

*Consolidated text including amendments by the following provisions:
Royal Decree 1464/2018 of 21 December.
Royal Decree 102/2019 of 1 March.*

Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions. (Boletín Oficial del Estado of 14 February 2015)

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I

The smooth operation of the financial system is essential for the efficient allocation of savings and the financing of economic activity. Credit institutions play a key role in this allocation process as the main providers of finance to households, businesses, and government, and are also where the majority of households' savings are deposited.

Given the unique features of the banking business, the solvency of credit institutions is of the utmost importance for the smooth operation of the financial sector as a whole. These features include, first and foremost, the intrinsic fragility that comes with the maturity transformation of assets and liabilities. Credit institutions usually take on debt with relatively short maturities and lend over much longer periods. Under normal circumstances, this mismatch between the maturities of their assets and liabilities is not a cause for concern. However, the mere emergence of doubts about institutions' solvency can trigger the massive withdrawal of deposits or their being shut out of wholesale credit markets. These impediments to refinancing their assets may cause a liquidity crisis and ultimately undermine the institution's viability and erode confidence in the banking system as a whole.

What is more, unlike other sectors of the economy, credit institutions often have significant exposures to their peers. These close financial links, in combination with the high levels of leverage with which institutions operate, mean that one institution's difficulty servicing its debt may easily spread to the rest of the financial sector.

Moreover, during boom periods, the apparent reduction in the risk associated with the activities financed, in conjunction with profits that bolster institutions' capital base, allows them to increase the pace at which they grant credit. By the same token, in times of recession, the increased risk and narrowing capital base resulting from negative earnings causes institutions to scale back their lending. Consequently the economy's money supply behaves in a procyclical way.

Traditionally, monetary policy has been used to tackle this procyclical behaviour. However, monetary policy is not very effective when institutions' balance sheets are seriously impaired. In effect, the reduction in own funds deriving from the assumption of unexpected losses, in conjunction with the increased risk on exposures, forces institutions to scale back credit in order to remain in compliance with minimum regulatory capital requirements. In turn, this contraction in credit prevents monetary policy being transmitted to the real economy.

These features mean that financial crises have a particularly powerful impact on the real economy. What is more, the impacts are not limited to a short-lived contraction in aggregate demand, but even affect economies' growth potential. Indeed, the interruption of credit channels affects both main sources of long-term growth by impeding, first, capital accumulation, and second, the financing of those activities generating technological progress.

For these reasons, credit institutions are subject to a level of regulation that is unparalleled in other economic activities. This regulation has historically been agreed at the global level in order to avoid regulatory arbitrage between countries, which could lead to artificial competitive advantages and undermine the stability of the global financial system. The backbone of international prudential regulation is today the "global regulatory framework for more resilient banks and banking systems" (Basel III), presented by the Basel Committee on Banking Supervision in December 2010. Basel III was adapted and implemented in the European Union's legal system through two basic legislative instruments: Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013, on prudential requirements for credit institutions and investment firms, amending Regulation (EU) No 648/2012 and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

II

Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, recently came into force. This Regulation enacted the Single Supervisory Mechanism (SSM), comprising the European Central Bank and the national supervisory authorities, which include the Banco de España. Regulation 1024/2013 is implemented by Regulation (EU) 468/2014 of the European Central Bank of 16 April 2014, establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.

Together with the Single Resolution Mechanism, the SSM is one of the pillars of the recently created Banking Union, supported by a single detailed, comprehensive, regulatory code for financial services throughout the internal market.

This measure entails conferring upon the SSM, and particularly upon the European Central Bank, the supervision functions, including those of granting and withdrawing authorisation and imposing penalties on credit institutions, that have traditionally been performed by national authorities. The European Central Bank has therefore taken on the supervision of the banking system as a whole, exercising direct supervision over the most significant institutions, and indirect supervision over less significant ones. The significance of the implementation of SSM for Spain can be seen from the fact that 15 groups of institutions, together holding over 90% of the system's assets, have been identified as significant.

This change in the legal framework for supervisory competences makes it necessary to adapt our legislation to this new situation, in particular the distribution of competences between the European Central Bank and the Banco de España, which is also addressed in this Royal Decree. Thus, Title I, governing the requirements credit institutions are to comply with, sets out the amendments needed in Spain's legislation, primarily formal in nature, to adapt it to the new supervisory framework established by the European Union, particularly as regards, authorisations, acquisition of qualifying holdings, and evaluation of the suitability of credit institutions' senior officers. For its part, Title II also includes the relevant adaptations to the SSM in relation to capital

buffers. This regime is rounded off with the second additional provision, which covers supervisory functions "sensu stricto", regulated in Title III on the principle that the European Central Bank exercises direct supervision over the most significant institutions, and the Banco de España does so over the less significant ones.

III

The transposition of Directive 2013/36/EU of 26 June 2013 took place in two stages. In the first phase, Royal Decree-Law 14/2013, of 29 November 2013, on urgent measures to adapt Spanish law to European Union standards on the supervision and solvency of financial institutions, transposed the most urgent features of the Directive, whose non-transposition would have made it difficult for the Banco de España to exercise the new powers granted to it by European Union legislation.

Subsequently, Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, undertook the full implementation in Spanish law of the provisions of the Directive requiring the status of law. Nevertheless, as well as this transposition, Law 10/2014 of 26 June 2014 recast the main rules on the regulation and discipline of credit institutions in a single text. These rules had previously been spread across numerous instruments dating as far back as 1946, and successive amendments to banking regulations had in many cases made them difficult to interpret.

Similarly, the aim of this Royal Decree is not only to complete the regulatory implementation of Law 10/2014 of 26 June 2014, but also to recast in a single text those rules with regulatory status on the regulation and discipline of credit institutions. This Royal Decree therefore recasts in a single text the provisions on credit institutions in Royal Decree 216/2008 of 15 February 2008 on financial institutions' own funds, which are to remain in effect until the entry into force of Regulation (EU) 575/2013 of 26 June 2013 and Directive 2013/36/EU of 26 June 2013 and of Royal Decree 1245/1995 of 14 July 1995 on the creation of banks, cross-border activity and other issues relating to the legal regime of credit institutions. The Royal Decree is therefore divided into three main titles. The first implements the framework for access to the business of credit institutions, which was largely contained in Royal Decree 1245/1995 of 14 July 1995. It should be noted, however, that the authorisation arrangements provided in this title are limited to banks. Savings banks and credit cooperatives will be governed by their own specific regulations.

The main new features introduced by Directive 2013/36/EU of 26 June 2013 in this title are to be found in Chapter IV, which deals with the obligations regarding corporate governance and remuneration policy. As regards remuneration policy, the Royal Decree specifies the type of information institutions are to publish. Greater transparency in this area will enable the institution's shareholders to exercise tighter control over the quality of its senior officers.

As regards corporate governance, the functions of the committees introduced by Law 10/2014 of 26 June 2014 are set out. In particular, these functions include the obligation of the appointments committee to adopt measures to achieve gender equality among executive positions.

Although the bulk of the solvency requirements are found in Regulation (EU) No 575/2013 of 26 June 2013, Title II introduces certain provisions on this subject that derive from Directive 2013/36/EU. In particular, Chapter I of this title requires institutions to undergo a process of self-assessment of their capital levels, bearing in mind the nature, scale and complexity of their activities, and to have appropriate procedures to cover the main risks to which their activity is subject. This chapter also clarifies the application of the articles of Regulation (EU) 575/2013 of 26 June 2013 on the risk weightings used to calculate capital requirements assigned to exposures to the regional and local governments, and the bodies reporting to them. Therefore, it establishes the application of the

same weightings as central government for regional and local governments, insofar as it is considered that Organic law 8/1980 of 22 September 1980 on the financing of regional governments, Royal Decree-Law 17/2014 of 26 December 2014 on financial sustainability measures for regional and local governments and other economic measures, Organic Law 2/2012 of 27 April 2012 on budgetary stability and financial sustainability, and Legislative Royal Decree 2/2004 of 5 March 2004, approving the recast text of the Law regulating local government finances, provide the appropriate legal framework to reduce the risk of default under the terms required by Article 115(2) of Regulation (EU) No 575/2013 of 26 June 2013. Bodies, agencies and public entities reporting to a government unit may enjoy similar treatment, as established in Article 116(4) of the aforementioned Regulation, provided that the Banco de España considers there to be no difference in risk.

Additionally, Chapter II of this title implements one of the main new features of Directive 2013/36/EU of 26 June 2013: The capital buffer system. Consequently, credit institutions are to maintain additional Common Equity Tier 1 Capital to that required under Regulation (EU) No 575/2013 of 26 June 2013. Particularly significant among these buffers are the countercyclical buffer and systemic risk buffer. The countercyclical buffer allows the Banco de España to impose additional Common Equity Tier 1 capital requirements in upward phases of the cycle and reduce these requirements during downward phases of the cycle. For its part, the systemic risk buffer allows the supervisor to impose additional Common Equity Tier 1 capital requirements for exposures that are evolving in a way that could jeopardise the stability of the financial system. These buffers give the macroprudential supervisor specific macroprudential tools which, together with monetary policy and fiscal policy, may help soften economic cycles.

For its part, Title III implements the Banco de España's supervisory powers. Thus, as well as supervising compliance with the various ratios required by the solvency regulations, Chapter I of this title requires that the national supervisor be particularly vigilant regarding the internal approaches credit institutions use to calculate their own funds requirements.

It is common nowadays to find institutions operating in several countries, either through branches or subsidiaries. For this reason, Chapters II and III of Title III, respectively, define the institutions subject to supervision by the Banco de España and the framework for its cooperation with other competent authorities.

The final provisions include the first final provision, which amends the Regulations implementing Law 13/1989 of 26 May 1989, on credit cooperatives, enacted by Royal Decree 84/1993 of 22 January 1993, to adapt the regulations to the new legal framework resulting from adoption of Law 10/2014 of 26 June 2014 and this Royal Decree. Specifically, it adapts the rules for authorisation of credit cooperatives, and the withdrawal and lapse of authorisation.

The second final provision amends Royal Decree 2660/1998 of 14 December 1998 on the changing of foreign currency in establishments open to the public other than credit institutions. The objective is, firstly, to eliminate all the references to transfers, as this is a payment services with vetted access for payment services providers, as defined in Law 16/2009 of 13 November 2009 on payment services, which transposes Directive 2007/64/EC of the European Parliament and the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. This provision also corrects the inconsistency resulting from the coexistence of payment entities authorised to perform currency transactions not linked to the provision of payment services (former remittance operators) alongside other payment entities that could only buy and sell currency when this was their sole business purpose.

