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RDL 19/2022: new Code of Good Practice for banking

Introduction

On 22 November, the Executive approved Royal Decree-law 19/2022, which establishes a Code of Good Practice to alleviate the rise in interest rates on mortgage loans on primary residences (hereinafter, the **RDL**). The RDL amends the Code of Good Practice approved by Royal Decree-law 6/2012, of 9 March, on urgent measures for the protection of mortgage debtors without means.

We have set out below the main new features of the RDL (in a “Q&A” format, for ease of reference).

Nature of the new Code

The RDL implements a new transitory Code of Good Practice (hereinafter, the **CGP**), with a duration of 24 months (until 31 December 2024), for the adoption of urgent measures for mortgage debtors in a situation of vulnerability.

The RDL states that the eligibility conditions to be met by debtors, as well as the applicable measures, would be developed in an Agreement of the Council of Ministers. This Agreement took place the following day, on 23 November.

It is voluntary for credit institutions (and other entities or natural persons that are professionally engaged in the business of granting mortgage loans) to subscribe to the CGP. However, it is expected that most banks will subscribe to it, as was the case in 2012 for the previous Code. From the moment an entity subscribes to it, the CGP becomes binding (affecting the entity’s entire mortgage loan portfolio), and non-compliance may give rise to the penalties envisaged in the RDL.

Entry into force

The RDL (and, consequently, the CGP), supplemented by the Agreement of the Council of Ministers of 23 November, entered into force on 24 November.

How does subscription to the CGP work?

Creditors that are willing to subscribe to the CGP must send a communication to the General Secretariat of the Treasury and International Financing (dependant on the Ministry of Economic Affairs and Digital Transformation), no later than four weeks after the adoption of the Agreement of the Council of Ministers (i.e. by 23 December 2022).

Without prejudice to the foregoing, all entities which, at the entry into force of the RDL, had subscribed to the 2012 Code¹ will be considered to have subscribed to the CGP, unless they expressly notify the General Secretariat of their request for withdrawal within two weeks of its entry into force.

¹ Entities that have subscribed to the 2012 Code _ The list can be consulted [here](#).

Entities will be considered to be validly subscribed to the CGP for its entire duration (24 months), unless the creditor decides to withdraw from the CGP by writing to the General Secretariat at least three months before the effective date of withdrawal.

Which loans are subject to the CGP?

The CGP affects loans granted to individuals and secured by a real estate mortgage on the debtor's (or the non-debtor mortgagor's) primary residence, provided that the purchase price of the property does not exceed 300,000 Euro.

It only affects loans granted until 31 December 2022 (not those granted thereafter).

Which debtors can benefit from the measures in the CGP?

Debtors (or non-debtor mortgagors) who meet *all of* the following eligibility conditions can request the application of the measures provided for in the CGP, from the date when the list of entities that have subscribed to the CGP is officially published, and until 31 December 2024:

- i. That the total income of the family unit does not exceed 3.5 times the annual IPREM in 14 payments², although this limit may be increased in some cases³;
- ii. That, in the four years prior to the application, the family unit has undergone a significant change in its financial circumstances⁴; and
- iii. That the mortgage payment is more than 30% of the net income of the family unit.

Documentary evidence of these circumstances must be submitted together with the application in the manner provided for in article 3(3) of Royal Decree-law 6/2012.

In order to prove that the debtor fulfils the eligibility conditions, the debtor may authorise the entity that has subscribed to the CGP, expressly and in writing, to obtain information directly from the State Tax Authorities, Social Security Management Entities and Property and Commercial Registries⁵.

What measures can debtors apply for?

Debtors can request that a deed of novation of the loan be granted, in one of the following forms:

- (a) Extension of the total loan term up to a maximum of seven years, with the option of a grace period, or temporary fixed instalments for a maximum of 12 months. The principal will accrue interest at a rate that results in a 0.5% reduction of the net present value of the loan; or

² **IPREM** _ Public Index of Multiple Purpose Income: for 2022, the annual IPREM is set at 6,948.24 Euro (in 12 payments) or 8,106.28 Euro (in 14 payments).

³ **Increased limit** _ The limit will be 4.5 times the IPREM if any of the members of the family unit has a declared disability of more than 33%, is in a situation of dependency or has an illness that is proven to be permanently incapacitating for work, or 5.5 times the IPREM if the debtor is a person with cerebral palsy, with mental illness, or with an intellectual disability, with a recognised degree of disability equal to or greater than 33%, or a person with a physical or sensory disability, with a recognised degree of disability equal to or greater than 65%, as well as in cases of serious illness that prevents the person or their carer from working.

⁴ **Significant alteration of economic circumstances** _ This is understood to mean that (a) the effort that the payments under the mortgage loan represent in relation to the family income has been multiplied by 1.2; (b) any of the members of the family unit has a declared disability of more than 33%, is in a situation of dependency or has an illness that prevents them from working; (c) in the family unit there live, in the same dwelling, one or more persons who are linked to the mortgage holder or his/her spouse by a family relationship up to the third degree by blood or marriage, and who are in a personal situation of disability, dependency, or serious illness that has been proven to temporarily or permanently prevent them from working; or (d) in the family unit there is a victim of gender-based violence or a victim of trafficking or sexual exploitation.

