



BANKING AND FINANCE | CAPITAL MARKETS

News – Banking and Finance and Capital Markets 4th quarter of 2019

Below, you will find the issue of our Banking and Finance and Capital Markets newsletter for the 4th quarter of 2019, which compiles the most significant news in this area.

I. Highlights

Sustainability in the financial sector – Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 harmonises the rules at a European level on information on sustainability related disclosures in the financial services sector.

In particular, it regulates the matters of integration of the risks, of negative impacts in the financial sector and in financial products. Those operating in the financial market and financial consultants are obliged to provide information on these issues, through reports, on a continuous basis.

Transparency is one of the main points of focus of the Regulation. It establishes the obligation of the entities referred to above to disclose information on their policies on issues of sustainability, on the website, with the necessary updates. These entities should explain to the investors how they integrate the risks in terms of sustainability in their processes of making investment decisions and giving advice (at the levels of organisation, risk management and governance).

In particular, they must disclose the negative impacts of investment decisions about the sustainability factors, including pre-contractual information for each financial product, in qualitative or quantitative terms.

The Regulation will apply from 10 March 2021, except for specific rules which will apply from 1 January 2022.

SMEs, Capital Markets and Market Abuse – Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 adapts the existing rules on capital markets so they are better adapted to small and medium-sized enterprises (“SMEs”) quoted in SME growth markets. Specifically, the rules that apply to this subcategory of multilateral trading system have been simplified compared with those for other players in the market. One highlight of this is the permission for SMEs to use a simplified prospectus and the EU Growth prospectus. To do so, they must meet certain requirements and comply with the simplified rules on the disclosure of information.

"Loan funds (or specialised alternative investment undertakings) will be able to grant loans and acquire credits from banks."

Amendments have also been made to the Market Abuse Regulation (MAR) (Regulation (EU) No 596/2014). These amendments broaden the scope of the obligation to draw up lists of people with privileged information and to adapt the provisions of Regulation to the current situation of the SME market.

The Regulation applies from 31 December 2019, although the amendments to the changes to the MAR are generally applicable from 1 January 2021.

- **Loan Funds** – Public Consultation of the Portuguese Securities Market Commission no. 8/2019 – The subject matter of this Public Consultation is the draft amendment to CMVM Regulation no. 3/2015 of 3 November 2015, on venture capital, social entrepreneurship and specialised alternative investment. In particular, the intention is to consolidate the rules on the new figure of loan funds that was established by the recent Decree-Law no. 144/2019 of 23 September.

Loan funds or specialised alternative investment undertakings (abbreviated “Loan OIAEs” from the Portuguese name, *organismos de investimento alternativo especializado*). These undertakings invest in loans but, despite this prerogative, they may not engage in certain operations that are typically available to credit institutions. These include short selling of financial instruments and granting of loans to individuals.

The aim of this Consultation is to adapt the Portuguese rules on loan funds to the international circumstances of loan funds, in order to increase the competitiveness of the Portuguese market.

- **New prudential requirements of investment firms** – published on 5 December 2019: **Regulation (EU) 2019/2033** of the European Parliament and of the Council of 27 November 2019 (on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014) and **Directive (EU) 2019/2034** of the European Parliament and of the Council of 27 November 2019 (on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU).

Regulation (EU) 2019/2033 and Directive (EU) 2019/2034 carry out a thorough review of the prudential rules applicable to investment firms in the EU provided for in the CRR. The new rules deviate from the current categorisation based on the types of services provided in MiFID II. They do this by adopting quantitative indicators and it may involve additional capital requirements for investment firms, subject to a transitional period.

In addition, Directive (EU) 2019/2034 amends MiFID II, particularly in relation to transactions exclusively at the initiative of the client (reverse solicitation) and other specific aspects of this Directive.

The Regulation will be applicable as from 26 March 2021, although certain specific provisions will apply before that date.

The Directive must be implemented into national law by 26 June 2021, although certain specific provisions will apply before that date.

- **Prevention of ML/TF** – Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 – Amends Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance, Directive 2014/65/EU on markets in financial instruments, and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Importantly, provision is made for mechanisms to strengthen the exchange of information and cooperation between the supervisory authorities and the European Supervisory Authority in cross-border insurance activity.

In particular, Directive (EU) 2019/2177 establishes notification requirements in the case of significant cross-border insurance activity or a crisis situation. It also establishes conditions for the creation of cooperation platforms, whenever the envisaged cross-border insurance activity is significant (in accordance with the assumptions set out in the Regulation).

The Directive must be implemented into national law by 30 June 2021, although certain specific provisions will apply from 1 January 2022.

- **Prevention of ML/TF** – Public Consultation of Banco de Portugal no. 3/2019 – This Public Consultation presents three sets of draft regulations on the prevention of money laundering and terrorist financing (“ML/TF”).