Lastly, the amendment of Royal Decree 1332/2005 of 11 November 2005 implementing Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates and amending other financial sector laws, represents the completion of the transposition of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate. The main new feature of Royal Decree 1332/2005 of 11 November 2005 is the elimination of the method of calculating the capital adequacy requirements for regulated entities in a financial conglomerate, referred to as book value/deduction of requirements.

This Royal Decree has been submitted for a report from the Ministry of Finance and Public Administration.

In view of the foregoing and at the proposal of the Minister of Economy and Competitiveness, with the prior approval of the Minister of Finance and Public Administration, in accordance with the State Council and following the Council of Ministers' discussion at its meeting on 13 February 2015,

I HEREBY PROVIDE:

PRELIMINARY TITLE
General provisions

Article 1. *Purpose.*

The purpose of this Royal Decree is to implement the provisions of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, as regards access to the activity, solvency requirements, and the arrangements for the supervision of credit institutions.

Article 2. *Scope.*

1. This Royal Decree will be applicable to credit institutions established in Spain or which provide services in Spain, and to consolidated groups and sub-groups of credit institutions whose parent company is based in Spain. It shall also be applicable, in accordance with the terms established in Law 10/2014 of 26 June 2014, to financial holding companies, mixed financial holding companies, and the groups of which they are the parent company.

2. The provisions of sections 1 to 3 of Title I, Chapter I, will be applicable solely to banks, unless the specific legislation for savings banks and credit cooperatives provides otherwise.

TITLE 1
Requirements of the activity

CHAPTER I
Authorisation, registration and activity of credit institutions

Section 1.
Authorisation and registration of banks

Article 3. *Authorisation and registration of banks.*

1. The Banco de España shall submit to the European Central Bank a proposal for authorisation to exercise the activity of a credit institution, following a report by the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds, in their respective areas of competence.

The Banco de España shall notify the General Secretariat for the Treasury and Financial Policy of the initiation of the authorisation procedure, indicating the essential elements of the case to be processed and the conclusion thereof.

2. The application for authorisation should be resolved upon within the six months following its receipt by the Banco de España, or at the time at which the required documentation is completed and, in any event, within the 12 months following its receipt. When the application is not resolved within the aforementioned period, it may be understood to have been rejected. The authorisation resolution adopted by decision of the European Central Bank will be subject to the appeals system provided under European Union legislation, and in particular, in Council Regulation (EU) No 1024/2013 of 15 October 2015 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

3. Once authorisation has been obtained and following their incorporation and registration in the Mercantile Register, banks must be entered on the Banco de España register of credit institutions in order to be able to exercise their activities.

4. Entries on the Banco de España register of credit institutions referred to in the preceding paragraph, and deletions from it, shall be published in the "Boletín Oficial del Estado" (Official State Gazette).

Article 4. *Requirements for exercise of the activity.*

The requirements to be met in order to exercise the activity include:

a) Incorporation as a company by the simultaneous incorporation procedure for indefinite duration.

b) Having an initial share capital of not less than €18 million, fully disbursed in cash and represented by registered shares.

c) Limitation of the corporate purpose stated in the articles of association or other constitutional documents to that of a credit institution.

d) Shareholders owning qualifying holdings must be deemed suitable, under the terms of Article 6.

e) No special advantages or special compensation whatsoever is to be reserved to the founders.

f) Having a board of directors comprising at least five members. Members of the board of directors and managing directors and similar officers, and persons responsible for key internal control functions and other key positions both of the institution, and where applicable, the parent company, must comply with the suitability requirements stipulated in Chapter III.

g) Having appropriate administrative and accounting structures, and adequate internal control procedures to guarantee the sound and prudent management of the institution. In particular, the board of directors must establish rules of operation and adequate procedures to facilitate compliance by its members at all times with their obligations and their assumption of the responsibilities upon them under the rules of organisation and discipline of credit institutions, recast text of the Share Capital Companies Law, enacted by Legislative Royal Decree 1/2010 of 2 July 2010 and other applicable provisions.

h) Having its registered offices and effective management and administration in Spain.

i) Having appropriate procedures and bodies for internal control and communication so as to prevent money laundering and terrorist financing operations, under the terms established in the relevant legislation.

Article 5. Requirements for the application for authorisation.

The application for authorisation to create a bank shall be sent to the Banco de España and must be accompanied by the following documents:

a) The draft articles of association or other constitutional documents, together with a certificate from the Mercantile Register showing that the proposed company name is not already in use.

b) Programme of activities, specifically listing the type of operations it intends to conduct, the administrative and accounting structures, internal control procedures, planned procedures for handling customer complaints and claims, and the internal control and communication procedures and bodies put in place to prevent operations related to money laundering and terrorist financing.

c) The list of the initial shareholders establishing the company, stating their respective shares of the company's capital. In the case of shareholders that are legal persons, any holdings or voting rights representing more than 5% of their capital are to be stated.

In the case of members due to own a qualifying holding, the necessary documentation to accredit compliance with the suitability requirements established in Article 6(1)(b) is to be submitted, together with:

1.- In the case of natural persons, information on their professional activity and career, and their asset situation.

2.- In the case of legal persons, the annual accounts and management report, with the auditors' report, where applicable, for the previous two financial years, or since its creation, if created during this period; the composition of its management bodies; and the detailed structure of the group to which it belongs, if any. In the case of company members that are legal persons belonging to a consolidated group, the consolidated annual accounts, management report, and auditors' reports for the group are also to be submitted.

If there are no members due to own a qualifying holding, the above information is to be provided regarding the twenty largest shareholders.

d) List of persons due to serve as members of the board of directors, managing directors, or similar officers, and the persons responsible for internal control and other key positions for the day-to-day running of the bank's activity, with detailed information on the applicable suitability requirements pursuant to Chapter III. This information shall also be provided in respect of the members of the board of directors, general managers or similar officers, as well as for those in charge of internal control functions and other key posts in the day-to-day running of the credit institution's parent company's activity.

e) Evidence that a cash deposit has been made with the Banco de España or that public debt securities have been pledged to the Banco de España for a sum equal to 20 percent of the minimum share capital established in the preceding article.

During proceedings, the Banco de España may require that the promoters submit any other reports or background information it sees fit to verify compliance with the conditions and requirements established in this Royal Decree.

Article 6. Refusal of the application.

1. Without prejudice to the European Central Bank's powers to refuse an application proposed by the Banco de España, the latter may refuse applications, stating its reasons, if the requirements of Articles 4 and 5 are not met, in particular when, given the need to guarantee sound and prudent management of the planned institution, the shareholders due to own a qualifying holding or, in the absence of shareholders with a qualifying holding, the twenty largest shareholders, are not considered suitable. For these purposes:

a) A qualifying holding in a bank is deemed to be a holding complying with the provisions of Article 16 of Law 10/2014 of 26 June 2014.

b) Suitability will be assessed based on, inter alia:

1.- The shareholders' commercial and professional repute under the terms of Article 30. This good repute shall be assumed in the case of shareholders that are public authorities or their dependent bodies.

2.- The financial resources at the shareholders' disposal to meet the commitments assumed.

3.- The transparency of the structure of the group to which the institution may belong, and, in general, the existence of serious difficulties inspecting or obtaining the necessary information on the conduct of its activities.

4.- The possibility that the institution may be inappropriately exposed to the risk of its promoters' non-financial activities or, in the case of financial activities, that the stability or control of the institution may be affected by their high risk.

5.- The possibility that the proper exercise of the institution's supervision be impeded by its close links to other natural or legal persons, the legal, regulatory or administrative provisions of the country to whose law some of these natural or legal persons are subject, or difficulties associated with the application of these provisions.

For these purposes, it shall be deemed that close links exist when two or more natural or legal persons are joined by:

i) A controlling link in the sense defined in Article 42 of the Commercial Code, or

ii) The direct or indirect ownership, or through controlling links, of 20 percent or more of the voting rights or capital of an institution.

2. The resolution to refuse authorisation shall be subject to the appeals system established in Law 13/1994 of 1 June 1994 and Law 30/1992 of 26 November 1992. After refusing an application, the Banco de España shall send the European Central Bank a copy of the resolution and proceed to return the deposit made pursuant to Article 5(e). It will also return the deposit in the event of an application's being withdrawn.

Article 7. Start of activity.

1. The bank's promoters must deliver the relevant deed of constitutional documents of the company, enter it on the Mercantile Register, and subsequently the Register of Credit Institutions, and start its activity within one year of being notified of its authorisation. The authorisation shall otherwise be declared to have lapsed, pursuant to the provisions of Article 13.

2. The deposit provided for under Article 5(e) will be release ex officio once the company has been incorporated and entered on the Banco de España register of credit institutions, and in the event of refusal, lapse, and, if not released previously, withdrawal or waiver of the authorisation provided for in this chapter.

Article 8. *Time limits on the activity of new banks.*

1. Newly created banks will be temporarily subject to the following limitations:

a) During the first three years after the start of activity, they may not distribute dividends, but must allocate all their freely available profits to reserves, unless authorised by the Banco de España in view of the institution's financial situation, and, in particular, provided that the institution is complying with its solvency requirements.

b) During the first five years after the start of activity:

1.- They may not grant credit, loans or guarantees of any kind to their directors and senior officers, directly or indirectly, nor to the immediate relatives thereof, or to companies in which any of them own holdings or more than 15 percent or on whose board they sit. In the case of shareholders who are legal persons belonging to the same economic group, this limitation extends to all companies of the group in question. In this case, the limitation shall not apply to operations with credit institutions.

2.- A natural or legal person or group may not hold, directly or indirectly, more than 20 percent of the bank's capital or voting rights, or exercise control over the same. For these purposes, a group shall be understood to be as defined in Article 42 of the Commercial Code. This limitation shall not be applicable to credit institutions and other financial institutions.

3.- The transfer *inter vivos* of shares and their encumbrance or pledging shall be conditional upon the prior authorisation of the Banco de España, and this limitation must be stated in the company's articles of association or other constitutional documents.

2. Non-compliance with the limitations cited in the foregoing paragraph, or a substantial deviation with respect to the programme of activities cited in Article 5(b) during the first three years, may result in the withdrawal of authorisation pursuant to Article 8 of Law 10/2014 of 26 June 2014.

Article 9. *Authorisation of banks subject to control by foreign persons.*

1. The creation of banks that will be controlled, as defined in Article 42 of the Commercial Code, by foreign persons, is subject to the provisions of the foregoing articles.

2. If control over the bank is to be exercised by a credit institution, investment firm, or insurance or reinsurance undertaking authorised in another European Union Member State, by the parent entity of such an entity, or by the same natural or legal persons that control it, before granting authorisation under Article 3(1), the Banco de España must consult the authorities responsible for supervision of the aforementioned entities.

