such submissions as may be appropriate.

*Rule 71. Application of a concentration limit for an economic sector.*

1. The concentration limit shall be the same for the target institutions and shall be expressed as a percentage of the Common Equity Tier 1 capital. Nonetheless, having regard to the nature of the business of some institutions (e.g. those specialising in a particular sector) or to other characteristics, such as size, the Banco de España may exempt them from applying the established limit or set the limit at a different level from that set for the other target institutions.

2. The limit shall apply with respect to one of the economic sectors included in Rule 69(2)(g) or to several of them simultaneously.

Where the Banco de España establishes concentration limits, institutions shall have a transition period of six months in which to apply them, save in duly justified exceptional circumstances, in which a period other than six months may be determined.

3. The limit shall apply during a period of time that shall not exceed 2 years. That period may be extended, where the Banco de España deems it necessary, in line with the criteria set out in Rule 70(2).

4. Periodically, and in any event at least once every six months, the Banco de España shall assess the impact of the concentration limit set.

*Rule 72. Publication of a concentration limit for an economic sector.*

Notwithstanding the notification of the decision adopted to the institutions affected, the Banco de España shall publish an announcement on its website, including the following information:

(a) The conclusions drawn with respect to the analysis referred to in Rule 70(2).

(b) The concentration limit the Banco de España has decided to set for an economic sector.

(c) The set of institutions exempt from application of the limit or, as the case may be, to which a different level applies in line with Rule 71(1).

(d) The period during which the limit applies.

(e) The factors deemed relevant by the Banco de España when deciding to set a limit.

(f) The reasons why the limit is sufficient, necessary and reasonable to address the systemic risk identified by the Banco de España.

(g) An assessment of the probable impact of complying with the limit.

(h) Any other information deemed pertinent by the Banco de España.

The same information shall be published where the Banco de España decides to maintain or modify the measure adopted.

*Rule 73. Compliance with the concentration limit for an economic sector.*

1. Where an institution anticipates that it will be unable to comply with the measure adopted on the date on which it enters into force, it shall notify the Banco de España without delay, submitting, within one month of the date on which the adoption of the measure is notified, a plan setting out the steps the institution plans to take in order to comply with the concentration limit set and a schedule with the phases it will follow until it complies with the limit. As a provisional measure until the plan has been approved, the Banco de España may impose limits on any new transactions performed by the institution with the sector(s) for which concentration limits have been envisaged.

2. The plan shall take into account the extent to which the institution cannot comply with the measure.

3. The Banco de España shall assess the plan submitted and, where appropriate, shall approve it where it considers that, if executed, the concentration limit set by the Banco de España may reasonably be expected to be met by the deadlines envisaged. The schedule of adjustments set out in the plan shall not envisage a deadline for complying with the limit that falls more than 3 months after the date on which the measure enters into force.

Rule 74. *Publication of the elimination of a concentration limit for an economic sector.*

Notwithstanding the notification of the decision adopted to the institutions affected, where the Banco de España considers that a concentration limit for an economic sector should be eliminated, it shall publish an announcement on its website, including, at least, the following information:

- (a) The decision to eliminate the concentration limit.
  - (b) The date as from which the limit shall effectively be eliminated.
  - (c) The factors deemed relevant by the Banco de España when deciding to eliminate the limit.”
- (f) A new Chapter 11 is added, which reads as follows:

## “CHAPTER 11

### **Other macroprudential tools**

Rule 75. *Imposition of limits and conditions for the granting of loans and other transactions secured by a mortgage over residential properties or over commercial properties to households and non-financial corporations and sole proprietorships (business activity) located in Spain.*

1. Where, based on an assessment of the indicators detailed in paragraph 3 of this rule, the Banco de España concludes that the policies and criteria being used by institutions to grant loans and other transactions secured by a mortgage over residential properties or over commercial properties to households and non-financial corporations and sole proprietorships (business activity) in Spain could adversely affect the intensity of systemic risk in the financial system, such that they may entail serious negative consequences for the financial system and Spain’s real economy, it may impose limits and conditions for the granting of such loans and transactions, pursuant to the provisions of Article 69 quater of Law 10/2014 and Article 15(1)(c) of Royal Decree 102/2019.

When doing so, in addition to assessing the indicators detailed in paragraph 3 of this rule, the Banco de España shall have regard to the following:

(i) The measure does not entail effects on the whole or parts of the financial system of other Member States or of the Union as a whole that may be or create an obstacle to the functioning of the internal market.