⁵ **Improper applications** _ If the debtor applies for the measures without fulfilling these requirements, they will be liable for any damages arising as a result, for the expenses incurred for the formalisation of the novation, as well as for the liabilities of any other nature that the debtor's conduct may give rise to (e.g. offence of false documentation).

- (b) Conversion from a variable to a fixed rate. The fixed rate may be that freely offered by the entity from time to time.

Debtors will not have to pay any costs or fees as a result of the novation, nor will they have to provide any additional collateral.

What limitations are there to these measures?

The extension of the term may not lead to:

- The total term of the loan being more than 40 years; or
- The instalments to be paid being reduced below the instalments the debtor was paying on 1 June 2022

Can the CGP affect assigned, securitised or sub-participated loans?

Based on the Explanatory Memorandum (*Exposición de Motivos*) of the RDL, we believe that the CGP measures may also be deemed to apply to assigned mortgage loans, as well as those that are securitised through participations (*participaciones hipotecarias*), mortgage transfer certificates (*certificados de transmisión de hipoteca*) or “sub-participated”, if they were originated by a subscribed entity.

What about defaulted loans?

The RDL and the Agreement of the Council of Ministers are silent on this point. In our opinion, the new measures described in the previous sections should not affect loans for which the creditor has formally notified the debtor of the acceleration due to non-payment of instalments, nor those that are under enforcement.

However, this point will need to be clarified in the coming months.

What are the disclosure obligations of subscribed entities?

They must adequately inform all clients holding mortgage loans of the existence of the CGP, and of the possibility of benefiting from it, by means of an individualised and specific communication, within a maximum period of one month from subscribing to the CGP, providing a telephone number and e-mail address for answering queries and receiving applications from clients. In addition, they must provide information on the measures in a prominent place on their website, and through their commercial network of offices.

Who pays the notary and registration tariffs for novation deeds granted under the CGP?

The creditor, in any case. The RDL provides for a 75% rebate for both tariffs.

How are these deeds taxed in relation to the variable amount of Stamp Duty?

They are exempt. The RDL has amended Article 45(l)(B) of the revised text of the Law on Transfer Tax and Stamp Duty, approved by Royal Legislative Decree 1/1993, of 24 September, in this regard.

What penalties are foreseen for subscribed entities that do not comply with the CGP?

Failure to comply with the CGP is considered a serious infringement under Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions. Accordingly, the penalty may be (a) between two and three times the profits derived from the infringement, where this can be quantified; or (b) up to 5% of the entity's total annual net turnover, or up to 5 million Euro (if applying the 5% gives a lower amount).

The RDL stipulates that supervision of compliance with the CGP will be the responsibility of the Monitoring Committee set up under the previous Code, to which the subscribed entities must provide information on a monthly basis.

What other measures are set out in the RDL?

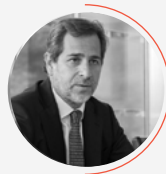
Among other complementary measures, the following are particularly noteworthy:

- The circumstances that place a debtor on the threshold of exclusion, according to the definition in the current Code, have been amended, as have the measures that debtors can propose as part of a restructuring plan. It is now possible to request a second restructuring plan, the deadline for requesting the deed in lieu of foreclosure of the property if the restructuring is not viable has been extended from one to two years, and the deadline for requesting social lease of the property for mortgagors whose eviction has been suspended has been extended from six months to one year.
- Law 2/1994, of 30 March, on subrogation and modification of mortgage loans has been amended, so that subrogation can affect any natural or legal person who, on a professional basis, carries out the activity of granting loans subject to Law 5/2019, of 15 March, regulating real estate credit agreements (*Ley 5/2019, reguladora de los Contratos de Crédito Inmobiliario*, or LCCI). Therefore, "alternative lenders" may now also be subrogated (i.e. replaced) by other entities (until now only credit institutions could be subrogated).
- Article 23(6) of the LCCI has been amended so that the fees for changing the interest rate from variable to fixed (or for subrogation of another creditor) may not exceed the amount of the financial loss suffered by the lender (i.e. the break costs), with a limit of 0.05% of the early amortised principal, and only during the first three years of the loan term. If the novation does not involve early amortisation (or if it takes place three years after the granting of the loan), no fee will be charged.
- Until 31 December 2023, the accrual of compensation or fees for total or partial early repayment or redemption of floating-rate mortgage loans subject to the LCCI has been suspended.
- The Bank of Spain is to prepare and keep updated a "*Guide of tools for mortgagors in payment difficulties*", which will include the content of the CGP and specific examples. It must also develop and make available to the public on its website simulators to determine whether a person is eligible for CGP measures.

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