



APR. 20

**BANKING AND FINANCE | CAPITAL MARKETS**

# News – Banking and Finance and Capital Markets 1<sup>st</sup> quarter of 2020

Below, you will find the issue of our Banking and Finance and Capital Markets newsletter for the 1<sup>st</sup> quarter of 2020, which compiles the most significant news in this area.

## I. Highlights

### **COVID-19**

The World Health Organization declared a public health emergency of international scope on 30 January 2020 and classified the Coronavirus as a pandemic on 11 March 2020. Following on from this, the Portuguese government felt it necessary to establish rules for contingency planning for the SARS-CoV-2 pandemic, ensuring the treatment of COVID-19 in the National Health Service. It did this by issuing Decree-Law 10-A/2020 of 13 March, which establishes legal rules to address this exceptional situation.

With the evolution of the pandemic and its consequent spread, on 18 March, the President of the Republic issued Decree 14-A/2020 declaring a state of emergency, based on a situation of public calamity. After this, the Portuguese parliament approved the declaration of a state of emergency by Resolution 15-A/2020 and it was put into effect by Decree 2-A/2020.

In the fight against the economic consequences of the COVID-19 pandemic, the Government has passed several pieces of legislation that apply generally to individuals and companies, and others applicable to those operating in certain sectors. One of these pieces of legislation was Decree-Law 10-J/2020 of 26 March, which establishes a set of economic measures to protect liquidity and cash flows of businesses and, more specifically, it introduces rules on moratoriums in financing. A detailed analysis of these rules is available [here](#).

Similarly, in light of the current situation, businesses in all sectors have begun to express their concerns, as have, in particular, institutions in the banking, financial and capital markets sectors.

- **The European Central Bank** issued [Decision 2020/440 \(EU\)](#) on a temporary pandemic emergency purchase programme (PPPE) and a recommendation concerning the distribution of dividends during the pandemic of COVID-19 ([ECB/2020/19](#)).

"The European Banking Authority (EBA) issued a declaration on measures to contribute to consumer protection and the orderly functioning of payment services. It also issued a statement on actions to mitigate the impact of COVID-19 on the banking sector in the EU."

- **The European Banking Authority (EBA)** issued a declaration on measures to contribute to consumer protection and the orderly functioning of payment services. It also issued a statement on actions to mitigate the impact of COVID-19 on the banking sector in the EU.
- **Banco de Portugal** has issued a macro prudential recommendation concerning new financing to consumers in the context of the COVID-19 pandemic, as well as a set of additional measures, among which we would highlight: (i) the Circular Letter [CC/2020/00000021](#) communicates a set of recommendations and additional measures for flexibility in areas relating to the supervisory powers and cash circulation powers conferred on Banco de Portugal. In addition, it provides clarification on the measures for flexibility on capital reserves and liquidity compliance communicated through the Circular Letter [CC/2020/00000017](#); (ii) Circular Letter [CC/2020/00000013](#), with recommendations regarding the process of granting and restructuring loans to borrowers or groups of borrowers of increased risk.
- **The CMVM** (Portuguese Securities Market Commission) has adopted a set of measures and information on measures implemented by it as a result of the COVID-19 pandemic is available [here](#).
- **ESMA** has issued [guidance](#) on the accounting implications of COVID-19.
- **EIOPA** has issued a [statement](#) regarding actions to mitigate the impact of COVID-19 in the insurance sector in the EU.

With respect to COVID-19 and the new laws relating to it, you will find a detailed analysis of the legislation in a broad range of areas [here](#).

## BANKING AND FINANCE

### I. Banco de Portugal

- **Notice 1/2020** – Determines, under article 8(4) of DL 147/2019 of 30 September, the terms of the notification to Banco de Portugal, using the designated form, by entities wishing to benefit from the transitional arrangements and contingency plan provided for in that DL, on contracts made by credit institutions, payment institutions and electronic money institutions, in the context of contingency measures to be applied in the event of the departure of the United Kingdom from the European Union without agreement ([link](#)).
- **Instruction 1/2020** – Amends Instruction 7/2019, published in BO 1/2019 of 15 January. It incorporates the EBA Guidelines on the STS (simple, transparent and standardised) criteria applicable to ABCP (asset-backed commercial paper) and non-ABCP securitisation (EBA/GL/2018/08 and EBA/GL/2018/09). ([link](#)).
- **Instruction 2/2020** – Revokes Banco de Portugal Instruction 4/2011, considering the entry into force of the guidelines of the European Banking Authority (EBA/GL/2018/04) on stress testing of institutions ([link](#)).

