

Prudential supervision for banks and investment firms: Commission suspends referral of Spain to the Court

On [19 July 2018](#), the European Commission decided to refer Spain to the Court of Justice of the EU for failing to adopt the national measures necessary to fully transpose the Capital Requirements Directive or CRD IV ([Directive 2013/36/EU](#)), which sets out the prudential and supervisory requirements for credit institutions and investment firms in the EU, including rules on the licensing of credit institutions, on the initial capital of investment firms, on the supervision of institutions, on supervisory cooperation, on risk management, on corporate governance (including remuneration) and on capital buffers.

Since then, the Spanish authorities have submitted to the Commission draft measures that would ensure full transposition of CRD IV, together with a timeline for their adoption that would permit a solution before a possible Court judgment. More specifically, one Royal Decree-Law on anti-money laundering was adopted by the Spanish Government on 31 August 2018, and a second Royal Decree-Law transposing some of the missing provisions followed on 28 September. Another Royal Decree is expected to be adopted in November, and, lastly, a Law amending Law 10/2014 relating to the solvency of credit institutions and Royal Decree Law 4/2015 relating to the Stock Markets is expected to be adopted by beginning of December and published before the end of the year.

Therefore, the European Commission considers that the execution of the referral should be put on hold, pending the adoption of the amending laws.

If the transposing measures still missing are not adopted as planned, the stay of the proceeding may be reconsidered.

Background

In January 2014, the European Commission formally requested Spain to transpose the Capital Requirements Directive (CRD IV; [Directive 2013/36/EU](#)). Then, in [January 2018](#), a reasoned opinion was issued against Spain. Given that Spain did not notify the missing measures related to the Directive at stake, the European Commission decided to refer Spain to the Court of Justice of the EU in [July 2018](#).

The Spanish competent authority is currently deprived of some of its powers and discretions in relation to investment firms and the obligation to encourage whistle-blowing by having in place mechanisms for reporting of breaches. Additionally, the Spanish competent authority cannot contact other EU competent authorities to obtain information related to cross-border banking groups, thus making supervisory cooperation more difficult. Lastly, corporate governance rules are currently weaker in Spain given that the

obligation to have diverse and competent management bodies of institutions is not enacted in national rules. However, the Spanish authorities have confirmed that all these shortcomings will be fully addressed before the end of the year.

For More Information

- On the key decisions in the November 2018 infringements package, see full [MEMO/18/6247](#).
- On the general infringements procedure, see [MEMO/12/12](#).
- On the [EU infringements procedure](#).