

# Agricultural Cooperatives Act

On 24 May the State Gazette published Decree 365/2018 on agricultural cooperatives. The same issue of the Gazette contained Decree 354/2018 which provides its supporting legislation.

The aim of the regulation is to lay out general principles on the constitution, functioning, splitting up, merger and extinction of agricultural cooperatives, regulating the following areas:

## Definition of an agricultural cooperative

Under the terms of the regulation, an agricultural cooperative is an economic and social organization within the agricultural and forestry production system for the production and sale of goods – essentially agricultural ones –, as well as service provision by collective management to satisfy social interest and that of the cooperative's partners.

## Types of agricultural cooperatives

The Decree differentiates between three types of cooperative:

**Basic Cooperative Production Unit:** natural persons who contribute their work or the goods they possess, it receives the land in usufruct, and its assets consist of the goods acquired through purchase or any other title, as well as those obtained from the productive processes carried out.

**Agricultural Production Cooperative:** small-scale farmers who contribute land or other goods they own to the asset of the cooperative that, once created, can receive land in usufruct. It is also made up of other natural persons who have completed their trial satisfactorily and are admitted by the cooperative's general assembly.

**Loans & Services Cooperative:** small-scale farmers who retain the ownership or usufruct of their respective land and other goods, as well as the production they obtain. It is also formed by family members of farmers who have links to the land, beekeepers without land and hired farm laborers who are accepted as members by the cooperative's general assembly. Its principal functions are to manage the cooperative partners' access to bank loans, to inputs and to the services that complete technology cycles; to hire and sell production and services, and to contribute to the overall development of the cooperative itself and the surrounding community.

## Guiding principles of agricultural cooperatives

The regulation contains the principles that must govern how agricultural cooperatives operate: voluntary action, cooperation and mutual aid, economic self-sufficiency, discipline as a member of the cooperative, sharing of assets, equal rights between cooperative members, territoriality and social responsibility, among others.

## Other areas

The Decree also covers the process of setting up agricultural cooperatives, its relationship with the State and other public bodies; its economic regime; the situation and disciplinary regime of cooperative members and workers hired; as well as the merger, splitting up and extinction of the same.

## Supporting regulation: Decree 354

The regulation for Decree 365 addresses questions about its constitution, the functions it performs, economic regime and cooperative members' rights and duties.

In addition, it contains a chapter on the leadership of these organizations. It regulates how the general assembly is chosen and what it does, and the same for the leadership board, the control and supervision committee, as well as the obligations and powers of the agricultural cooperative's president.

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# Principles, rights, obligations and procedures regulating Personal Data Protection

Act 81 on Personal Data Protection was passed last March to establish the principles, rights, obligations and procedures regulating Personal Data Protection applicable to natural or legal persons, subject to public or private law, that handle personal data in the terms covered by the regulation.

This law, which will come into force 2 years after it was passed -29 March 2021- allows personal data to be processed provided that this is done within the terms of the law and for the purposes covered in the legislation; furthermore, secondary legislation is needed to develop it. The key areas it regulates include the following:

## Consent

Personal data processing may only take place when the law explicitly allows it or when the data holder has given consent.

## Sensitive data

Those concerning their holder's private life or the improper use of which could give rise to discrimination or entail a serious risk for the data holder – of a racial nature, involving their religious beliefs or convictions, trade union affiliation, political views, relating to their health, information about their life, their sexual preferences or orientation, genetic or biometric data, among others – intended to clearly identify an individual. Sensitive data may not be transferred unless the following requirements are met:

When the data holder has given explicit consent;

When it is necessary to protect the data holder's life;

When it is necessary in order to uphold the recognition, exercise or defense of a right in a legal process, and

When there is a historic, statistical or scientific purpose.

## Basic, inalienable rights of personal data holders

The Act lists the following basic rights:

Access (to obtain the data and know the purpose for which they were collected and where from),

Rectification (to access and request corrections, amendments or updates),

Cancellation (to ask for data to be erased),

Opposition (to refuse to provide consent, or withdraw that consent), and

Portability (the right to obtain a copy of one's personal data in a structured format under certain

circumstances)

## Personal data storage or transfer

Storage or transfer of personal data of a confidential, sensitive or restricted nature, beyond Panama's borders by the company in charge of the data's use, storage or custody, is permitted provided that the company and/or country of residence is bound by standards of protection comparable to those of this Law or if the institution transferring the data makes sure it adopts all the necessary processes so that they are protected.