- **Instruction 3/2020** – Amends Instruction 34/2018 to update the standardised reporting of **interest rate risk exposure** resulting from activities not included in the trading portfolio and from the impact on the variation of the economic value and the financial margin of a sudden and unexpected change in interest rates of 200 basis points on the yield curve ([link](#)).
- **Instruction 5/2020** – Regulates the reporting of information on systems, instruments, transactions, **payment services** and sending of funds ([link](#)).
- **Instruction 6/2020** – Amends Instruction 5/2019 to include in the **Report on the Prevention of Money Laundering** and Terrorist Financing information relating to specific procedures to comply with Regulation (EU) 2015/847 ([link](#)).
- **Instruction no. 7/2020** – Releases, for the second quarter of 2020, the maximum rates to be used in consumer credit agreements in the context of DL no. 133/2009 of 2 June.
- **Circular Letter CC/2020/00000002** – Stresses the importance of compliance with the guidelines of the European Banking Authority relating to **stress testing** of institutions (EBA/GL/2018/04) ([link](#)).
- **Circular Letter CC/2020/00000004** – Releases, in accordance with paragraph 9 of Instruction no. 18/2015 of 15 January, the reporting forms for **Financing and Capital Plans**, the description of the macroeconomic and financial scenario and other guidelines necessary to implement the exercise and provision of information by the institutions ([link](#)).
- **Circular Letter CC/2020/00000010** – States that Banco de Portugal will make a platform called *Perto - Plataforma Eletrónica de Registo e Transmissão de Ofícios* (an electronic platform to register and send official communications - PERTO) available from 16 March 2020. Its purpose is to receive requests for information, and to receive and subsequently divulge official communications in the financial system ([link](#)).
- **Circular Letter CC/2020/00000013** – Recommends that, in the process of granting and restructuring loans to borrowers or groups of **borrowers of increased risk**, their increased risk requires the approval of the board of directors of the institution, given in a plenary meeting. Furthermore, the supervisory body must be informed immediately of the transaction examined by the board of directors, regardless of whether they approve or reject them. The institutions must send the internal policies adopted following the recommendation contained in this circular letter to Banco de Portugal by 30 June 2020 ([link](#)).
- **Circular Letter CC/2020/00000015** – Provides information about the framework and functioning of service for the banking system to publish information relating to situations of loss, theft, theft, forgery, counterfeiting and illegal use of **personal identification documents**, through the electronic platform for registering and communicating official communications (PERTO), an electronic solution provided for this purpose on the Bank Customer Website, which was announced by Circular Letter CC/2020/00000010 of 02-17-2020. Revokes Circular Letter CC/2019/00000047 de 15-05-2019 ([link](#)).
- **Communiqué of the Banco de Portugal** on the implementation of the macro prudential recommendation in force in the context of consumer credit ([link](#)).

- **Public Consultation of Banco de Portugal 3/2020** – Proposal for a “National Strategy for Retail Payments | 2020-2022” drawn up by the Payment Systems Forum ([link](#)).

## II. European Union

- **The Commission has launched a public consultation on the review of the Non-Financial Reporting Directive (NFRD)** – In February, the Commission launched a public consultation on the review of the Non-Financial Reporting Directive (NFRD). This directive requires certain large companies to include a non-financial statement (for example, on environmental or social issues) as part of their annual public information obligations. The main objective of this consultation is to gather opinions from across the EU on different reforms or possible improvements that could be made to the directive. As set out in the Communication on the European Green Deal and in the European Green Deal Investment Plan, the European Commission undertook to review the NFRD in 2020 as part of its strategy to strengthen sustainable investment in Europe. Meeting the objectives of the European Green Deal will require additional investments in all sectors of the economy, most of which will have to come from the private sector. As a consequence, this directive is an essential part of the Commission's efforts to increase sustainable financing, improve corporate transparency, and provide all stakeholders with more comparable and relevant information on sustainable business activities.
- **Recommendation of the European Central Bank** of 17 January 2020 on **dividend distribution policies** ([ECB/2020/1](#)).