3. If control over the bank is to be exercised by one or more persons, credit institutions or otherwise, registered or authorised in a non-European Union country, a guarantee may be required covering the totality of the Spanish bank's activities.

Section 2.

Authorisation of amendments to the constitutional documents and structural changes.

Article 10. *Amendments to the constitutional documents.*

1. The amendment of banks' articles of association or other constitutional documents shall be subject to authorisation by the Banco de España, which must resolve within the two months following receipt of the application, after which time it will be considered accepted. All other points will be governed by the authorisation and registration procedure established in Article 3.

The application to make an amendment must be accompanied by a certification of the act in which it was agreed, a report explaining the proposal, written by the board of directors, and the new draft constitutional documents, identifying the changes made.

2. No prior authorisation shall be required, although the Banco de España must be notified for the fact to be noted in the Register of credit institution, in the case of amendments to the constitutional documents with the purpose of:

- a) Changing the registered address within Spain.
- b) Increasing the share capital.
- c) Incorporating legal or regulatory precepts of an imperative or prohibitive nature in the constitutional documents, or complying with judicial or administrative decisions.
- d) Other amendments for which the Banco de España, in response to a prior enquiry on the subject by the bank concerned, considered authorisation unnecessary in view of the limited significance of the amendment.

The Banco de España should be notified within fifteen days following the adoption of the decision to amend the constitutional documents. If, having received the notification, this amendment were to exceed the scope envisaged in this paragraph, the Banco de España will notify the interested parties within thirty days so they can review the amendments, or, where applicable, adapt them to the authorisation procedure in the preceding paragraph.

Article 11. *Authorisation and registration of structural changes.*

1. In accordance with the provisions of the twelfth additional provision of Law 10/2014 of 26 June 2014, and under the terms thereof, the Minister for Economic Affairs and Competitiveness will be responsible for authorising mergers, carve-outs or the transfer of assets and liabilities, in whole or in part, in which a bank is involved, or any agreement that has similar economic or legal effects to the foregoing, together with the amendments to the constitutional documents deriving from them. To this end, the relevant reports required will be obtained, including, in all cases, that of the Banco de España.

2. For the purposes of the preceding paragraph, the transfer as a block of one or more parts of the capital of a bank (each of which forms an economic unit) to one or more newly created or existing companies is deemed a partial transfer of assets and liabilities, provided the operation is not considered a carve-out or global transfer of assets and liabilities pursuant to Law 3/2009 of 3 April 2009 on structural modifications to mercantile companies.

3. The application for authorisation shall be submitted to the General Secretariat for the Treasury and Financial Policy, accompanied by the following documents in triplicate:

- a) Certificate of the decision by the board of directors, approving the merger, carve-outs or whole or partial transfer of assets and liabilities with similar economic or legal effects to the foregoing operations.

b) Plans for the merger, carve-outs or whole or partial transfer of assets and liabilities with similar economic or legal effects to the foregoing operations.

c) A report by the directors explaining the operation, where appropriate.

d) Where appropriate, an expert report on the planned merger, carve-outs or whole or partial transfer of assets and liabilities with similar economic or legal effects to the foregoing operations, under the terms of Law 3/2009 of 3 April 2009 on structural changes in mercantile companies.

e) The draft constitutional documents of the company resulting from the operation, where applicable.

f) The draft constitutional documents of the companies involved, if they are amended, where applicable.

g) The current constitutional documents of the companies taking part in the operation.

h) Identification of the directors of the companies involved in the operation and those proposed to hold these offices in the resulting entities or entities involved.

i) Audited annual accounts of the entities involved in the operation for the last three financial years, and of the groups to which they belong, where applicable.

j) Balance sheet of the merger or structural change.

k) Certification of the decisions taken by the general assemblies of the entities involved in the operation.

l) Any other document the competent authority considers necessary in order to analyse the operation and expressly requested from the interested parties.

4. Once authorisation has been obtained and the operation entered on the Mercantile Register, when appropriate, it will be entered on the Banco de España's register of credit institutions.

Section 3. Withdrawal and lapse

Article 12. *Withdrawal and waiver procedure.*

1. The Banco de España will be competent to initiate, process, and submit a proposal to withdraw authorisation to the European Central Bank. The Banco de España may only initiate this procedure ex officio under the terms of Article 69 of Law 30/1992 of November 26 1992 on the Legal Status of Public Administration and Common Administrative Proceedings, and on the grounds set out in Article 8 of Law 10/2014 of 26 June 2014 or other rules with the force of law. The withdrawal resolution adopted by decision of the European Central Bank will be subject to the appeals system provided under European Union legislation, and in particular, in Council Regulation (EU) No 1024/2013 of 15 October 2015 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

2. The Banco de España shall grant a consultation process to the interested parties once the withdrawal proceedings have begun or immediately before drafting the proposed resolution, giving them fifteen days in which to make submissions and present any documents and evidence they see fit.

3. The Banco de España will also submit a proposal to withdraw authorisation to the European Central Bank when the credit institution waives the authorisation granted, or it may expressly refuse this waiver, within a period of three months from the time of notification.

Credit institutions shall accompany their notification of waiver with plans for the cessation of activity.

4. The waiver procedure will be governed by the rules envisaged for withdrawal of authorisation, with there being no requirement to wind up and liquidate the institution pursuant to Article 8(6) of Law 20/2014 of 26 June 2014, if the institution intends to continue to pursue unrestricted activities.

5. In the event of refusal of the waiver, the Banco de España must explain the reasons why it considers cessation of activity may give rise to serious risks to financial stability. For this purpose it will take into account the need to:

a) Ensure the continuity of activities, services and operations which, if interrupted, could disrupt the economy or the financial system and, in particular, financial services of systemic importance and payment, clearing and settlement systems.

b) Avoid detrimental effects for the stability of the financial system.

c) Safeguard deposits, repayable funds and other assets of credit institutions' customers.

Article 13. *Lapse of authorisation.*

1. The Banco de España shall expressly declare authorisation to operate as a credit institution to have lapsed if, within the twelve months following the notification date, the institution has not commenced the specific activities included in its programme of activities referred to in its authorisation owing to causes attributable to the institution. The resolution on the lapse of authorisation shall be subject to the appeals system established in Law 13/1994 of 1 June 1994 on the Autonomy of the Banco de España and Law 30/1992 of 26 November 1992.

2. The procedure to declare authorisation to have lapsed may only be initiated ex officio under the terms of Article 69 of Law 30/1992 of 26 November 1992.

3. Once the initiation of the procedure has been decided, the interested parties will be notified within ten days so that they may make submissions and provide any documents or other evidence at any time prior to the consultation process referred to in the following paragraph.

4. The Banco de España shall grant a consultation process to the interested parties once the proceedings have begun or immediately before drafting the proposed resolution, giving them fifteen days in which to make submissions and present any documents and evidence they see fit.

Section 4. **Cross-border activity**

Article 14. *Opening of branches and free provision of services in other European Union Member States by Spanish credit institutions.*

1. Credit institutions that intend to open a branch in another European Union Member State must first apply to the Banco de España, which may only refuse permission to open the branch when it has reasons to doubt, given the plans in question, the suitability of the administrative structures or financial situation of the credit institution, or when the programme of activities submitted includes

activities the institution is not authorised to conduct. The Banco de España will issue a resolution setting out the grounds on which it is based, within not more than two months of the receipt of all the information referred to in the following paragraph.

2. The application to open a branch envisaged in the preceding paragraph shall be accompanied by the following information:

a) The Member State in whose territory the branch is intended to be opened and the address in that State where documents may be required.

b) A programme of activities indicating, in particular, the operations the branch is intended to carry out and its organisational structure.

c) The names and backgrounds of the executives responsible for the management of the branch.

3. If the opening of the branch is agreed to, the Banco de España shall notify the competent authority in the host Member State. This notification will also be forwarded to the applicant institution accompanied by the relevant information and the documentation envisaged in the preceding paragraph.

The Banco de España will also inform the applicant of the amount and composition of the credit institution's own funds and the sum of the requirements upon it under Article 92 of Regulation (EU) No 575/2013 of 26 June 2013. In the circumstances envisaged in paragraph 6, the information forwarded by the Banco de España will be sent the parent credit institution.

4. The Banco de España will notify the European Commission and the European Banking Authority of the number and nature of cases in which applications for permission referred to in this article have been refused.

Any amendments to the content of any of the information forwarded as referred to in paragraph 2 must be reported to the Banco de España and the competent authorities in the host Member State by the credit institution at least one month before they are implemented. Within the one-month period referred to the Banco de España may oppose these amendments by issuing a resolution, setting out the grounds on which it is based, which will be communicated to the institution, under the terms set out in the preceding paragraph, and forwarded to the European Commission and European Banking Association.

5. When an institution wishes to exercise any type of activity in another European Union Member State under the freedom to provide services, it must first notify the Banco de España, stating the activities, from among those it is authorised to carry out, that it proposes to conduct. Within one month of receipt of this notification, the Banco de España shall inform the supervisory authorities in the host Member State, and notify the institution that it has done so.

6. The provisions of this article may be applied to the provision of services in other Member States of the European Union directly or by opening a branch by Spanish financial institutions that, being controlled by credit institutions that are also Spanish, comply with the arrangements envisaged in Article 12(4) of Law 10/2014 of 26 June 2014. In such cases, applications must also be signed by the parent institution or institutions.

When the financial institution is subject to the supervision of an authority other than the Banco de España it will inform the authority of the application, and in the case of the opening of branches, it must refuse authorisation if the aforementioned authority opposes it on the grounds of

non-compliance with the requirements set out in Article 16(2). The specific supervisory authority will be directly competent for subsequent activities. Nevertheless, the Banco de España shall ensure the conditions set out in this article are maintained.

The Banco de España will verify compliance with the requirements laid down in the first sub-paragraph of this paragraph and will provide the financial institution with a certificate of compliance, also notifying the supervisory authority of the host Member State.

If the financial institution ceases to comply with any of the requirements of the first sub-paragraph of this paragraph, the Banco de España will inform the supervisory authority in the host Member State of this fact, and the activities the institution carries out in this State will be subject to the latter's regulations.

7. When the institution intending to open a branch is a significant supervised entity for the purposes of Regulation (EU) No 2014/2013 of 15 October 2013, the decision regarding the opening of the branch will be made by the European Central Bank. The European Central Bank will also take on the competences conferred upon the Banco de España in this article, with the exception of the receipt of the application to open a branch, when a significant supervised entity intends to open a branch or exercise the freedom to provide services in a European Union Member State that is not a participant in the Single Supervisory Mechanism.