The above requirements are relaxed in the following cases:

When the data holder has consented to the data transfer;

When the transfer is necessary for the data holder to be able to sign or execute an existing or new contract that is to their own benefit;

Bank and money transfers, stock and securities market transfers, and

When the transmission of the information concerned is required by law or to comply with international treaties that have been ratified by Panama.

In addition, the law establishes the obligation to set procedures, protocols and processes for managing and transferring data that comply with the necessary security methods.

## Sanctions and payouts

The body in charge of enforcing this law is the National Transparency & Information Access Authority (ANTAI) except in the case of subjects regulated by special laws, that must be referred to the competent regulatory authority, in the first instance.

This body is authorized to impose sanctions, which can range between Balboa/USD 1,000 and Balboa/USD 10,000, depending on seriousness and recurrence of the breach. This body can also issue written warnings, a summons to the ANTAI, close the data base record and suspend or disable the storage and/or personal data handling process.

The personal data processing officer must indemnify the economic and/or moral damages caused by improper use of these.

## Data bases

The data base officers or keepers who transfer personal data that is stored in these data bases to third parties must keep a record of these data bases, which must be available for inspection by ANTAI, if so required.

## Personal Data Protection Council

The law provides for the creation of a Personal Data Protection Council, whose functions include advising the ANTAI about the law, making public policy recommendations, assessing cases submitted for consultation and developing a set of internal regulations. This body will be made up of:

The Minister for Trade & Industry;

The General Administrator of the Consumer Protection & Competition Authority (ACODECO);

The CEO of ANTAI;

The People's Ombudsman, or someone designated by this officer;

A representative from the National Private Enterprise Council (CONEP);

A representative from the National College of Attorneys;

A representative from the Panamanian Banking Association;

A representative from the Election Tribunal, and  
A representative from Panama's Chamber of Trade, Industry & Agriculture.

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# Registry and classification of Micro, Small & Medium-sized Enterprises

On 15 April the Secretariat for Entrepreneurs and Small & Medium Enterprises (SEPyME) published Resolution 220/2019 creating the Registry of Micro, Small & Medium-sized Enterprises (MiPyMES), which also sets the criteria that companies must meet to be classified as such.

The Resolution, drawn up to comply with Act 24,467, 13 July 2016 on promoting MSMEs, covers the following areas:

## Creating a Registry for MSMEs

A Registry for MSMEs is to be set up with the following functions:

To store updated information about the composition and characteristics of the various MSME sectors  
To collate, register, digitize and protect information and documents about companies that want or need to accredit their MSME status  
To issue certificates accrediting the condition of MSME

## Relations of linkage and control

In principle, the resolution does not allow the registration of those companies that, despite meeting the legally established requirements, control or are controlled by and/or linked to other company(ies) or economic group(s) that do not in turn meet the conditions set in the legislation. Thus, the regulation stipulates:

Linkage: a company is considered to be linked to another/other company(ies) or economic group(s) when it/they have a 20% stake or more in the former.

Control: a company is considered to be controlled by or to control another company, when it has a participation, directly or through another company controlled in turn, of more than 50% of the former's capital. In these cases, compliance with the requirements must be analyzed for all the companies as a whole and the activity which accounts for the economic group's largest proportion of income must be considered its principal activity.

The exception to this general rule are the enterprises provided for in Act 27.349 to support entrepreneurial capital<sup>[1]</sup>, already discussed in [Progreso 13](#), provided that entrepreneurial capital institutions have invested in them. In this way they can be treated as MSMEs even when they are linked to other companies that do not meet the required conditions.

## MSME certificate

The certificate will be valid from when its date of issue until the last day of the fourth month after the end of the applicant company's tax period and may be renewed at the interested party's request or automatically. Furthermore, the SEPyME itself may remove from the Registry any MSME that has

submitted untrue information or documents. In these cases, the certificate will become invalid, whatever the date. There is a model of the certificate in an appendix to the Resolution.

[1] Any activity, for profit or not, conducted in the Republic of Argentina by a new legal person or one that was set up no longer than 7 years previously.

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# Gender Equality Policy to tackle the causes and effects of discrimination against women

On 4 April the Peruvian government's Women & Vulnerable Population Groups Ministry (MIMP) published its National Gender Equality Policy to tackle the causes and effects of structural discrimination against women, in compliance with the Peruvian state's international obligations on human rights, state policies set out in the National Agreement, the Strategic National Development Plan and the Peru Prepares for 2030 Plan.