(ii) The recommendations issued by the ESRB.

(iii) Any other criteria that the Banco de España may consider appropriate.

The measure adopted may consist of imposing limits or conditions on the financial characteristics or other aspects of transactions, in accordance with paragraph 6 of this rule, or on the policies or criteria used by institutions to assess borrower solvency, income and level of indebtedness for the purposes of granting transactions, based on the ratios referred to in paragraph 7 of this rule.

For the purposes of this chapter, the following definitions apply:

(a) “Commercial property”: Any property, whether built or at the development phase, that generates or may generate income, including rented properties that are suitable for residential use where used for a business activity, or properties held by their owner to pursue their business or commercial purposes or activities of any nature, whether built or under construction. In particular, real estate developments shall be deemed to constitute commercial properties for the purposes of this chapter, as shall all building plots, with the exception of those referred to in point (b) below.

(b) “Residential property”: Any property available for housing purposes, acquired, built or refurbished by a natural person, whether built or under construction, including properties suitable for residential use bought to let by a natural or legal person, even where the lease is arranged on a seasonal basis. Storerooms and garages annexed to housing shall also be deemed to constitute residential properties. Building plots for self-build housing shall also be deemed to constitute residential properties.

In the event that a property is used simultaneously as a commercial and a residential property, it shall be deemed to constitute different properties (based, e.g. on the floor area allocated for each use), provided such a breakdown is possible; otherwise, the property may be classified based on its predominant use.

(c) “Loans and other transactions”: Any credit exposure, in accordance with Rule 69(2)(c).

(d) “Loans and other transactions secured by a mortgage over commercial properties”: Any credit exposure, in accordance with Rule 69(2)(c), secured by a mortgage over a property deemed commercial in accordance with point (a) above, regardless of the purpose for which the transaction is sought.

(e) “Loans and other transactions secured by a mortgage over residential properties”: Any credit exposure, in accordance with Rule 69(2)(c), secured by a mortgage over a property deemed residential in accordance with point (b) above, regardless of the purpose for which the transaction is sought.

(f) “Households, non-financial corporations and sole proprietorships (business activity)”: Those referred to in Rule 69(2)(g) of this Circular.

3. In order to assess, monitor and determine the need to impose limits and conditions for the granting of loans and other transactions, in accordance with paragraph 1 of this rule, the Banco de España shall use, inter alia, the following indicators in addition to those detailed in Rule 70(2):

–Indicators on borrower indebtedness, income and solvency and their change over time, including those referred to in paragraph 7 of this rule.

–The level of the indicators (ratios) used by institutions to grant loans and other transactions, also referred to in paragraph 7 of this rule, for a significant percentage of the credit portfolio, and their change over time.

–Any other indicators relating to the granting of loans and other transactions that the Banco de España may deem relevant.

4. The Banco de España shall assess and continuously monitor the indicators referred to in paragraph 3 of this rule and, where applicable, the extent to which the aims have been met as a result of a measure already imposed, with a view to adopting, in due course, any decision to impose, maintain, recalibrate, review or bring an end to a measure. Where, based on such assessment, the Banco de España considers that the relevant decision must be adopted, it shall, where applicable, notify the institutions affected, which shall have ten working days in which to file such submissions as may be appropriate.

Where the Banco de España establishes limits and conditions in accordance with paragraph 1 of this rule, institutions shall have a transition period of 6 months in which to apply them, save in duly justified exceptional circumstances, in which a period other than 6 months may be determined.

The limits and conditions shall apply indefinitely, unless the decision establishing them sets their duration.

In the event that the recalibration or review of the measures adopted entails a relaxation of one or more of the limits and conditions initially established, the decision may apply immediately or within the period set out in the decision to modify the measure.

5. The new limits and conditions shall apply to any new exposures secured by mortgages over residential or commercial properties as from the date set in accordance with paragraph 4 of this rule.

For the purposes of this rule, new exposures refer to any that entail a contractual relationship between a credit institution and a borrower that did not exist beforehand or, where it did exist, that has been refinanced, restructured, renewed or renegotiated, and executed in a public deed as from the date envisaged in paragraph 4 of this rule. Moreover, for the purposes of this rule, new exposures refer to any granted by the institution itself or by other institutions in its group to the borrower (or borrowers) or to one or more other businesses in its group, pursuant to the provisions of Annex 9(18) to (25) of Circular 4/2017; the subrogation of purchasers to the mortgage loans of developers and, in general, any other type of mortgage subrogation or novation.