Article 15. *Opening of branches and free provision of services in non-member States of the European Union by Spanish credit institutions.*

1. Credit institutions seeking to open a branch in a non-European Union country must first apply to the Banco de España, including information on the State in which they intend to establish a branch and its planned address, accompanied by at least the following documentation:

b) A programme of activities indicating, in particular, the operations the branch is intended to carry out and its organisational structure.

c) The names and backgrounds of the executives responsible for the management of the branch.

2. The Banco de España will issue a resolution setting out the grounds on which it is based, within not more than three months of the receipt of all the foregoing information. When the application is not resolved within the above-mentioned period, it may be understood to have been rejected. The application may be rejected by the Banco de España when there are reasonable grounds to doubt the suitability of the administrative structures or financial situation of the credit institution, or when the programme of activities presented includes activities the institution is not authorised to conduct. The Banco de España may also refuse the application if it considers that the activities of the branch will not be subject to effective control by the supervisory authority in the host country, or because of the existence of legal or other impediments preventing or hindering the control and inspection of the branch by the Banco de España.

3. Any amendments to the information referred to in this paragraph must be reported to the Banco de España by the credit institution at least one month before they are implemented. No significant changes can be made to the branch's programme of activities if the Banco de España, opposes them within the aforementioned one-month period, by a resolution setting out the grounds on which it is based, of which the institution will be notified. This opposition must be based on one of the grounds cited in this paragraph.

4. Credit institutions that intend to conduct their activities for the first time under the freedom to provide services in a non-European Union country must first notify the Banco de España, stating the activities for which they are authorised that they intend to carry out.

Article 16. *Opening of branches and free provision of services in Spain by credit institutions from another European Union Member State.*

1. Credit institutions authorised in another European Union Member State may, either through opening a branch or under the freedom to provide services, may pursue in Spain the activities enjoying mutual recognition envisaged in the Annex to Law 10/2014 of 26 June 2014. To this end, the authorisation, constitutional documents and legal regime to which the institution is subject must permit it to pursue the activities in which it seeks to engage in Spain.

In the pursuit of their activity in Spain, such institutions shall observe the regulatory and disciplinary provisions for credit institutions which, where appropriate, are applicable and whatsoever other provisions issued for reasons of general interest, whether at the central, regional or local government level.

2. The opening in Spain of branches of credit institutions authorised in other European Union Member States will be conditional upon the Banco de España's receiving notification from the credit institution's supervisory authority containing at least the following information:

a) A programme of activities stating, in particular, the operations it intends to carry out and the branch's organisational structure.

b) The address in Spain from which all the necessary information may be required of the branch.

c) The names and backgrounds of the executives responsible for the management of the branch.

d) The amount and composition of the own funds and sum of own funds requirements for the credit institution and any consolidated group to which it belongs.

e) Detailed information about any deposit guarantee scheme protecting the branch's depositors.

Once it has received this notification, the Banco de España will proceed to inform the credit institution of its receipt, and the credit institution will then enter the branch on the Mercantile Register, and then the Banco de España's Register of credit institutions, notifying it of the effective date of commencement of its activities.

The Banco de España may set a waiting period of not more than two months from the time of reception of notification from the credit institution's supervisory authority before the branch commences activity. Where appropriate, it may also notify it of the conditions under which it is to exercise its activity in Spain, for reasons of general interest. If the notified activities include any that are not listed in the annex to Law 10/2014 of 26 June 2014, and it is an activity that credit institutions are prohibited from exercising or may only exercise with restrictions, the Banco de España shall notify the institution and its supervisory authority of this fact.

If the institution has not opened the branch one year after it has been notified of the communication from its supervisory authority, or after the end of the waiting period set by the Banco de España, it must recommence the procedure described in this paragraph.

Any amendments to the content of any of the information referred to in this paragraph must be reported to the Banco de España by the credit institution at least one month before they are implemented, in which case the Banco de España shall proceed as described in the foregoing sub-paragraphs. If the institution plans to close the branch, it must inform the Banco de España at least three months in advance.

3. Credit institutions authorised in another Member State of the European Union may begin activities under the freedom to provide services for the first time once the Banco de España has received notification from its supervisory authority indicating the activities the institution is allowed to exercise and which activities it intends to exercise in Spain. These arrangements will apply whenever the credit institution intends to conduct an activity in Spain for the first time, other than those contained in the aforementioned notification.

If the freedom to provide services is due to be exercised in Spain by a credit institution authorised in another Member State of the European Union that is not participating in the Single Supervisory Mechanism, the competences conferred upon the Banco de España in the preceding sub-paragraph shall be conferred upon the European Central Bank.

4. The arrangements provided in the foregoing paragraphs shall be applicable to the opening of branches or the freedom to provide services in Spain by financial institutions from other European Union Member States, whether subsidiary of a credit institution or shared subsidiary of several credit institutions, complying with the requirements laid down in Article 12(4) of Law 10/2014 of 26 June 2014.

The communication sent to the Banco de España pursuant to paragraph 2 must include the following:

a) A certificate issued by the supervisory authority for the parent credit institution or institutions accrediting compliance with the requirements set out in Article 12 of Law 10/2014 of 26 June 2014.

b) Other points required in paragraph 2 in the case of the establishment of branches or freedom to provide services by credit institutions authorised in other Member States of the European Union. Nevertheless, the information envisaged in paragraph 2(d) shall be substituted for by the amount and composition of the financial institution's own funds and the total risk exposure of the credit institution that is its parent company, calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013 of 26 June 2013. The information envisaged in paragraph 2(e) shall also be substituted for by information on any investor guarantee scheme to which the financial institution may belong.

When the activity of any of the financial institutions mentioned in the foregoing paragraphs corresponds to that carried on in Spain by specialised lending institutions, once the formalities envisaged in paragraph 2 have been completed, the Spanish branches of these institutions will be entered on the Banco de España's corresponding special register.

When the activity of the Spanish branch of the financial institution is subject to the control of another national supervisory authority, the Banco de España shall forward to that authority the communication received from the supervisory authority in the European Union Member State in which the financial institution was authorised or has its registered offices; once the branch has been entered on the Mercantile Register that authority shall enter it on its registers and may set a waiting period as described in paragraph 2, giving the notification referred to there. The Banco de España will notify the financial institution that the communication has been forwarded.

If a financial institution ceases to comply with any of the condition required in this paragraph, it must notify the Banco de España immediately.

5. When a credit institution authorised in a European Union Member State that is not participating in the Single Supervisory Mechanism that complies with the criteria set out in Article 6(4) of Regulation (EU) No 1024/2013 of 15 October 2013 intends to open a branch in Spain, the competences conferred upon the Banco de España in paragraph 2 shall be conferred upon the European Central Bank.

Nevertheless, the Banco de España shall receive the communication from the supervisory authority and shall have the power stipulate the conditions under which, for reasons of general interest, it is to exercise its activity in Spain.

Article 17. *Opening of branches and free provision of services in Spain by credit institutions from non-European Union countries.*

1. The establishment in Spain of branches of credit institutions authorised in non-European Union countries shall require authorisation from the Banco de España. To this end, the applicable provisions of Articles 3 to 9 shall be observed, with the following specific features:

a) Minimum share capital shall be understood to mean the endowment of permanent funds maintained by the institution in Spain on an indefinite basis, available to cover the branch's losses.

b) Article 4(a), (d), (e) and (f), Article 5(c), and the reference to the components of the board in Article 5(d) shall not apply. The reference to the draft constitutional documents in Article 5(a) shall be understood to refer to the draft deeds of constitution of the branch and the constitutional documents of the credit institution that are in force, and the Banco de España must be informed of any subsequent amendments made to either of them.

c) It must have at least two people who effectively determine the steering of the branch and are directly responsible for its management. They will be required to meet the standards of good repute, knowledge and experience referred to in Chapter III.

d) The branch's corporate purpose may not include activities the institution is not permitted to conduct in its home country.

e) The documentation accompanying the application will contain the information necessary in order to fully understand the legal and management characteristics of the foreign credit institution making the application, and its financial situation. It will also include a description of the organisational structure of the institution and of the group to which it belongs, if any. It will also accredit that it holds authorisation from its home country to open the branch, when so required, or a certificate to the effect that no such authorisation is required.

The authorisation may also be refused by application of the principle of reciprocity.

For the purposes of this point (e), the application must be accompanied by the following documentation:

1.- A programme of activities stating, in particular, the operations it intends to carry out and the branch's organisational structure.

2.- The address in Spain from which all the necessary information may be required of the branch.

3.- The names and backgrounds of the executives responsible for the management of the branch.

4.- The amount of the own funds and solvency ratio of the credit institution and any consolidated group to which it belongs.

5.- Detailed information about any deposit guarantee scheme protecting the branch's depositors.

2. If, once the branch has been opened, the foreign credit institution intends to modify the content of any of the information listed in point (e)(1), (2), (3) or (5) of paragraph 1, it must inform the Banco de España, without prejudice to any notification it is required to give to its supervisory authority, at least one month before making the change, in order that the Banco de España may issue its opinion and act in accordance with the provisions of the foregoing paragraph. If the institution plans to close the branch, it must inform the Banco de España at least three months in advance. The Banco de España may accept or refuse the closure, under the terms of Article 12(3) to (5).

3. When a foreign credit institution not authorised in another European Union Member State intends to provide services without a branch in Spain, it must first apply for authorisation from the Banco de España, stating the activities it intends to conduct. The Banco de España may request additional information to that supplied, and refuse authorisation to exercise some or all of these activities, or make authorisation conditional upon compliance with additional requirements, when this is necessary to guarantee that rules laid down for reasons of general interest are complied with.

Article 18. *Activity through other credit institutions.*

1. The authorisation arrangements provided by Articles 6 to 10 of Law 10/2014 of 26 June 2014 shall be applicable in the case of the creation of a foreign credit institution not authorised in a Member State of the European Union by a credit institution established in Spain, and in the case of the acquisition of a qualifying shareholding in an institution of this type, whether the acquisition is made directly or indirectly through entities controlled by the credit institution or group of credit institutions concerned.

2. In the case of the creation of a credit institution, the application for authorisation presented to the Banco de España should be accompanied by, at least, the following information.

a) The amount of the investment and percentage of the capital and voting rights of the institution to be created it represents, stating, where applicable, the entities through which the investment will be made.

b) That envisaged in Article 5(a), (b) and (d). That envisaged in Article 5(c) will be substituted by a list of the members due to hold qualifying shareholdings.

c) Complete description of the banking regulations applicable to credit institutions in the State in which the new institution is to be established, and, in particular, the regulations of the supervisory arrangements to which the institution will be subject and from which it may be appreciated that there are no impediments to the exercise of consolidated supervision, and the regulations in force on fiscal matters and the prevention of money laundering.