The policy comes into force immediately and is mandatory for all bodies in the public administration, with oversight and evaluation being the responsibility of the MIMP, the ministry leading it. There will be 6-monthly and annual assessments that will contain the information provided by all the ministries responsible for providing the services stipulated in the policy and by the National Statistics & IT Institute (INEI). The Executive is expected to approve the Multisectoral Strategic Gender Equality Plan within ninety days following publication of the policy, which will provide substantial input for policy implementation.

## Structural discrimination

The policy defines structural discrimination as the *"set of practices reproduced by sociocultural patterns inbuilt in people, institutions and society in general. This discrimination is expressed through exclusive practices and narratives that are given credence by the established social order, where men and women inter-relate at social, political, economic and ethical levels. Thus it is also evident in the opportunities for development and for achieving life plans that differ due to the biological reality of being men or women."*

## The policy's strategic goals

The policy has the following strategic goals in order to eliminate structural discrimination:

Reduce violence against women

Guarantee the exercise of women's sexual and reproductive health rights

Guarantee the access of and participation by women in decision-making

Guarantee the exercise of women's economic and social rights

Reduce the institutional barriers that stand in the way of equality in the public and private spheres between women and men

Reduce the prevalence of discriminatory sociocultural patterns in the population

Note that each goal develops its specific indicators and guidelines for state intervention, determining in each case those responsible.

## Policy Indicators

Lastly, the policy establishes the future scenario it hopes to reach, consisting of reduced structural discrimination affecting women, setting the following targets:

The reduction to 36.8% of tolerance in society of violence against women;

The incorporation of the gender approach in the institutional management of 100% of ministries

The reduction to 2.4% of the proportion of women who have been victims of physical and/sexual violence from their partner, in the previous 12 months;

A 40% increase of women in Congress, and a 20% increase in female mayors; and,

The increase of the rate of income equality between women and men to 86.8%.

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# Guidelines for regulating crowdfunding and related services

On 11 February 2019, Chile's Financial Market Commission (CMF in the Spanish acronym) published a White Paper with general guidelines for regulating crowdfunding and related services to help the financial market to operate and develop more smoothly, given that it will have to deal with the challenges and demands arising as a result of these new activities.

The Commission's expectation is for this report to form the basis to which all interested parties will provide their feedback and suggestions, so that progress can be made towards an appropriate regulatory framework that encourages innovation and greater inclusion in the provision of financial services, while also protecting investors and other users of these services, and safeguarding the integrity and stability of the financial system as a whole, without creating unnecessary obstacles to the sector's development.

The White Paper contains a summary of Crowdfunding and Fintech regulation in other jurisdictions (Argentina, Australia, Brazil, Colombia, European Union – Spain, the United States and Mexico), and of the principles and recommendations made by international bodies on the subject (International Organization of Securities Commissions – IOSCO, International Association of Insurance Supervisors – IAIS, Bank for International Settlements -BIS, Financial Action Task Force -FATF).

## Fundamental principles

The regulation of the crowdfunding industry is built on the following principles:

**Proportionality:** establishing requirements that are differentiated and proportionate to the inherent risks of the specific activities carried out by each institution.

**Neutrality:** the regulation should not create regulatory asymmetries between institutions that use technology intensively and those that do not, nor should the regulation be designed around the use of one technology in particular.

**Integration:** crowdfunding regulation should not only cover issues intrinsic to the activity, but also related services and issues, to enable companies to generate economies of scale and reach, while

improving their local and regional competitiveness.

Flexibility: it should enable different business models to co-exist, and these should be able to change over time without the need to constantly adapt the regulations.

Modularity: recognizing that the service can be broken down into its component parts, and that there may therefore be service providers that only produce one component in the service value chain, which is why the demands that the institution must meet are directly related to the different components that it is going to produce.

### Services covered by the regulation

The financial services involved or that might be involved in crowdfunding, and that should be regulated, are listed:

Crowdfunding platforms

Financial advisors

Purchase or payment order channels

Alternative transaction systems

Financial instrument custody

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# Guidelines for the proper functioning of appointments and remunerations committees of listed companies

As part of its commitment to promote best practice in the good corporate governance of the country's listed companies, Spain's National Securities Market Commission has recently published a new set of technical guidelines on how the appointments and remunerations committees of these companies should be run.

The main objective is to make this body more independent so that it can improve how it operates and carries out the process of selecting and appointing board members and senior management, together with the remunerations policy.

We have summarized below the main contents of the technical guidelines:

## Overarching principles

**Independence.** Committee members must act with independence, freedom of criteria and judgment, and an open mind, in particular when assessing potential candidates and specifically in the designation of independent board members when they have been proposed by executive board members who wield significant influence.