**"Under the CBPP3, the central banks of the Eurosystem can definitively purchase eligible covered bonds from eligible counterparties in the primary and secondary markets, in accordance with the eligibility criteria for counterparties."**

- **Decision (EU) 2020/187** of the European Central Bank of 3 February 2020, on the implementation of the third covered bond purchase programme ([ECB/2020/8](#)). The Eurosystem establishes the on the implementation of the third covered bond purchase programme (CBPP3), under which the central banks of the Eurosystem can buy bonds with eligible underlying assets under its article 3. Under the CBPP3, the central banks of the Eurosystem can definitively purchase eligible covered bonds from eligible counterparties in the primary and secondary markets, in accordance with the eligibility criteria for counterparties.
- **Decision (EU) 2020/188** of the European Central Bank of 3 February 2020, on a secondary markets **public sector asset** purchase programme (recast) ([ECB/2020/9](#)).
- **European Parliament** resolution of 3 May 2018 on the Annual Report 2016 on the protection of the EU's financial interests – Fight against fraud ([2017/2216\(INI\)](#)).

- **Council Directive (EU) 2020/284** of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for **payment service** providers.
- **Decision (EU) 2020/380** of the European Central Bank of 18 February 2020 amending Decision (EU) 2016/245 laying down the rules on procurement ([ECB/2020/10](#)).
- **Guideline (EU) 2020/381** of the European Central Bank of 21 February 2020 amending Guideline (EU) 2017/2335 on the procedures for the collection of granular **credit and credit risk data** ([ECB/2020/11](#)).
- **Decision (EU) 2020/440** of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme ([ECB/2020/17](#)).
- **Decision (EU) 2020/441** of the European Central Bank of 24 March 2020 amending Decision (EU) 2016/948 of the European Central Bank on the implementation of the corporate sector purchase programme ([ECB/2020/18](#)).

## CAPITAL MARKETS

### I. CMVM

- **Circular Letter of 17 January 2020** to clarify the **accounting rules** to be applied by collective investment undertaking management companies (**SGOIC**) and by securitisation fund management companies (**SGFTC**) to prepare financial statements on an individual basis and on a consolidated basis, from 1 January 2020.
- **Annual Circular of 2020 relating to issuers**, which provides regulatory news and updates.
- **CMVM Regulation no. 1/2020**, which defines the form and content of the duties of sending information to the CMVM by **SGOICs** and **SGFTCs**. The current arrangements for sending prudential supervision information arise from the transfer from Banco de Portugal to the CMVM of the powers of supervision over collective investment undertaking management companies and securitisation fund management companies. This transfer was made by Decree-Law 144/2019, which made the CMVM responsible for the prudential and behavioural supervision of these entities ([link](#)).
- **CMVM Regulation no. 2/2020 on the prevention of money laundering and combating terrorist financing**. This Regulation sets out the regulations under Law 83/2017 of 18 August, which establishes measures to combat money laundering and terrorist financing. It partially implements Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015, and Directive 2016/2258/EU of the Council of 6 December 2016. It applies to obliged entities of a financial nature which are subject to the exclusive supervision of the CMVM. It also applies to entities of a financial nature whose supervision is shared with the Bank of Portugal and the auditors, whether in the form of a company or an individual practitioner. The objective is to simplify and organise the regulatory framework, with all the materials on the prevention of money laundering applicable to obliged entities under the supervision of the CMVM in a single Regulation ([link](#)).
- **CMVM Regulation 3/2020 (collective investment undertakings)**. This Regulation makes the third amendment to CMVM Regulation 2/2015 of 17 July 2015 on management of collective investment undertakings. The amendment was made due to the transfer from the Bank of Portugal to the CMVM of the powers of supervision over collective investment undertaking management companies, which was made by Decree-Law 144/2019 ([link](#)).

- **CMVM Regulation 4/2020 (securitisation).** This Regulation amends CMVM Regulations 02/2002 and 12/2002, and it has the same impact on both securitisation companies of and securitisation fund management companies. These changes affect the appraisal of authorisation applications made by those companies and on applications for authorisation for mergers and de-mergers involving securitisation companies and on the conditions for the extension of the period to dispose of immovable property ([link](#)).
- **Public Consultation no. 1/2020 (suitability evaluation).** The CMVM submitted draft guidelines on the assessment of suitability to hold regulated positions and to hold qualifying shareholdings for public scrutiny, to ensure that all market players can give their opinions.

## II. European Union

- **The Commission launches a consultation on MiFID II and MiFIR.** In February, the European Commission launched a consultation on possible reforms of the Directive and regulation of markets for financial instruments (MiFID and MiFIR), which lay down rules applicable to European securities markets. In particular, the consultation addresses potential changes to the rules to protect investors, to find the right balance between promoting the participation of investors in the capital markets, the competitiveness of the EU financial sector, and safeguarding the interests of investors. The consultation is also looking at potential actions to promote the coverage of SMEs in the field of research. The consultation addresses the possible introduction of a new instrument of transparency to enable investment managers, investment advisers and their clients to have access to “live” asset prices in the EU as a whole, in a consolidated format.