3. When a qualifying shareholding is due to be acquired, this being understood to be a holding that complies with the provisions of Article 16 of Law 10/2014 of 26 June 2014, or it is intended to that a qualifying shareholding be increased, such that the percentages set out in Article

17 of the aforementioned Law are reached or exceeded, the information stipulated in the foregoing paragraph must be submitted, although that envisaged in point (b) may be limited to those data that are public in nature. The term envisaged for the investment to be made will also be stated, the annual accounts of the last two years of the investee entity, and, where applicable, the rights of the entity to appoint representatives in its management and executive bodies.

4. Applicants may be required to submit all data, reports or background information the Banco de España considers necessary in order to decide appropriately, and in particular, that enabling the consolidated supervision of the group to be exercised.

Article 19. *Representative Offices.*

1. For the purposes of this Royal Decree, a representative office shall be understood to be a structurally and functionally dependent establishment belonging to a credit institution authorised in another country, such that this office's activity consists of providing information or commercial services relating to banking, financial or economic matters, that serve as a material support for the provision of services without an establishment. Representative offices may not demand remuneration of any kind for the exercise of these activities. Nevertheless, they may pass on to customers payments made to their related third parties.

Representative offices may not conduct lending operations, take deposits or act as financial intermediaries, nor may they provide any type of banking service except the channelling of third-party funds to their parent institutions. This channelling must be carried out through credit institutions operating in the country in which the representative office is established.

2. Spanish credit institutions, prior to any application that it must make to foreign authorities, must notify the Banco de España of its intention to open a representative office abroad, specifying the activities it intends to conduct. The Banco de España shall be notified of the office's opening, once carried out, and of its closure.

3. Credit institutions authorised in other European Union Member States shall notify the Banco de España of their intention to open a representative office in Spain.

The Banco de España may set a waiting period of not more than two months from the time of receipt of notification before the representative office commences activity. Where appropriate, it may also notify it of the conditions under which it is to exercise its activity in Spain, for reasons of general interest.

4. The Banco de España shall be responsible for authorising the establishment in Spain of representative offices of credit institutions not authorised in a European Union Member State.

Once an application for authorisation has been submitted, the Banco de España must issue an opinion within not more than three months of its receipt, after which time, if no express opinion has been issued, the application for authorisation shall be deemed to have been accepted.

5. The notification and application for authorisation provided for in paragraphs 2 and 3, respectively, must specify the activities intended to be conducted, and the name and background of the natural person who will be in charge of the office.

The Banco de España is to be notified of any subsequent changes to the representative office's address, the scope of its activities, the person in charge of it, and of its closure.

Section 5. Offices, agents and delegation of functions

Article 20. *Offices of credit institutions.*

Credit institutions and branches of credit institutions may open new offices in Spain. This shall be understood without prejudice to:

- a) Any restrictions that may be laid down in entities' constitutional documents.
- b) The prudential supervision measures adopted by the Banco de España under Article 68(2)(e) of Law 10/2014 of 26 June 2014.
- c) The limitations established in Article 2(1) of Law 26/2013 of 27 December 2013 on savings banks and banking foundations.
- d) The limitations established in Article 3 of the Regulations implementing Law 13/1989 of 12 July 1989, on Credit Cooperatives, enacted by Royal Decree 84/1993 of 22 January 1993.

Article 21. *Agents of credit institutions.*

1. For the purposes of this article natural or legal persons to whom a credit institution has granted powers to act habitually vis-à-vis its customers in its name and on its behalf, in the negotiation or formalisation of operations typical of a credit institution are considered its agents. This excludes representatives authorised for a sole specific operation, and persons linked to the institution or other institutions of the group by a relationship of employment.

2. Agents may not formalise guarantees or other off-balance-sheet risks.

3. Agency contracts as referred to in this Article shall be entered into in writing, and shall specify the type of operations in which the agent may act, and the geographical scope of the agent's activities.

4. Credit institutions shall inform the Banco de España, in the manner it determines, of their list of agents, indicating the scope of representation granted to them, once a year. This list shall be updated with the new representations granted or the cancellation of any existing representations, as soon as they take place. Institutions shall include this list of agents in an annex to their annual report.

The Banco de España may gather data from represented entities and their agents all such information as it deems necessary on matters relating to the subjects for which it is competent.

5. Credit institutions must require in their agency contracts that their agents disclose their nature in all their dealings with customers, uniquely identifying the represented institution.

6. The credit institution will be responsible for fulfilling the regulatory provisions and disciplinary rules in its acts with the agent. For these purposes, it shall develop appropriate oversight procedures.

7. An agent may only represent one credit institution or the credit institutions belonging to a single consolidated group of credit institutions.

8. The credit institutions' agents may not operate through sub-agents.

9. When the agency contract provides for the agent's receiving or delivering funds in cash, cheques or other payment instruments, these may not be paid to the agent, or be drawn against the agent's bank accounts, even on a transitory basis.

10. Without prejudice to the provisions in Articles 14 to 17 on the provision of services, Spanish credit institutions entering into agreements with other foreign credit institutions for the habitual provision of financial services to customers, in the name of or on behalf of another institution, or entering into agency agreements in the sense indicated in paragraph 1, must notify the Banco de España thereof, stating the name of the correspondent and the services covered, within a period of one month from the formalisation of the agreement.

11. When agency contracts envisage performing operations envisaged in Law 24/1988 of 28 July 1988 on the securities market, credit institutions and their agents must also comply with the rules of this Law and its implementing regulations.

Article 22. *Delegation of the provision of services or exercise of functions of credit institutions.*

1. Credit institutions may delegate the provision of services or exercise of functions to a third party, provided that the institutions' activity is not emptied of content and the delegation does not diminish the entity's internal oversight capacities and the supervisory capacities of the Banco de España and European Central Bank.

The activities reserved to credit institutions may not be the object of delegation, without prejudice to the provisions in relation to the agents of credit institutions in the preceding article.

2. The delegation of services or functions to third parties by credit institutions does not diminish their responsibility for the full compliance with the obligations established in the legislative framework for their authorisation and operation.

3. The delegation of essential services or functions by credit institutions must comply with the following requirements:

a) Delegation must not result in the transfer by senior management of its responsibility. Specifically, delegation may not reduce the internal oversight requirements established in Article 43.

b) Delegation may not alter the relationships and obligations of the credit institution with its customers or with the competent supervisory authority.

c) The conditions the credit institution must comply with to receive and maintain authorisation may not be eliminated or modified by the existence of a delegation agreement.

d) The delegation agreement between the credit institution and the third party must be in the form of a written contract specifying the rights and obligations of the parties.

4. Credit institutions must prepare and execute an objective and comprehensive policy for the delegation of essential services or functions.

5. A function or service shall be understood to be essential to the exercise of a credit institution's activity if a deficiency or anomaly in its execution may either significantly affect the credit institution's capacity to permanently meet the conditions and obligations deriving from its authorisation and the framework established in Law 10/2014 of 26 June 2014 or affect its financial profits, solvency or the continuity of its business.

6. The Banco de España will specify the foregoing requirements and the conditions under which credit institutions may delegate the provision of services or exercise of functions. Also, depending on the nature or criticality of certain functions or activities, it may establish limitations on delegation other than those mentioned in this article.

The Banco de España or, where applicable, the European Central Bank, will be responsible for the supervision provided for in this article, and for these purposes, credit institutions must have all the necessary information available when requested.

CHAPTER II **Qualifying holdings**

Article 23. *Definition and calculation of qualifying holdings.*

1. Holdings defined in Article 16 of Law 10/2014 of 26 June 2014 shall be considered qualifying holdings in credit institutions, and the following shares, contributions, or voting right shall be included in their calculation:

a) Those acquired directly by the potential acquirer.

b) Those acquired through companies controlled or part-owned by the potential acquirer.

c) Those acquired by companies forming part of the same group as the potential acquirer or companies part-owned by group entities.

d) Those acquired by other persons acting on behalf of the potential acquirer or in concert with the acquirer or with companies of the acquirer's group. In all cases, the following will be included:

1.- Voting rights that may be exercised by virtue of an agreement with a third party that obliges the potential acquirer and the third party to adopt, through the concerted exercise of the voting rights they hold, a lasting common policy in relation to the management of the credit institution, or which aims to influence it in a significant way.

2.- Voting rights that may be exercised by virtue of an agreement with a third party envisaging the temporary transfer to the potential acquirer of the voting rights in question for valuable consideration.

e) Those held by the potential acquirer linked to shares acquired through a trustee.

f) Voting rights that may be controlled, with the express statement of intent to exercise them, as a result of the deposit of the corresponding shares as collateral.

g) Voting rights that may be exercised by virtue of agreements to constitute a right of usufruct on shares.

h) Voting rights that are linked to shares deposited with the potential acquirer, provided the latter can exercise them at its discretion without the need for specific instructions from the shareholders.

i) Voting rights which the potential acquirer may exercise as a proxy where the latter may exercise the voting rights at its discretion without the need for specific instructions from the shareholders.

j) Voting rights that may be exercised by virtue of agreements or businesses from among those in points (f) to (i), entered into by an entity controlled by the potential acquirer.

2. Voting rights will be calculated on the totality of the shares on which they apply, even in those cases in which the exercise of these rights is suspended.

3. For the purposes of the provisions of Title I, Chapter III of Law 10/2014 of 26 June 2014 and of the provisions of this chapter, shares, contributions or voting rights to be included in the calculation of a shareholding shall not include:

a) Shares acquired solely for the purposes of clearing and settlement within the usual short settlement cycle. For this purpose, the maximum duration of the usual short settlement cycle shall be three stock-exchange business days as of the transaction. This shall apply both to transactions conducted on an official secondary market or any other regulated market and those conducted off of such a market. The same principles shall also apply to transactions carried out using financial instruments.

b) Shares that may be held as a result of providing insurance or placing of financial instruments on a firm commitment basis, provided that the associated voting rights are not exercised or used to intervene in the management of the credit institution and are transferred within one year of their acquisition.

c) Assets held under a contractual relationship for the provision of management services and custody of securities, provided that the institution may only exercise the voting rights inherent in these shares with instructions drawn up by the owner in writing or by electronic means.

d) Shares or shareholdings acquired by a market maker acting as such, provided that:

1.- It is authorised to act as a market maker under the provisions incorporated in national legislation of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU or Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and

2.- It neither intervenes in the management of the credit institution concerned nor exerts any influence on it to buy such shares or support the share price in any other way.

e) Shares or shareholdings included in a portfolio managed in a discretionary and individualised way provided that the investment firm, collective investment institution management company or credit institution may only exercise the voting rights inherent in these shares with specific instructions from the customer.