**Dialogue.** The committee chair must ensure that a climate of constructive dialogue prevails among members, encouraging diversity of opinion. There must be direct contact between the committee and the Chair of the Board, the CEO and the coordinating board member.

**Resources and expert support.** The committee must be able to access external advice if needed to handle particularly specialized or important matters, always bearing in mind potential conflicts of interest or incompatibilities. Furthermore, there must be an earmarked budget item that enables it to operate independently.

Proportionality. The criteria in the guidelines must be applied and followed taking into account each institution's characteristics, scale and complexity, its business and the sectors with which it deals.

## Composition and functioning

Committee members must have knowledge and experience of corporate governance, analysis and strategic assessment of human resources, selection of board directors and senior management, experience of their own in senior management positions and design of the policies and remuneration plans affecting them.

The composition of the management body must be diverse and, in particular, in those institutions with a controlling shareholder, the guidelines recommend that there should be a majority of independent board directors, to strengthen the independence of the selection processes.

With regard to how they work, in the same way as the role of supervisor was described in the technical guidelines for the audit committees, as covered in [Progreso 12](#), the committee should have its own set of regulations, timely access to information, the necessary time allocation of its members, sufficient resources and appropriate planning in place.

A minimum of three meetings a year is advisable, each to take place with a sufficient time span before the subsequent board meeting.

## Assessing and selecting the board members

Fulfilment of the committee's role of assessing and selecting the board members, should entail the following good practices:

An analysis of the competences, skills and experience of the existing board members in order to better define the functions and aptitudes of the candidates filling the vacancies

An analysis of the remaining board positions and, specifically, the maximum number of boards on which they can serve, in order to ensure they can discharge their duties effectively

A definition of the profile and capabilities required before initiating each selection process

Drawing up a template of the board's competences that defines the aptitudes and skills of the candidates to the board and helps the committee to define the functions, competences, skills and experience that each vacant post needs

A description of the reasons supporting the suitability of the candidate, indicating in each case the specific circumstances that were relevant in each decision

In addition, for the appointment, re-election and severance of independent board directors:

Outsourcing the candidate search

Enabling all board directors to put up names of possible candidates

Requiring from the candidate a reasonable amount of information about their other activities and potential conflicts of interest that could affect them

Informing the candidate, before proposing their appointment to the board, about what is expected of them (time dedication, participation, commitment)

When making re-election proposals, bearing in mind the need to progressively renew the board

Ensuring that any severance proposal affecting independent board members that the board is going to submit to the General Meeting originated in the committee itself

The guidelines also recommend that the appointment of the coordinating board member should be proposed by this committee.

## Succession planning

The committee should prepare a succession plan for the Chair of the Board, the chief executive and

the company's most senior posts, in order to avoid or at least reduce uncertainties that could affect the institution. This plan must be reviewed regularly "to adapt it to the new needs and circumstances".

## Remuneration policy

The committee should ensure that the remuneration policy for board members and senior management is clear, detailed, verifiable, based on objective criteria and consistent with the reality of the institution and its strategy.

The committee must review this policy every year to confirm that it is aligned with the institution's situation and strategy, and also with market conditions, in order to evaluate whether it contributes to creating long term value and to appropriate supervision and management of risk.

It should also monitor whether executive directors' and senior management's contract conditions are being met and verify that they are consistent with current remuneration policies.

In addition, it must check that the remunerations policy is being properly applied, that unscheduled payments are not being made to board members and senior management; if the circumstances are such that the "*malus*" and "claw-back" clauses for recovering bonuses are applicable, it must recover the sums concerned.

## Other functions

The guidelines recommend that the committee be involved in the annual evaluation of the board of directors and its supporting management committees, so this body should have access to the results achieved and the action plans or recommendations that may be necessary to correct potential deficiencies detected or to improve how the organs of government work.

Should a board member resign their post before the end of their term, the committee should evaluate the information received from this individual and, if it feels it is right to do so, start a dialogue to find out why they took this decision, ensuring that the board makes these reasons public and that the annual corporate governance report contains an explanation.

As well as the committee's core duties, the guidelines list other possible functions, consistent with current corporate governance trends:

Involving the Chair of the committee, together with the coordinating board member, in the communication and contact with shareholders, institutional shareholders and proxy solicitors  
Review or verification of the information about the board's remuneration that the company is required to disclose  
Review of the information within its area of responsibility that is posted on the institution's website  
Participation in the possible updates of the board's regulations as they concern its areas of competence

In any event, the guidelines make clear that the committee's duties are not limited solely to the board members, but also concern the company secretary, senior management and, in general, those carrying out leadership roles under the direct oversight of the board, the executive committees or the chief executive officers.