The first Draft Instruction goes into further detail on the risk factors for ML/TF, on the low and high level. It also proposes the adoption of specific simplified or strengthened identification and due diligence measures.

The second Draft Instruction defines the form and terms for sending the report on the activity carried on, in Portugal, by financial companies with their seat in another Member State of the European Union, which operate in Portugal under the freedom to provide services, for the purposes of prevention of ML/TF.

Finally, the third Draft Instruction amends Banco de Portugal Instruction no. 5/2019 of 30 January to allow for the inclusion in the Report on Prevention of Money Laundering and Terrorist Financing of information on the specific procedures to comply with Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on the information on the payer and payee that must accompany transfers of funds, for the purposes of prevention of ML/TF.

The period to submit contributions ended on 16 January of this year.

- **Payment Services** – Circular Letter no. CC/2019/00000065 – States that credit institutions, investment firms, payment institutions and electronic money institutions subject to supervision by Banco de Portugal must, as from 31 May 2020, comply with the requirements laid down in the European Banking authority’s guidelines on outsourcing arrangements (EBA/GL/2019/02). These are a comprehensive set of guidelines and recommendations on implementing mechanisms and processes in the field of management of outsourced functions. They are intended to strengthen and harmonise the outsourcing practices the addressees of the guidelines.

BANKING AND FINANCE

I. Regulatory developments

Highlights

- **Decree-law 150/2019 of 10 October** – Regulates the Electronic Compensation System for the purposes of voluntary compensation claims.
- **Banco de Portugal Communication of 29 November 2019** – Communicates the imposition of an equity reserve on the institutions identified as “other institutions of systemic importance”.
- **Instruction no. 18/2019** – Amends Instruction no. 5/2017 which governs the reporting of information for supervisory purposes, on an individual basis, to certain entities. These include: bureaux de change, annexed savings banks, development financial institutions, electronic money institutions, payment institutions, financial lending companies, financial corporations of financial micro-credit companies, investment fund management companies, securitisation fund management companies, holding companies, regional development companies, factoring companies, mutual guarantee companies, investment companies, and leasing companies.
- **Instruction no. 20/2019** – Introduces into the Portuguese rules the guidelines of the European Banking Authority (EBA) on disclosure of non-performing and forborne exposures (EBA/GL/2018/10) by less significant of credit institutions.

"Instruction no. 21/2019 regulates the reporting of cybersecurity incidents in entities supervised by Banco de Portugal and in credit institutions with their seat in Portugal that are supervised by the European Central Bank (ECB)."

- **Instruction no. 21/2019** – Regulates the reporting of cybersecurity incidents in entities supervised by Banco de Portugal and in credit institutions with their seat in Portugal that are supervised by the European Central Bank (ECB).

II. Other major news (Banco de Portugal)

- **Instruction no. 19/2019** – Amends Instruction no. 54/2012 of 15-01-2013, which regulates the Trans-European Automated Real-time Gross settlement Express Transfer system – TARGET2-PT.
- **Instruction no. 22/2019** – Discloses, for the first quarter of 2020, the maximum rates to be used in consumer credit agreements under Decree-Law 133/2009 of 2 June.

- **Statement of Rectification no. 56/2019** – Rectifies Decree-Law no. 144/2019 of 23 September, of the Ministry of Finance, which transfers to the Securities Market Commission the powers of supervision over investment fund and securitisation fund management companies, published in the official gazette, Diário da República, Series 1, no. 182 of 23 September 2019.
- **Notice no. 3/2019** – Amends Notice no. 11/2014 of Banco de Portugal of 22-12, to include within its scope the branches in Portugal of financial institutions with their seats abroad.
- **Circular Letter no. CC/2019/00000066** – Regulates Instruction no. 1/2011 published in BO no. 2, 15-02-2011 on the specific rules for the use of Intelligent Banknote Neutralisation Systems (IBNS). Repeals Circular Letter 1/2011/DET of 08-01-2015.
- **Circular Letter no. CC/2019/00000070** – Provides information about the deadline for notification of the amount of minimum reserves (monthly and quarterly reports), as well as the calendar of maintenance periods for 2020.
- **Instruction no. 23/2019** – Sets a base contribution rate of 0.0003% to determine the rate for each institution and sets the value of the minimum contribution to the Deposit Guarantee Fund to be made by participating institutions (EUR 235.00) in 2020. Determines that participating credit institutions cannot replace their annual contribution with irrevocable payment commitments.
- **Instruction no. 24/2019** – Sets the base rate to determine the periodical contributions to the Resolution Fund in 2020 at 0.06%.
- **Circular Letter no. CC/2019/00000083** – Publishes best practices to be observed by institutions in providing their customers with commissions statements through digital channels and emails.
- **Report on Banco de Portugal Public Consultation no. 2/2019** – Corresponds to the Report on the Public Consultation on the reporting of cybersecurity incidents.
- **Banco de Portugal Public Consultation no. 4/2019** – Draft Instruction on the updating of the report on interest rate risk exposure resulting from activities not included in the trading book and from the results of the outlier tests. Its objective is to update the standardised reporting on interest rate risk exposure resulting from activities not included in the trading book and from the results of the outlier tests. The report is made by the supervisor in accordance with article 116-A(5) of the General Rules on Credit Institutions and Financial Companies approved by Decree-Law 298/92 of 31 December. It is also made in the light of the new “Guidelines on the management of interest rate risk arising from non-trading book activities” of the European Banking Authority (EBA/GL/2018/02, or Guidelines), which came into force on 30 June 2019, with transitional arrangements until 31 December 2019. This Consultation will be available until 30 January 2020.