4. In order to calculate a shareholding for the purposes set out in paragraph 2 in the case where the potential acquirer is a parent entity of a collective investment institution management company or an entity that exercises control over an investment firm, the following considerations shall apply:

a) The parent entity of a collective investment institution management company shall not be obliged to aggregate the proportion of voting rights accruing to it from the shares forming part of the assets of collective investment institutions managed by the management company, provided that it exercise these voting rights independently from the parent entity.

Notwithstanding the foregoing, the provisions in the above paragraphs shall apply when the parent entity or other entity controlled by it has invested in shares making up the assets of the collective investment institutions managed by the management company and the latter does not have discretion to exercise the corresponding voting rights but may only exercise them following the direct or indirect instructions of the parent entity or another entity controlled by it.

b) The entity exercising control over a company providing investment services shall not be obliged to aggregate the share of the voting rights accruing to it from the shares it owns to the share that it manages on an individualised basis as a result of its providing a portfolio-management service, provided that the following conditions are met:

1.- That the investment firm, credit institution or collective investment institution management company are authorised to provide portfolio management services under the terms established in Articles 63(1)(d) and 65 of Law 24/1988 of 28 July 1988.

2.- That it may only exercise the voting rights inherent in such shares following instructions given in writing or by electronic means or, otherwise, it ensures that individual portfolio management services are conducted independently of any other services and under conditions equivalent to those provided for in Law 35/2003 of 5 November 2003 on collective investment institutions, by putting appropriate mechanisms in place.

3.- That it exercises its voting rights independently from the parent entity.

Notwithstanding the foregoing, the provisions in the above paragraphs shall apply when the parent entity or other entity controlled by it has invested in shares making up the assets of a collective investment institution belonging to the group and the latter does not have authority to exercise the corresponding voting rights but may only exercise them following the direct or indirect instructions of the parent entity or another entity controlled by it.

5. Indirect shareholdings will be included in the calculation at their full value when the potential acquirer controls the intermediary company, and as the percentage of their value corresponding to the percentage shareholding in the intermediary company otherwise.

When a qualifying shareholding is held indirectly, wholly or partially, the Banco de España must be notified in advance of any changes in the persons or entities through which this shareholding is held, and it may oppose such changes as provided in Article 25.

6. Companies in which the potential acquirer has control as a result of any of the situations envisaged in Article 42 of the Commercial Code shall be considered to be controlled companies, and those in which at least 20 percent of a company or entity's voting rights or capital is held, directly or indirectly, or 3 percent of its shares are traded on a regulated market shall be considered an investee company.

7. For these same purposes, in any event the possibility of appointing or dismissing any member of the credit institution's board of directors shall be understood to imply significant influence.

Article 24. *Information the potential acquirer is to provide.*

1. The Banco de España shall issue a Circular with a list of information the potential acquirer is to provide, in compliance with the notification obligation referred to in Article 17(1) of Law 10/2014 of 26 June 2014. The Banco de España shall publish the content of this list on its website.

2. In any event, the list referred to in the preceding paragraph must contain information on the following points:

a) On the potential purchaser and, where applicable, any person effectively directing or controlling the latter's activities.

1.- The identity of the potential acquirer, its shareholdership and the composition of its administrative and management bodies.

2.- The professional and business standing of the potential acquirer and, where applicable, any person effectively directing or controlling the latter's activities.

3.- The detailed structure of any group to which it belongs.

4.- The asset and financial situation of the potential acquirer and any group to which it belongs.

5.- The existence of links or relationships, financial or otherwise, between the potential acquirer and the acquired entity and its group.

6.- The evaluations carried out by international organisations on the prevention of money laundering and terrorist financing in the home country of the potential acquirer, unless it is a European Union Member State, together with the potential acquirer's track record in relation to the prevention of money laundering and terrorist financing, and those of the entities in its group that do not have their registered offices in the European Union.

In the case of Member States of the European Union, the information on this track record will be obtained from the Banco de España's consultation with the supervisory authorities of this State, pursuant to Article 19(1) of Law 10/2014 of 26 June 2014.

b) On the proposed acquisition:

1.- The identity of the entity to be acquired.

2.- The purpose of the acquisition.

3.- The amount of the acquisition, and the manner and place in which it will be carried out.

4.- The effects of the acquisition on the capital and voting rights, before and after the proposed acquisition.

5.- The existence of express or tacit concerted action with third parties, of relevance to the proposed operation.

6.- The existence of prior agreements with other shareholders of the entity to be acquired.

c) On the financing of the acquisition: Source of the financial resources used for the acquisition, entities through which they will be channelled, and arrangements by which they are made available.

d) In addition, the following shall be required:

1.- In the case of qualifying shareholders that cause a change in the entity's control, the business plan will be set out, including information on the strategic development of the acquisition, the financial statements, and other forecasts. The main modifications the potential acquirer intends to make to the entity due to be acquired will also be described. In particular, the impact the acquisition will have on corporate governance, the structure and the resources available in the internal oversight bodies, and the procedures for the prevention of money laundering and terrorist financing, will be set out.

2.- In the case of qualifying shareholdings that do not bring about changes in the entity's control, information will be given on the potential acquirer's policy regarding the acquisition and its intentions for the acquired entity, in particular, as regards its participation in the entity's governance.

3.- In the two preceding cases, the aspects of the suitability of the members of the board of directors and managing directors and similar officers who are to direct the credit institution's activity as a consequence of the proposed acquisition.

Article 25. *Evaluation of proposed acquisitions of qualifying shareholdings.*

1. The Banco de España will evaluate the proposed acquisitions of qualifying shareholdings and submit to the European Central Bank a proposed decision so that it may oppose the acquisition or not. The evaluation of the proposed acquisition will take the following criteria into account:

a) The commercial and professional repute of the potential acquirer.

b) Compliance with the suitability requirements established in Chapter III of this title in relation to the members of the board of directors and general managers or similar officers who are to manage the activity of the credit institution as a consequence of the proposed acquisition.

c) The financial soundness of the potential acquirer and its ability to meet the commitments undertaken, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed.

d) The credit institution's capacity to comply in a lasting way with the applicable regulatory provisions and disciplinary rules, and in particular, when applicable, if the group of which it will become a part has a structure that does not hinder effective supervision, and which enables an effective exchange of information between the competent authorities to carry out this supervision and determine the distribution of responsibilities between them.

e) The absence of reasonable grounds to suppose that:

1.- Money laundering or terrorist financing operations have been conducted or attempted in relation to the proposed acquisition, as defined in the regulations on the prevention of such activities.

2.- The acquisition would increase the risk that such activities take place.

2. As soon as notification is received pursuant to Article 17(1) of Law 10/2014 of 26 June 2014, the Banco de España will ask the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC) for a report so it is able to properly assess this criterion. With this request the Banco de España will send the SEPBLAC the information it has received from the potential acquirer or that it has from the exercise of its competences that may be relevant to this assessment. The SEPBLAC shall send its report with the stated information to the Banco de España within thirty working days of the day after receipt of the request.

3. The decision whether or not to oppose the acquisition of a qualifying holding must be adopted within a maximum of sixty working days, as of the date on which the Banco de España has acknowledged receipt of the notification, in order to make the assessment referred to in paragraph 1. The acknowledgement of receipt will be given in writing within two working days of the date of receipt of the notification by the Banco de España, provided that the latter is accompanied by all the information required under Article 24, and in which the potential acquirer will state the exact date on which the evaluation period expires. If the notification does not include all the required information, the potential acquirer will be notified such that, within ten days, it remedy the gaps in the information

or provide the necessary information, warning it that if it does not do so the proposed acquisition will be considered withdrawn.

4. If it deems it necessary, before the fiftieth working day of the period established in the foregoing paragraph, the Banco de España may request any additional information that, in general, may be required in accordance with the provisions of Article 24 in order to properly evaluate the proposed acquisition. This request shall be made in writing and shall specify the additional information required.

5. The Banco de España may only submit to the European Central Bank a proposed decision to oppose the proposed acquisition when there are reasonable grounds for it to do so, on the basis of the criteria established in paragraph 1.

If the Banco de España, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing, setting out the reasons for its decision.

If no decision has been issued within the period of sixty working days provided for in paragraph 3, it shall be understood that there is no opposition.

6. The Banco de España may not impose prior conditions in terms of the amount of the shareholding to be acquired nor take into account the economic demands of the market when making the evaluation.

7. The draft decisions drawn up by the Banco de España shall mention the possible observations or reservations expressed by the competent authority responsible for supervision of the potential acquirer, consulted under the terms of Article 19 of Law 10/2014 of 26 June 2014.

8. At the acquirer's request or ex officio, the Banco de España may disclose the reasons for its draft decision, provided that the information thus disclosed does not affect third parties not participating in the operation.

Article 26. *Suspension of the assessment period.*

1. In the circumstances envisaged in Article 25(4), the Banco de España may suspend the calculation of the evaluation period, once only, during the period between the date of the request for additional information and the date on which such information is received. This suspension may not have a duration of more than twenty working days.

2. Notwithstanding the provisions of the foregoing paragraph, the Banco de España may determine that the suspension of the calculation of the evaluation period mentioned in the preceding paragraph may have a duration of up to thirty days, if the potential acquirer:

- a) Is authorised or registered outside of the European Union; or,
- b) Is not subject to financial supervision in Spain or in the European Union.

3. The calculation of the thirty working days provided for under Article 25(2) for the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences to send its report to the Banco de España shall be suspended under the same terms as the latter may suspend calculation of the evaluation period in accordance with Article 25(4).

Article 27. *Information on credit institutions' capital structures.*

Independently from the obligation established in Article 22(1) of Law 10/2014 of 26 June 2014, credit institutions shall notify the Banco de España, in the manner established by the latter, within one month of the end of each calendar quarter, of the composition of their share capital, listing all the shareholders, in the case of banks, or holders of contributions, in the case of credit cooperatives, that at the end of the period are considered financial institutions and those that, not being such, have shares or contributions registered in their name representing a percentage of the entity's share capital equal to or greater than 0.25 percent, in the case of banks, and 1 percent in the case of credit cooperatives.

Article 28. *Disclosure of shareholdings.*

1. In accordance with Article 88 of Law 10/2014 of 26 June 2014, credit institutions shall include the following in their annual report:

a) Itemised information on the holdings in its own capital, at year-end, held by domestic or foreign credit institutions, or groups, as defined in Article 42 of the Commercial Code, which include a domestic or foreign credit institution, when the holding is equal to or greater than 5 percent of the entity's capital or voting rights.

b) Itemised information on the entity's holdings in the capital of other domestic or foreign credit institutions, when these holdings reach or exceed the percentage stated in point (a).