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# Gender equality measures to ensure that men and women are treated equally

Royal Decree 6/2019, 1st March, with urgent measures to ensure that men and women are treated equally and given the same opportunities in the workplace, aims to give society a legal framework for further progress towards completely equal treatment and opportunities.

We have summarized its key contents below:

## Effective equality

Clause 1 explains the amendments to [Organic Law 3/2007, 22 March](#) on effective equality between women and men (LOIHM) and essentially extends the requirement for companies with 50 or more workers to write equality plans, creating the obligation to register these in the record that will be set up for this purpose, pursuant to the regulation. It sets a transition period for compliance with these obligations, that varies according to the number of employees:

- 1 year for companies with 150 to 250 people
- 2 years for those with 100 to 150 people
- 3 years for companies with 50 to 100 workers

This clause is given more context in clause 6, amending [the consolidated text of the Social Order Infractions & Sanctions, passed by Royal Decree 5/2000, 4 August](#). It defines infractions in more detail, classifying as a serious infraction non-compliance on the part of businessowners with their obligations relative to equality plans and measures that have been laid down, not only in the Workers' Statute or applicable collective agreement, but also in the LOIHM.

## Workers' Right

Clause 2 refers to the reworking of the [consolidated text of the Workers' Statute, passed by Royal Decree 2/2015, 23 October](#), and restates the right of workers to a reasonable personal, family and work balance.

It explicitly regulates workers' right to the pay corresponding to their labor, specifying that pay should be equal, without discrimination and describing what is understood by "work of equal value", establishing a series of factors that should be assessed and compared to determine equivalence: the nature of the functions or tasks the work entails; educational, professional or skills attainments required to carry them out; factors that strictly relate to performance and working conditions for the activities being conducted.

Likewise, it sets an obligation on all companies (however many employees they have) to keep a record of their payroll wages (average wages, bonuses and extras), divided by sex and distributed by professional groups, professional categories or job positions that are the same or have equal value. The regulation stipulates that workers are entitled to see this record via their labor representatives.

Clause 3 describes the amendments to [the consolidated text of the Public Sector employees' basic statute law, passed by Royal Decree 5/2016, 30 October](#), and is a reflection of the measures set out in

the regulation for remaining public sector workers.

Both clauses, each in their respective area of application, standardize the duration of parental leave for the birth of a child. This is an important step forward in achieving real and effective equality between men and women, in supporting an appropriate work/life balance, and the principal of shared responsibility between both parents.

## Provisions to cover new rights

Clause 4 deals with the adaptation of Social Security regulations to the measures outlined in the labor regulation, redefining the welfare benefits in the light of these new rights. It also creates a new benefit to cover co-responsible care of the newborn, following the new provisions in both the [Workers' Statute](#) and in the Public Sector employees' Basic Statute.

Clause 7 contains the adaptations needed to include these provisions in the Social Security's protection scheme for self-employed workers.

## Financial support for the third sector

Finally, clause 5 contains an amendment to the sixty-first stipulation of [the 2009 National Budget \(Act 2/2008, 23 December\)](#), pursuant to which a fund has been created for ten years to finance infrastructure and services for personal autonomy and care of dependents, and for social services. This will provide financial support to social action institutions in the third sector, benefit corporations and all other bodies and companies that carry out this activity for dependent people and social services.

## Effective date

All these measures came into force immediately on 8 March, coinciding with International Women's Day.

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# Regulating companies of general interest (“benefit corporations”)

With the passing of Act 1901 in 2018, the Colombian government opened up the possibility of all types of companies adopting general interest company (BIC in the Spanish acronym) legal status, which entails their having a societal and environmental purpose that goes beyond shareholders' profit and interests.

By virtue of that law, the senior officers and managers of companies adopting this status must attach serious importance to the company's social and environmental interest and ensure transparency in reporting on its social impact in all its dimensions: business model, corporate governance, labor practices, environmental practices and community practices. Furthermore, the company's legal representative will be in charge of enforcing its social and environmental purpose, which must be properly covered in the corresponding management report.

In line with the above, in order to regulate this type of company more closely, the Ministry of Trade, Industry & Tourism recently tabled a draft decree setting out operating instructions and setting the

incentives that companies adopting the BIC classification will have:

Right to a 50% reduction on the Companies Register fee

The Industry & Trade Authority must bear in mind the company's BIC category when setting the rates applicable for registering logotypes and new creations

Exemption from income tax on profits from stocks given to workers

Preferential access to lines of credit

Reduced tariff on the withholding tax

Additional scoring in state procurement tenders

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## Instructions on the use of cloud-based computing services

Colombia's Financial Authority, the SFC, recently issued External Circular 005 which promotes the use of cloud-based computing for the provision of financial services and makes the operational risk management entailed in using these services more robust.