CAPITAL MARKETS

I. Regulatory developments

Highlights

- **Securities Market Commission Public Consultation no. 5/2019** – The Securities Market Commission opened up a public consultation on the Draft Regulation that amends CMVM Regulation no. 2/2015 on the management of collective investment undertakings.
- **Securities Market Commission Public Consultation no. 6/2019** – The Securities Market Commission opened up a public consultation on the Draft Regulation that amends CMVM Regulations no. 2/2002 and no. 12/2002, relating to the securitisation of credits.
- **Securities Market Commission Public Consultation no. 7/2019** – The Securities Market Commission opened up a public consultation on the three Draft Regulations that will make it possible to complete the transfer of powers of prudential supervision over collective investment undertaking management companies (sociedades gestoras de organismos de investimento coletivo – SGOIC) and securitisation fund management companies of securitisation funds (sociedades gestoras de fundos de titularização de créditos – SGFTC) from the Banco de Portugal to the CMVM.
- **Commission Implementing Regulation (EU) 2019/2091 of 28 November 2019** – amending Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council.
- **Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019** amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

"The Securities Market Commission opened up a public consultation on the Draft Regulation that amends CMVM Regulation no. 2/2015 on the management of collective investment undertakings."

EUROPEAN UNION – OTHER NEWS

I. Banking and Finance

- **Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019** – supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation.

- **Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019** – laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA.
- The European Banking Authority (EBA) reaffirms the obligation on payment services providers to adopt strong customer authentication in online payments by card by 31 December 2020.
- **Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019** – amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.
- The ESMA recommendations of 18 December 2019 on potential undue “short-termism” in securities markets.
- The ESMA has announced that it is extending the time limit laid down in article 50 (39 concerning the United Kingdom’s exit from the European Union (EU). Its previous statements on the preparations for a Brexit agreement will cease to be applicable as from 31 October.

II. Capital Markets

- **Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019** – on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU.
- **Decision (EU) 2019/2158 of the European Central Bank of 5 December 2019** – on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees (ECB/2019/38).
- The European Supervisory Authorities (ESAs) published a joint draft of Regulatory Technical Standards (RTS) to amend the delegated regulations on techniques to mitigate the risks of non-compensated OTC derivatives (bilateral margins), and a joint declaration on the introduction of safeguard measures in OTC derivative agreements and the requirement for an exchange of guarantees.
- **Commission Delegated Regulation (EU) 2019/1867 of 28 August 2019** – supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the establishment of flat-rate financing.
- **Commission Delegated Regulation (EU) 2019/1868 of 28 August 2019** – amending Regulation (EU) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council.
- **Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019** – amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

"The ESMA has launched a public consultation on the draft guidelines on internal controls of credit rating agencies. These guidelines define the systems and controls that these agencies should have to comply with the requirements of the CRA Regulation on internal controls. "

- The ESMA has launched a public consultation on the draft guidelines on internal controls of credit rating agencies. These guidelines define the systems and controls that these agencies should have to comply with the requirements of the CRA Regulation on internal controls. The guidelines define the criteria that the CRAs must have in place and they focus on their framework and internal control functions, to demonstrate to the ESMA that there are adequate internal control systems and effective measures to ensure the accuracy and integrity of the credit rating process. This Public Consultation will be available until 16 March 2020.
- The ESMA published additional technical details for the notification of securities financing transactions (SFTs), as required by the SFTR Regulation.
- A statement that, in relation to MiFID II, the ESMA will publish the systematic data concerning the systematic internaliser (SI) and the liquidity of the bond market, following the recent developments involving the departure from the United Kingdom (UK) from the European Union (EU).
- The European Securities and Markets Authority (ESMA) has launched a Consultation Paper on position limits and position management in commodity derivatives.