## III. ESMA

- **ESMA announces three priorities for 2020-22.** The European Securities and Markets Authority has published its Strategic Orientation for 2020-22. The Strategic Orientation defines the orientation and future goals of the Authority and reflects its responsibilities and extended powers. It also increases the emphasis on supervisory convergence, reinforces its role in the construction of a Capital Markets Unions (CMU), and gives it more direct oversight responsibilities. The new powers and responsibilities of the Authority include instruments of strengthened supervisory convergence. These include peer reviews, questions and answers, collective supervision actions, and the strategic priorities of the EU in terms of supervision, at the same time as it will draw up an EU supervision manual. The powers also include coordination of the acquisition of retail investment products, development of risk indicators of retail and collection, analysis and information on consumer trends. There are also new tasks to assess equivalence in third countries, including the monitoring of the evolution of regulation and supervision in equivalent third countries, to assist the European Commission in preparing equivalence decisions and an enhanced role in international fora.

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- In February, ESMA published a final report suggesting changes to the trading obligation under MiFIR, following the introduction of the EMIR Refit. The recent changes to the EMIR through the Refit has modified the scope of counterparties subject to the clearing obligation - exemption for small financial counterparties and modified determination of non-financial counterparties. The introduction of the EMIR Refit was not accompanied by direct changes to MiFIR. This currently leads to a misalignment between the scope of counterparties subject to the clearing obligation under the EMIR and the obligation to trade derivatives under MiFIR. In the light of the interconnections between these two obligations, the EMIR Refit mandates the ESMA to evaluate whether the obligation to trade derivatives under MiFIR should be aligned with the changes to the clearing obligation introduced by the EMIR Refit, and to submit its conclusions in a report to the Commission.
  - ESMA publishes a call for evidence on the availability and use of information and data from credit rating. The aim is to gather information on the specific uses of credit ratings, as well as on how users of credit ratings are currently accessing this information. The results of this call for evidence will allow ESMA to map key activities (regulatory and other) undertaken by several types of credit ratings users. Based on the feedback, ESMA will publish a report describing the current disclosure practices, including disclosure through third party data service providers, as well as the consumption patterns of notation users. This report will consider options to improve access to and the use of credit ratings, including the possibility to improve the usability of the information provided on websites.
  - ESMA decides to extend the date of response to all consultations in progress by four weeks, with a closing date of 16 March or after this date. This notice concerns the following enquiries: (i) Consultation on Guidelines on Internal Controls for CRAs; (ii) Consultation on MiFIR report on SI; (iii) Guidelines on securitisation repository data completeness and consistency thresholds; (iv) Consultation on MiFID II/ MiFIR review report on the transparency regime for equity; (v) Draft Regulatory Technical Standards under the Benchmarks Regulation; (vi) Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR; (vii) Consultation paper on MiFIR Review Report on Transparency for Non-equity TOD.
- "The recent changes to the EMIR through the Refit has modified the scope of counterparties subject to the clearing obligation. "
- ESMA publishes the ESEF Conformance Suite to facilitate the implementation of the ESEF Regulation. The ESEF Regulation requires that, from 2020, all issuers with securities listed on a regulated market in the EU must draw up their annual financial reports in xHTML and mark the consolidated financial statements in accordance with the IFRS contained in them using XBRL labels and iXBRL technology.

## INSURANCE

- ASF publishes notice concerning the requirement for “appropriate qualification” for the purposes of the new law of insurance distribution. All insurance or reinsurance brokers, members of the management board responsible for the activity of distributing insurance or reinsurance undertakings, and anyone directly involved in the activity of distribution of insurance or reinsurance (PDEADS), who moved on from Decree-Law 144/2006 of 31 July, must attend a conformation course with the appropriate qualification requirements laid down in the legal rules on the distribution of insurance and reinsurance (RJDSR)
- **Public Consultation 2/2020** – Draft Regulatory Standard amending the Regulatory Standard 6/2019-R of 3 September. This amendment seeks to introduce an exception that allows training organisations that give insurance courses to ask the ASF to allow in-person training and the final written evaluation to be done remotely. This exception requires that certain minimum requirements be met and it applies in situations in which, for reasons of *force majeure*, including public health, if there are constraints in relation to holding in-person sessions. Responses must be submitted by 31 March. ■

"ASF publishes notice concerning the requirement for “appropriate qualification” for the purposes of the new law of insurance distribution.a"