Where the policies and criteria for the granting of loans and other transactions established by credit institutions as a means of managing credit and counterparty risk in line with the requirements under Title II, Chapter I of Royal Decree 84/2015 are stricter than the limits and conditions set by the Banco de España in line with this rule, institutions must at all times apply the stricter internal policies and criteria over those established by the Banco de España for this macroprudential tool.

6. The limits and conditions that the Banco de España may impose with respect to the financial characteristics and other aspects of transactions include the following:

(a) Limiting the maturity of transactions.

(b) Limiting the grace period of transactions.

(c) Setting a minimum repayment requirement for the loan principal.

7. The Banco de España may apply limits and conditions on ratios for assessing borrower solvency, income and level of indebtedness and on those used by institutions to grant loans and other transactions, such as, inter alia, the following:

- (a) Loan to value (LTV).
- (b) Loan to price (LTP).
- (c) Loan to income (LTI).
- (d) Loan service to income (LSTI).
- (e) Debt to income (DTI).
- (f) Debt service to income (DSTI).
- (g) Interest coverage ratio (ICR).
- (h) Loan to rent (LTR).

Moreover, for non-financial corporations, the following ratios shall be considered:

- (a) Loan to assets (LTA).
- (b) Debt to assets (DTA).

The formulas for calculating each ratio shall be those detailed in Annexes IV and V of the ESRB Recommendation of 31 October 2016 (ESRB/2016/14) on closing real estate data gaps.

In line with the ESRB Recommendation, the values of the above ratios may be considered either at origination or at current value.

For the purposes of paragraph 3 and of this paragraph, unless the decision on the measure otherwise provides, at the level of each institution the

aggregate value of each ratio shall be calculated as a weighted average of the ratios calculated individually for each transaction, using the amount of said transaction for weighting purposes.

In the case of non-financial corporations and sole proprietorships (business activity), income shall be taken to be EBITDA. For the purposes of this rule, EBITDA is calculated as the difference between the income originating from the productive activity and the expenses deriving from such activity, not including taxes, interest, provisions, depreciation and amortisation.

Where a non-financial corporation is part of a group of companies, unless the decision on the measure otherwise provides, the data considered for the purposes of paragraph 3 and this paragraph shall be those corresponding to both the corporation and the consolidated group.

The foregoing notwithstanding the fact that, pursuant to paragraph 8 of this rule, the decision on the measure may include the provisions necessary to complete the definitions of the ratios referred to in this section, including by reference to definitions set out in other circulars and their implementing technical standards and to definitions included in international standards and recommendations, e.g. from the EBA or the ESRB, or in other rules and regulations, such as those concerning the mortgage market or real estate loan agreements.

8. Notwithstanding the notification to the institutions affected of the decision adopted in line with paragraph 4, the Banco de España shall announce the measure on its website. The announcement shall include the following information:

(a) The mortgage-backed exposures affected.

(b) The limits and conditions imposed on transactions or the ratio(s) on borrower solvency, income and level of indebtedness to which the limits and conditions for the granting of transactions apply, as well as the level thereof.

(c) The definition of the ratio(s) affected by the measure and the related calculation method, where it proves necessary to supplement the provisions of paragraph 7 of this rule.

(d) The guidance needed to properly apply the measure.

(e) A justification of the measure.

(f) The date of application of the measure and, where applicable, the duration thereof.

(g) Any other data the Banco de España may deem appropriate, particularly in light of potential ESRB recommendations.

9. The level of the measure established by the Banco de España may differ depending on the type of property, its use, location, etc. Moreover, provisions may be made for flexibility quotas (“speed limits”) or exemptions from application of the measure, such as allowing a percentage of new loans not subject thereto.

In the case of measures concerning ratios, the Banco de España may determine a measure based on one or several ratios considered individually or a combination thereof. Moreover, the relevant measure may be applied to stressed ratios where the exposure’s interest rate is variable or where the exposure is denominated in foreign currency.

To determine a measure, the Banco de España may take into account, *inter alia*, the currency of the loan, whether the interest rate is fixed or variable, the type of property used as collateral, its use (main residence, second home, lease), whether it is a first purchase of a main residence, the property appraisal value and the socio-economic characteristics of the borrower.