### Compliance with new requirements

Under the conditions of this Circular, if financial institutions in Colombia want to use the cloud to store information pertaining to their business activities and accounting or financial management, they must meet the new requirements set up by the regulator, among which we have highlighted the following:

Provide for the effective management of the risks arising from using these services as part of the institution's operational risk system

Establish criteria to select the suppliers who provide information storage services in the cloud

Verify that the jurisdictions in which the information is processed have data protection regulations that are comparable to those of Colombia

Establish back-up mechanisms for the information and keep the information encrypted

Suppliers providing cloud storage services must be ISO 27001 certified and comply with ISO 27017 and 27018

Reach agreements by which the supplier offers at least 99.95% availability

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## Progress on the use of

# cryptoassets

Although Colombian legislation states that the Colombian peso is the only legal tender with unlimited discharging effect, the use of cryptocurrencies has grown in the country since 2014 and, according to the central bank, “there has been a significant increase in transactions carried out with this type of assets, reaching annual growth rates of 47.1% between 2014 and 2017, when there were a total of 425,000 transactions”.

Given the above, the legislator has found it necessary to regulate transactions and other operations with cryptoassets, including cryptocurrencies and, half way through 2018, a Bill started going through Congress to regulate the use of virtual currencies, as discussed in [Progreso 16](#).

The draft at the first Senate reading makes several changes to the text submitted last year:

It includes cryptocurrencies in its definition of cryptoassets

The authorization for legal persons to operate as traders will be given by the Financial Authority

Traders must guarantee the protection by all possible means of the information

The Government must regulate the requirements that trading establishments have to meet in order to obtain authorization to trade in cryptoassets.

The Financial Authority will inspect, monitor and supervise the cryptoasset transactions made by institutions.

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## Progress being made towards approving several bills amending the financial habeas data law

Bill 324/2018, to amend the 2008 Financial Habeas Data law, is currently at the Congress reading stage. It will elaborate on the constitutional right of all citizens to know about, update and rectify any information collected about them in data banks, particularly financial and credit information, together with commercial and services data.

### Relief for small producers, young people and rural women

This program provides relief for small-scale producers, young people and rural women who have been put onto credit blacklists but who are currently up to date with their financial obligations, after receiving agricultural loans, through the Agricultural Financing Fund (FINAGRO). It sets the period during which negative data can be held on these fund beneficiaries at one month, starting from the date on which their back-payment installments or the loan in arrears has been paid.

### Financial habeas data law

On 26 March at its second reading, the Bill to amend the law regulating financial information habeas data rights was passed, a bill that we discussed in [Progreso 18](#).

The text finally adopted contained some amendments from the previous version, specifically those on the requirement to update the client's internal rating at the same time as the negative data is erased

or the non-compliance ends. However, it should be remembered that the regulatory bill is currently still passing through Colombia's House of Representatives, so it may undergo further amendments at later debates.

The most important aspects of the regulation are summarized below:

The maximum time that negative information can be listed is 2 years, counting from the date the back payments are paid back or the obligation is canceled

The negative listing of obligations that are less than 20% of 1 MMW (EUR47) only applies if there have been two prior notifications to the borrower.

The client's rating will be updated internally at the same time as the negative report is erased or the non-compliance ceases.

The negative data will expire after 5 years, starting from when the default began or immediately after the court case comes to an end.

If data owners wish to check the information held about them, this procedure will always be free of charge and will not bring their credit rating down.

The Information Source will be required to report the negative data within 18 months from the data owner's obligation falling due.

If the data is reported without the data owner being notified beforehand, it must be withdrawn, and proper notification must take place.

Information must not be used for the purposes of taking employment-related decisions.

The regulation sets an interim period, during which:

Data owners who pay their debt within 6 months from the law coming into effect will only remain on the negative register for 6 months.

Data about data owners whose information has remained on the register for at least 6 months since the obligation was canceled must be erased immediately.

Data owners who have not completed the 6 months will be reported for the time remaining until the 6 months are completed.

Furthermore, we should also remember that Bill 350/2019 is currently going through Colombia's Congress, having been recently submitted to the Senate. This bill establishes that negative information reports on non-compliance with obligations are not enforceable when the balance on the obligation is lower than 2 minimum daily wages in Colombia (about EUR 15).