2. In consolidated groups of credit institutions, the information required in the preceding paragraph shall be included in the group's annual report and shall refer, in the case of point (a), to holdings in any of the credit institutions in the group, and in the case of point (b), those held by the group as a whole.

CHAPTER III
Suitability, incompatibilities and register of senior officers

Article 29. *Suitability assessment.*

1. The members of the board of directors, and general managers or similar officers, and individuals responsible for internal oversight functions and other key posts for the daily running of the credit institution's activities, must comply with the requirements for good repute, experience and good governance established in Title I, Chapter IV of Law 10/2014 of 26 June 2014.

These requirements must also be met by the members of the board of directors, general managers or similar officers, as well as for those in charge of internal control functions and other key posts in the day-to-day running of the credit institution's parent company's activity. When assessing these requirements, the nature, scale and complexity of the functions performed by these persons in relation to the credit institution will be taken into account.

2. The assessment of the requirements referred to in the preceding paragraph shall be performed:

a) By the institution, or when applicable, by its promoters, when applying for authorisation to exercise the credit institution's activity, whenever new appointments are made, and whenever circumstances arise making it advisable to reassess the suitability of applying the procedures envisaged in Article 33.

b) By the acquirer of a qualifying holding, when the acquisition of this holding results in new appointments, without prejudice to the subsequent assessment by the entity.

If the suitability assessment envisaged in points (a) and (b) above is negative, the institution must abstain from appointing the individual, or if the circumstance arises subsequent to his or her appointment, it must take the necessary measures to correct the shortcomings identified and, if necessary, suspend or dismiss the individual concerned.

c) By the Banco de España or, where applicable, the European Central Bank, in the following cases and periods:

1.- When authorising the creation or acquisition of a credit institution, within the period envisaged in Article 3.

2.- In the event of the acquisition of a qualifying holding, resulting in new appointments, within the period envisaged in Article 25.

3.- Following the notification of the proposal of new appointments pursuant to Article 33(3), within three months as of the date of notification. If no notification is given within this period, the assessment will be deemed to be favourable.

4.- When, in the presence of well-founded indications, it is necessary to evaluate whether the serving members remain suitable.

3. The Banco de España must be notified of any non-compliance with the requirements specified in Articles 30 to 32 by the entity within a maximum period of fifteen working days from when they become known.

Article 30. *Commercial and professional repute requirements.*

1. Commercial and professional repute required under Article 24 of Law 10/2014 is deemed to apply to persons who have shown a personal, commercial and professional conduct that casts no doubt on their ability to pursue sound and prudent management of the institution.

2. In order to assess whether the commercial and professional repute requirements have been met, all the available information will be considered, including:

a) The officer's track record in relation to the regulatory and supervisory authorities; the reasons for any dismissals from previous posts or offices; their history of personal solvency and if they have fulfilled their obligations; their professional conduct if they have held positions of responsibility in credit institutions subject to a process of restructuring or resolution; and if they have been disqualified under Law 22/2003 of 9 July 2003 on insolvency, unless the period of disqualification set in the bankruptcy ruling has expired, or if they are undischarged bankrupt or insolvent persons under insolvency proceedings prior to the entry into force of the aforementioned law.

b) Sentences for crimes or offences and penalties for administrative offences, taking into account:

1.- The degree of intent or recklessness in the crime, offence, or administrative infringement.

2.- Whether the penalty or sanction is confirmed.

3.- The seriousness of the penalty or sanction imposed.

4.- The classification of the facts resulting in the penalty or sanction, particularly in the case of financial crimes, money laundering, crimes against the socio-economic order and against the tax and social security authorities, or if they entail an infringement against the regulatory rules governing the exercise of banking, insurance, or the securities market, or the protection of consumers.

5.- If the facts giving rise to the penalty or sanction were carried out for the party's own benefit or harmed the interests of third parties who had entrusted the administration or management of business to them, and in this case, the significance of the facts giving rise to the penalty or sanction in relation to the functions assigned or due to be assigned to the officer in question in the credit institution.

6.- The time barring of the criminal acts or administrative offence or the possible time barring of criminal responsibility.

7.- The existence of attenuating circumstances and subsequent conduct since the committing of the crime or offence.

8.- Repeated penalties or sanctions for crimes, offences or infringements.

For the purposes of the evaluation provided for in this sub-paragraph, the entity shall send the Banco de España an extract from police records on the person being assessed. The Banco de España shall also consult the databases of the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority on administrative sanctions and may set up a committee of independent experts in order to report on assessment dossiers in which there are sentences for crimes and offences.

c) The existence of relevant and founded investigations, in either the criminal or administrative spheres, into any of the facts mentioned in point (b)(4). Good repute shall not be considered to be absent for the mere reason that, while holding his or her office a director, general manager or similar officer, or other employee responsible for internal oversight, or who holds a key position in the general running of the entity, is the object of such investigations.

3. If, during the exercise of his or her activity the person being assessed is found to be in any of the circumstances envisaged in the preceding section and this fact is relevant to the assessment of their good repute, the credit institution shall inform the Banco de España within a maximum of fifteen working days from when it becomes aware of it.

4. The members of the board of directors, general managers, or similar officer, or other employees responsible for internal oversight functions and other key offices for the daily running of the entity who become aware that any of the aforementioned persons are affected by any of the circumstances described in paragraph 2 must immediately inform their institution.

Article 31. *Knowledge and experience requirements.*

1. Persons who have the appropriate skills level and profile, in particular in the banking and financial services areas, and practical experience from their previous positions over sufficient periods of time shall be deemed to possess suitable knowledge and experience as required by Article 24 of Law 10/2014 of 26 June 2014. For this purpose, both the knowledge acquired in an academic environment, and experience gained from the professional exercise in other entities or companies of similar functions to those that are to be performed.

2. When assessing practical and professional experience, particular attention should be paid to the nature and complexity of the positions held, the competencies and decision-making

powers and responsibilities assumed, the number of people the individual was in charge of, the technical knowledge gained regarding the financial sector, and the risks that need to be managed.

In any event, the knowledge and experience criteria shall be applied assessing the nature, scale and complexity of each entity's business and the specific functions and responsibilities of the position to which the assessed person was assigned.

3. Also, the board of directors must have members who collectively have sufficient professional experience in the governance of credit institutions to ensure the effective capacity of the board of directors to make independent decisions to the benefit of the institution.

Article 32. *Capacity to exercise good governance of the entity.*

1. In order to assess the capacity of the members of the board of directors to exercise good governance over the institution, as required under Article 24 of Law 10/2014 of 26 June 2014, the following shall be considered:

a) The existence of possible conflicts of interest leading to undue influence of third parties, as a result of:

1.- Positions held in the past or present in the same institution or other public or private organisations,

2.- Any personal, professional or economic relationship with members of the institution's board of directors, or that of its parent or subsidiaries,

3.- Any personal, professional or economic relationship with shareholders controlling the institution, its parent or subsidiaries.

b) The ability to devote sufficient time and effort to carry out the corresponding functions.

2. If, during the exercise of his or her activity any director is found to be in any situation that may affect his or her capacity to exercise good governance, the credit institution shall inform the Banco de España within a maximum of fifteen working days from the moment it becomes aware of this fact.

Article 33. *Selection, control and assessment of suitability requirements by credit institutions.*

1. Credit institutions and the branches of credit institutions not authorised in a European Union Member State should have, commensurate with the nature, scale and complexity of their activities, suitable internal units and procedures to carry out the ongoing selection and assessment of members of the board of directors and managing directors and similar officers, and the persons in charge of their internal oversight functions and other key positions in the institution.

2. Credit institutions shall likewise identify the key posts for the day-to-day running of their business and those in charge of internal oversight functions, maintaining for the Banco de España an updated list of the individuals performing such functions, the assessment of suitability made by the institution and the attendant substantiating documentation.

3. Credit institutions must notify the Banco de España of the proposed appointment of new members of the board of directors and managing directors and similar officers of either the credit institution itself, or its parent company, where applicable.

Article 34. *Register of senior officers.*

1. In order for them to be entered on the register of senior officers provided for under Article 27 of Law 10/2014 of 26 June 2014, the members of the board of directors and managing directors and similar officers of the institution must expressly state the following in the document accrediting their acceptance of their position:

a) That they comply with the suitability requirements referred to in Article 24 of Law 10/2014 of 26 June 2014.

b) That they are not affected by any of the limitations or incompatibilities established in Article 26 of Law 10/2014 of 26 June 2014 or any other rules applicable to them.

2. As well as managing the Register of senior officers, the Banco de España will be responsible for creating and managing a register of members of the board of directors and managing directors and similar officers of the parent companies of Spanish credit institutions, when such entities are financial holding companies or mixed financial holding companies. It shall be obligatory for members of the board of directors and managing directors and similar officers to be entered on this register.

For their registration, the entity must give notice of their appointment within fifteen working days of their accepting their post, including the personal and professional data the Banco de España established as a general requirement and expressly declare, in the document accrediting acceptance of the post that the members of the board of directors and managing directors and similar officers comply with the requirements established in points (a) and (b) of the preceding paragraph.

Article 35. *Limits on the granting of loans and guarantees to the institution's senior officers.*

1. Credit institutions must apply to the Banco de España for authorisation to grant loans and guarantees to members of the board of directors and managing directors and similar officers.

2. The granting of loans or guarantees shall not require authorisation pursuant to the foregoing paragraph when:

a) They are covered by collective labour agreements between the credit institution and its employees as a whole.

b) They are granted under contracts with standardised conditions and apply en masse in a habitual way to a large number of customers, provided that the amount granted to any given person, their family members to the second degree of kinship, or the companies in which these persons have a controlling shareholding of 15 percent or more, or on the board of which they sit, does not exceed €200,000.

In any event, the Banco de España shall be informed of the granting of such loans or guarantees as soon as it takes place.

3. When assessing the application for authorisation provided for in the preceding paragraph, the Banco de España shall take at least the following points into account:

a) The effects that the loan or guarantee may have on the sound and prudent management of the institution and its proper compliance with the regulatory provisions and disciplinary rules.

b) The effects that these operations may have on the appropriate distribution of responsibilities within the organisation and the prevention of conflicts of interest.

c) Terms and conditions on which such operations are granted in relation to the general interest of the institution, and, in particular, in comparison with operations granted to other employees other than the members of the board of directors general managers and similar officers, and customers.

CHAPTER IV

Corporate governance and remuneration policy

Article 36. *Obligations regarding corporate governance and the remuneration policy.*

1. For the purposes of Article 34(1)(ñ) of Law 10/2014 of June 2014 discretionary pension benefits shall be understood to mean discretionary payments granted by a credit institution on an individual basis to their staff by virtue of a pension plan or other mechanism granting retirement benefits and which may be deemed analogous to variable remuneration. Under no circumstances will benefits granted to an employee under the institution's pension scheme be included.