10. In the absence of financial stability reasons, an excessive increase in bank risk or excessive borrowing that might justify the application of a measure across the board, the Banco de España may afford a different treatment or even an exemption to loans for financing government-sponsored or social housing or housing eligible for similar public support, or specialised lending for civil engineering works, among others. In particular, it may afford differentiated treatment to non-financial corporations and sole proprietorships (business activity) or exclude them from the application of the measure based on the number of years during which they have pursued the relevant economic activity, their size (measured by turnover, total assets, headcount, etc.) or their sector of activity. Moreover, the Banco de España may exempt transactions subject to refinancing, restructuring, rollover or renegotiation from application of the measure.

11. When determining a measure, the Banco de España may adjust its implementation based on institutions’ subjective circumstances (e.g. their size or specialisation), where necessary to safeguard the stability of the financial system.

*Rule 76. Imposition of limits and conditions for the granting of loans and other transactions not secured by a mortgage over properties to households and non-financial corporations and sole proprietorships (business activity) located in Spain.*

1. Where, based on an assessment of the indicators detailed in paragraph 2 of this rule, the Banco de España concludes that the policies and criteria used by institutions to grant non-mortgage loans and other transactions to households and non-financial corporations and sole proprietorships (business activity) in Spain could adversely affect the intensity of systemic risk in the financial system, such that they may entail negative consequences for the financial system and Spain's real economy, it may impose limits and conditions for the granting of such loans and transactions, pursuant to the provisions of article 69 quater of Law 10/2014 and Article 15(1)(c) of Royal Decree 102/2019.

When doing so, in addition to assessing the indicators detailed in paragraph 2 of this rule, the Banco de España shall have regard to the following:

(i) The measure does not entail effects on the whole or parts of the financial system of other Member States or of the Union as a whole that may be or create an obstacle to the functioning of the internal market.

(ii) The recommendations issued by the ESRB.

(iii) Any other criteria that the Banco de España may consider appropriate.

The measure adopted may consist of imposing a limit or condition on the financial characteristics or other aspects of the transactions, in accordance with paragraph 5 of this rule, or on the policies or criteria used by institutions to assess borrower or counterparty solvency, income and level of indebtedness for the purposes of granting transactions, based on the ratios referred to in paragraph 6 of this rule.

2. In order to assess, monitor and determine the need to impose limits and conditions for the granting of loans and other transactions, in accordance with paragraph 1 of this rule, the Banco de España shall use, inter alia, the relevant indicators detailed in Rule 75(3).

3. The Banco de España shall assess and continuously monitor the indicators referred to in paragraph 2 of this rule and, where applicable, the extent to which the aims have been met as a result of a measure already imposed, with a view to adopting, in due course, any decision to impose, maintain,

recalibrate, review or bring an end to a measure. Where, based on such assessment, the Banco de España considers that the relevant decision must be adopted, it shall, where applicable, notify the institutions affected, which shall have ten working days in which to file such submissions as may be appropriate.

Where the Banco de España establishes limits and conditions in accordance with paragraph 1 of this rule, institutions shall have a transition period of six months in which to apply them, save in duly justified exceptional circumstances, in which a period other than six months may be determined.

The limits and conditions shall apply indefinitely, unless the decision establishing them sets their duration.

In the event that the recalibration or review of the measures adopted entails the relaxation of one or more of the limits and conditions initially established, the decision may apply immediately or within the period set out in the decision to modify the measure.

4. The new limits and conditions shall apply to any new exposures not secured by mortgages over properties as from the date set in accordance with paragraph 3 of this rule.

For the purposes of this rule, new exposures refer to any that entail a contractual relationship between a credit institution and a borrower or counterparty that did not exist beforehand or, where it did exist, that has been refinanced, restructured, renewed or renegotiated at the date envisaged in paragraph 3 of this rule. Moreover, for the purposes of this rule, new exposures refer to any granted by the institution itself or by other institutions in its group to the borrower (or borrowers) or to one or more other businesses in its group, pursuant to the provisions of paragraphs 18 to 25 of Annex 9, of Circular 4/2017. In the case of transactions in derivatives, new transactions refer to the new positions with the counterparty even where they are part of a single framework contract.

Where the policies and criteria for the granting of loans and other transactions established by credit institutions as a means of managing credit and counterparty risk in line with the requirements under Title II, Chapter I of Royal Decree 84/2015 are stricter than the limits and conditions set by the Banco de España in line with this rule, institutions must at all times apply the stricter internal policies and criteria over those established by the Banco de España for this macroprudential tool.