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## From the unavoidable to the sustainable

Reasonable doubt can no longer be harbored about the existence of worldwide climate change. It is a fact. Such change is now one of the most crucial challenges facing humanity because of its widespread impact on the most diverse aspects of our globalized society. Its consequences are already tangible in the economy, society, geopolitics, demographics, health... And the list goes on...

To mark the United Nations Climate Change Conference (COP 22) held in Marrakech in November 2016, the World Bank released its report *Unbreakable: Building the Resilience of the Poor in the Face of Natural Disasters*, stating that the impact of extreme weather phenomena on poverty is much more devastating than had been thought, causing annual losses worth USD 520 billion in spending terms

(60% more than the asset losses) and preventing 26 million people a year from escaping poverty.

Nor is there any doubt about the contribution of human activity to the genesis and exacerbation of this widespread phenomenon. The scientific community has coined the term “Anthropocene” to define the current era, characterized by the intense impact of human activity on the environment and land ecosystems, and its involvement in the degradation of the equilibriums that support them.

Becoming increasingly aware of this reality, the international community has mobilized. It is designing actions to implement an alternative sustainable development model to mitigate the negative consequences that the current model of economic and social development has for the health of the planet and the welfare of future generations. The sustainable development model is underpinned by a holistic concept of development, in which the different facets of human life cannot be kept separate from one another.

Society, economics and environment are all melded in a sustainable development model driven by the United Nations’ Agenda 2030. When it was approved by its General Assembly in 2015, many saw it as the foundational event of a new economic paradigm. The Agenda drives forward a transformative vision for achieving the economic, social and environmental sustainability of the 193 UN-member countries. The over-arching goal of sustainable development is presented as a necessary consequence of balancing three key elements: economic growth, social inclusion and environmental protection. These factors are all inextricably linked to the wellbeing of people and their communities. In pursuit of this balance between them, the Agenda specifies a set of Sustainable Development Goals (SDGs). Establishing targets to be reached over the next few decades helps to bring us closer to this sustainable, inclusive development model, in which poverty reduction and climate change are profoundly interconnected.

Aware of this world-wide challenge and of the particular vulnerability in the areas of Latin America where it conducts its activity, the BBVA Microfinance Foundation (BBVAMF) was an early adopter of the new model of sustainable finance. It designed a Sustainability Strategy that supports microfinance solutions linked to our clients’ productive activities with business templates focused on low-carbon sustainable growth. The Strategy protects natural capital, improves environmental quality and governance and achieves resilient growth that reduces people’s vulnerability to natural risks and to climate change.

Promoting this strategy has taken the form of many initiatives supported by the BBVAMF Group, among which the numerous agreements and partnerships with recognized development entities and agencies play a significant part. The partnership reached with the UN Environment Program (UNEP) is an important example. It has enabled Banco de las Microfinanzas (Bancamía) in Colombia (since 2011) and Banco de Ahorro y Crédito Adopem in the Dominican Republic (since 2018) to develop the Microfinance for Ecosystems based Adaptation (MEbA) program, which provides vulnerable rural populations with personalized advice and technical assistance, together with specific products and services to make it easier to adapt their productive activities to environmental imperatives, thus making their production unit and its performance more robust. Or with housing programs, such as the “Adopem Eco Home” product, for financing, designing and promoting environmentally friendly rural housing in the Dominican Republic, which links into the Rural Finance & Environment (FRA in the Spanish acronym) program, part of the “Improving the aggregate social value in microfinance” project sponsored by Redcamif and (Appui au Développement Autonome (ADA).

With a diversified offering of greener products in savings, lending and insurance, our microfinance institutions not only open up access to more efficient technologies and processes that reduce resource consumption, increasing both cost-savings and competitiveness, but also help to transform the habits and attitudes of the people, companies and communities that our activity targets. Thus, they come more into line with the aims that inspired the United Nations’ Responsible Banking Principles, currently going being debated within the approval process.

In this new global development approach, the BBVAMF is taking a leading role as an agent of progress and a driving force in transforming our reality. Microfinance has the potential to catalyze our small-scale producers' adaptation to climate change, because small-scale positive action with this goal can be transformed into a large-scale positive change for the most disadvantaged population groups and those at the greatest risk.

As the General Secretary of the United Nations Ban Ki-moon urged, on the twentieth anniversary of the Social Development Summit held in Copenhagen in 1995: "We are the first generation that can wipe out extreme poverty. We are the last generation that can address the worst impacts of climate change before it is too late". It is not possible to overcome one challenge successfully without tackling the other. Starting from this premise, in BBVAMF we are working to turn that hope of a better future into reality, promoting a sustainable and inclusive development model so that "no-one is left behind".