5. The limits and conditions that the Banco de España may impose on transactions shall be, inter alia, those set out in Rule 75(6) of this Circular.

6. The Banco de España may apply limits and conditions, inter alia, to some or all of the ratios for assessing borrower or counterparty solvency, income and level of indebtedness detailed in Rule 75(7), save those referred to in points (a), (b) and (h) thereof, and in line with the definitions and other provisions established therein.

7. Notwithstanding the notification to the institutions affected of the decision adopted in line with paragraph 3, the Banco de España shall announce the measure on its website. The announcement shall include the following information:

(a) The non-mortgage exposures and types of derivatives and counterparties affected.

(b) The economic sector(s) affected by the measure.

(c) The limits and conditions imposed on transactions or the ratio(s) on borrower or counterparty solvency, income and level of indebtedness to which the limits and conditions for granting transactions apply, as well as the level thereof.

(d) The definition of the ratio(s) affected by the measure and the related calculation method, where it proves necessary to supplement the provisions of Rule 75(7) of this Circular.

(e) The guidance needed to properly apply the measure.

(f) A justification of the measure.

(g) The date of application of the measure and, where applicable, the duration thereof.

(h) Any other data the Banco de España may deem appropriate, particularly in light of potential ESRB recommendations.

8. The Banco de España may establish a measure that affects one or several economic sectors or sub-sectors, or even extend it to all non-financial

corporations and sole proprietorships (business activity). Moreover, provision may be made for flexibility quotas (“speed limits”) or exemptions from application of the measure, such as allowing a percentage of new loans not subject thereto.

In the case of measures concerning ratios, the Banco de España may determine a measure based on one or several ratios considered individually or a combination thereof. Moreover, the Banco de España may apply the relevant measure to stressed ratios where the exposure’s interest rate is variable or where the exposure is denominated in foreign currency.

To determine a measure, the Banco de España may take into account, *inter alia*, the currency of the loan or whether the interest rate is fixed or variable.

9. In the absence of financial stability reasons, an excessive increase in bank risk or excessive borrower or counterparty indebtedness that might justify the application of a measure across the board, the Banco de España may afford differentiated treatment or even an exemption to certain exposures where, due to their characteristics or the collateral effects of their application, it has been decided that a different treatment is appropriate or that such exposures need not be made subject thereto. In particular, it may afford differentiated treatment to non-financial corporations and sole proprietorships (business activity) or exclude them from the application of the measure based on the number of years during which they have pursued the relevant economic activity, their size (measured by turnover, total assets, headcount, etc.) or their sector of activity. Moreover, the Banco de España may exempt transactions subject to refinancing, restructuring, rollover or renegotiation from application of the measure.

10. When determining a measure, the Banco de España may adjust its implementation based on institutions’ subjective circumstances, (e.g. their size or specialisation) where necessary to safeguard the stability of the financial system.”

(g) A new Annex IX is introduced, with the SCCyB1 template, in the Annex to this Circular.

**Sole final provision.** *Entry into force.*

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

**ANNEX**  
**ANNEX IX**

SCCyB1 - BREAKDOWN OF CREDIT EXPOSURES FOR CALCULATING THE SECTORAL COMPONENT OF THE COUNTERCYCLICAL CAPITAL BUFFER BY COUNTRY AND SECTOR, AND PERCENTAGE THEREOF

Country	
Sector	

	Amount	Percentage	Qualitative information
Relevant credit exposures - Credit risk			
Exposure value under the Standardised Approach			
Exposure value under the IRB Approach			
Relevant credit exposures - Market risk			
Sum of the long and short positions of the trading book exposures for standardised approaches			
Value of the trading book exposures for internal models			
Relevant credit exposure - Securitisation			
Exposure value of securitisation positions in the banking book			
Own funds requirements and weights			
Total own funds requirements for the sectoral countercyclical buffer			
Own funds requirements for relevant credit exposures - Credit risk			
Own funds requirements for relevant credit exposures - Market risk			
Own funds requirements for relevant credit exposures - Securitisation positions in the banking book			
Percentages of the sectoral component of the countercyclical capital buffer			
Percentage set by the designated authority for the risk exposure amount for the sector			
Average percentage of the sectoral risk exposure amount component in the country			
Use of the 2% threshold			
Use of the 2% threshold for general credit exposure			
Use of the 2% threshold for trading book exposure			