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## Basic payment accounts to help vulnerable people and those at risk of financial exclusion

On 3 April, Royal Decree 164/2019 was passed, establishing a system of free basic payment accounts to help vulnerable people and those at risk of financial exclusion.

The regulation is a consequence of the requirements in EU Directive 2014/92[1], the transposition of which began with Royal Decree 19/2017, 24 November, as discussed in [Progreso 13](#), which sets out two fee bands: a general one (clients have to pay a maximum monthly fee which remunerates the institution for the costs it incurs) and another less costly rate (for vulnerable groups and those at risk of financial exclusion).

In the case of the first fee band, Ministerial Order ECE/228/2019, 28 February, sets the maximum fee at EUR 3 per month to cover the most common transactions: opening, using and closing an account, paying in cash (in Euros), withdrawing cash in Euros from the institution's branch offices and ATMs in the Member States of the European Union, and payment transactions using a debit or prepaid card, among others. Furthermore, the Order authorizes the institution to pass on to the client any fees incurred from cash withdrawals from other institutions' ATMs, pursuant to the second additional provision of Royal Decree 19/2018, 23 November, on payment services and other urgent measures on financial matters, as covered in [Progreso 17](#).

Royal Decree 164/2019 regulates the second fee band, such that the most vulnerable population group can access these accounts free of charge to receive the services indicated in Art 4.2 of this Order, as described above. The main areas covered in the Decree are as follows:

### Special situation of vulnerability or at risk of financial exclusion

This will apply when:

Gross annual income per family unit does not surpass certain thresholds[2] of the public revenue index (IPREM in the Spanish acronym).

Members of the family unit have neither direct or indirect ownership nor any rights over real estate goods apart from their primary residence, nor do they own any private companies.

## Proof of status

The client or credit institution in question must provide proof of this situation pertaining to all people in the family unit by providing: an official family record, income declaration, the last three pay checks received, a certificate from the administrative body of unemployment subsidies received, or similar.

## Document informing the client whether free service has been awarded or refused

Institutions must inform their clients as to whether free service has been awarded or refused within 30 days after the client provides the information requested by that institution. If the institution does not reply, this will be understood as acceptance of the client's free status.

## Duration of the free service

The service will be free of charge for 2 years, starting from when it became effective, unless the institution demonstrates that the client is no longer in vulnerability or at risk of financial exclusion, and may be extended for a further two years, provided this situation is shown to be unchanged.

## Storage period of documents

Credit institutions must store all the documents provided by clients for 6 years, independently of whether free service is offered or not.

[1] On the possibility of comparing fees for payment accounts, the transfer of payment accounts and access to basic payment accounts establishes the right of everyone to a basic payment account and also that member states may require credit institutions to apply more favorable terms to vulnerable consumers as a way of promoting social inclusion within the EU's financial products market.

[2] -Twice the 12-payment IPREM total, applicable at the time of making the application when it concerns people who are not members of any family unit.

- Two and a half multiples of this indicator when the people concerned are members of a family unit with fewer than four members.

- Three times this indicator when the family units concerned contain four or more members or have acknowledged "large family" status in line with current regulations.

-Three times the indicator in the case of family units containing a person with a disability level of 33% or higher, as officially recognized in a resolution issued by the Institute for the Elderly and Social Services or by the equivalent devolved regional body.

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# New policy to encourage enterprises into the formal

# economy

To curb the high proportion of companies operating in the informal sector in Colombia, the government is drafting a new policy to encourage companies into the formal economy. It is targeted at micro, small and medium-sized companies, to promote their access to financing, participation in public tender processes, exporting of products and advertising for their businesses, etc.

CONPES, the National Economic & Social Policy Council, is seeking to achieve three main goals with the new policy:

To reduce the regulatory burden for existing companies and for those wanting to go into the formal economy, by simplifying the paperwork

To implement policies that allow companies to materialize the advantages of the formal economy

To increase the cost of remaining in the informal economy

The financial sector's role in executing this policy will cover three main areas:

Financial literacy, since this is viewed as *"an instrument which enables entrepreneurs to take better financial decisions, as well as to recognize the best alternative for leveraging their company, with a profit and risk approach."*

The regulatory agenda, giving the country a more modern, inclusive and secure payment ecosystem.

Financial technology -Fintech- promoting new tools to raise finance, such as crowdfunding.

Finally, the government will analyze the feasibility of having "development banking" in the country, in order to increase access to financing for micro and small companies.