2. For the purposes of compliance with the provisions of Article 34(1)(p) of Law 10/2014 of 26 June 2014, the Banco de España may:

a) Impose restrictions on credit institutions for the use of the instruments indicated in the aforementioned article of the Law.

b) Set the criteria necessary to allow the variable remuneration to be reduced according to the institution's negative financial earnings.

c) Require credit institutions and their groups to limit variable remuneration as a percentage of total revenues when it is inconsistent with the maintenance of a sound capital base;

3. In the case of institutions that have received financial support under the terms provided in Article 35 of Law 10/2014 of 26 June 2014, and without prejudice to any other applicable regulations, the Banco de España shall be able to expressly authorise the amount, accrual and payment of any variable remuneration to the managers and executives, and may also establish limits on their total remuneration, where applicable.

4. Without prejudice to the foregoing, the Banco de España may establish criteria for the remuneration policies and items contained in Articles 32 to 35 of Law 10/2014 of 26 June 2014, and in particular it may establish specific criteria for the determination of the relationship between the fixed and variable components of the total remuneration.

5. In accordance with Article 29(1) of Law 10/2014 of 26 June 2014, the Banco de España may consider the obligation to set up the committees required under Articles 31 and 36 of the aforementioned law, provided that:

a) They are subsidiary credit institutions that have been individually exempted from application of the prudential requirements under Articles 7 or 10 of Regulation (EU) No 575/2013 of 26 June 2013 and the fifth additional provision of Law 10/2014 of 26 June 2014.

b) The parent credit institutions set up committees of this kind, pursuant to Articles 38 and 39, and exercise their functions in respect of their subsidiaries.

Article 37. *Disclosure obligations regarding corporate governance and the remuneration policy.*

1. Under Article 29(5) of Law 10/2014 of 26 June 2014, credit institutions shall provide clear, comprehensible and comparable corporate governance information on their websites, pursuant to

Title I, Chapter V of the aforementioned law, including information on the manner in which they comply with their corporate governance and remuneration obligations. The Banco de España shall specify the terms under which the website is to be configured and the information that credit institutions are to include on it, in accordance with the provisions of Law 10/2014 of 26 June 2014 and this chapter.

2. The board of directors will be responsible for keeping the aforementioned information up to date at all times.

3. Information on the remuneration accruing in each financial year to members of the board of directors, which shall be published on the credit institution's website, must reflect the total remuneration accruing, with an individual breakdown by remuneration items with reference to the amount of the fixed components and allowances, and the variable remuneration items.

This information will contain all the remuneration items accruing, whatever their nature or the group entity paying them.

4. The provisions of the preceding paragraph will include, where applicable, all the remuneration items accruing to the members of the board of directors for their belonging to the boards of other group or investee companies in which they act in representation of the group.

5. It will also include information on the results of the vote by the general assembly of shareholders, on the policy for the remuneration of members of the board of directors, pursuant to Article 33(3) of Law 10/2014 of 26 June 2014, stating the quorum existing, the total number of valid votes for and against, and the number of abstentions.

Article 38. *Appointments committee.*

1. The functions of the appointments committee provided for in Article 31 of Law 10/2014 of 26 June 2014 shall include at least the following:

a) Identifying and recommending candidates to fill vacancies on the board of directors, with a view to their approval by the board of directors or the general assembly.

b) Evaluating the balance of knowledge, capacity, diversity, and experience on the board of directors and preparing a description of the functions and skills necessary for a specific appointment, evaluating the time commitment envisaged for the performance of the office.

c) Periodically evaluating (at least once a year) the structure, size, composition and action of the board of directors, making recommendations to it on possible changes.

d) Periodically evaluating (at least once a year) the suitability of the various members of the board of directors and of the board as a whole, and informing the board of directors accordingly.

e) Periodically reviewing the policy of the board of directors on the selection and appointment of members of senior management, and drawing up recommendations.

f) Establishing, in accordance with Article 31(3) of Law 10/2014 of 26 June 2014, a target for representation by the least represented sex on the board of directors and draw up guidelines on how to increase the number of persons of the least represented sex with a view to achieving this target. The target, the guidelines, and their application shall be published together with the information envisaged in Article 435(2)(c) of Regulation (EU) No 575/2013 of 26 June 2013 and shall be forwarded to the European Banking Authority by the Banco de España.

The Banco de España shall also use this information to compare practices to promote diversity.

2. In the performance of its tasks, the appointments committee shall take into account, as far as possible and on a permanent basis, the need to ensure that decision-making in the board of directors is not dominated by an individual or small group of individuals in a way that is harmful to the interests of the institution as a whole.

3. The appointments committee may use the resources it sees fit for the performance of its tasks, including external advice, and shall receive the funds necessary for it to do so.

Article 39. *Remuneration committee.*

1. The remuneration committee envisaged in Article 36 of Law 10/2104 of 26 June 2014 shall be responsible for preparing remuneration-related decisions, including those which have implications for the risk of the entity concerned and its risk management, for such decisions to be adopted by the board of directors.

In particular, the remuneration committee must inform the general remuneration policy for the members of the board of directors, general managers, general managers and similar officers, and the individual remuneration and other contractual conditions applicable to members of the board of directors who perform executive functions, and ensure the policy is complied with.

2. In those cases in which the specific regulations for an entity envisage staff representation on the board of directors, the remuneration committee will include one or more staff representatives.

3. When preparing such decisions, the remuneration committee shall take into account the public interest as well as the long-term interests of shareholders, investors and other stakeholders in the credit institution.

Article 40. *Oversight of remuneration policies.*

The Banco de España will collect information published by entities under Article 450(1)(g), (h) and (i) of Regulation (EU) No 575/2013 of 26 June 2013 and forward it to the European Banking Authority. This information will be used by the Banco de España to compare remuneration trends and practices.

In the case of information on the number of natural persons in each entity receiving remuneration of €1 million or more per year, their responsibilities in the post they hold will also be included, together with the business scope concerned and their main salary components, incentives, long-term bonuses, and pension contributions.

Article 41. *Risk management function.*

1. The director of the risks unit envisaged in Article 38(1) of Law 10/2014 of 26 June 2014 shall be an independent senior manager, who shall not perform operational tasks and shall specifically assume responsibility for the risk management function and may not be dismissed from his post without the prior approval of the board of directors.

In any event, operational tasks shall be understood to be those involving executive responsibilities or management of the entity's business lines or areas.

The director of the risk management unit will have direct access to the board of directors in order to perform his or her tasks.

2. When the nature, scale and complexity of the entity's activities do not justify an individual's being specifically appointed to this role, it may be performed by another of the entity's senior managers, provided there is no conflict of interest.

3. Credit institutions' risk management units shall be responsible for:

a) Properly determining, quantifying and reporting all major risks.

b) Actively participating in drawing up the institution's risk strategy and in all significant risk management decisions.

c) Presenting a full picture of the whole range of risks to which the institution is exposed.

d) Directly informing the board of directors on specific changes in risk that affect or may affect an institution.

Article 42. Risk Committee.

1. The risk committee provided for in Article 38 of Law 10/2014 of 26 June 2014 shall be responsible for:

a) Advising the board of directors on the institution's overall current and future risk appetite and its strategy in this area, and assisting the board on the oversight of this strategy.

The board of directors shall, nevertheless, be responsible for the risks the institution assumes.

b) Ensuring that the policy on the prices of assets and liabilities offered to the institution's customers take the business model and its risk strategy fully into account. Where this policy is not taken into account, the risk committee shall present a plan to rectify any deviations to the board of directors.

c) Determining, jointly with the board of directors, the nature, quantity, format and frequency of the information on risks to be gathered by the committee and the board of directors.

d) Collaborating on the establishment of rational remuneration policies and practices. To this end, without prejudice to the role of the remuneration committee, the risk committee shall examine whether the incentives in the remuneration system take into account the risk, capital, liquidity and the likelihood and timeliness of the benefits.

2. To ensure that the risk committee is able to discharge its duties properly, institutions shall guarantee that it has unimpeded access to information on the institution's risk position, and that the risk management unit can obtain outside advice if necessary.

TITLE II

Solvency of credit institutions

CHAPTER I

Risk management and internal capital adequacy assessment systems, procedures and mechanisms

Article 43. Organisation, risk management and internal control requirements.

1. In accordance with Article 29 of Law 10/2014 of 26 June 2014, credit institutions must have in place, on a consolidated or sub-consolidated basis, systems, strategies, procedures and

mechanisms in order to comply with the regulatory provisions and disciplinary rules, in particular with the rules established in Articles 46 to 54. To this end, they must:

a) Have an organisational structure appropriate to the nature of their activities, and well-defined, transparent and consistent lines of responsibility.

b) Have an internal audit function that oversees the correct functioning of the internal control and reporting systems.

c) Have a unit that performs the regulatory compliance function. This function must be comprehensive, comprising, inter alia, the related obligations resulting from the provision of investment services and those established by the anti-money laundering legislation.

2. The functions mentioned in points (b) and (c) of the preceding paragraph must be performed under the principle of independence with respect to the areas, units or functions on which their verification depends.

The board of directors of the credit institution must also be informed regularly of the outcome of the verification work carried out by the internal audit and regulatory compliance functions.

3. The credit institutions that were not exempted by the Banco de España by virtue of Articles 7 or 10 of Regulation (EU) No 575/2013 of 26 June 2013, and of the fifth additional provision of Law 10/2014 of 26 June 2014, from the application of the prudential requirements on an individual basis must have in place the systems, strategies, procedures and mechanisms to which paragraph 1 refers, also on an individual basis.

4. The subsidiaries of Spanish credit institutions located in non-European Union countries must also have in place equivalent systems, strategies, procedures and mechanisms unless prohibited by the legislation of the country in which the subsidiary is located.

5. Credit institutions that provide investment services must respect the internal organisation requirements set forth in Article 70 ter.(3) of Law 24/1988 of 28 July 1988.

Notwithstanding the above, the requirements of Article 70 ter.(3) of Law 24/1988 of 28 July 1988, referring to administrative and accounting procedures, to internal control mechanisms, to internal audit and to effective risk measurement techniques, as well as the obligation to have in place measures ensuring continuity and regularity in the provision of services, included in point (b) of the same paragraph, shall be deemed to have been fulfilled when the credit institutions comply with the provisions of this chapter.

Article 44. Responsibility of the board of directors in the assumption of risk.

1. In order to correctly exercise the responsibilities of the board of directors on risk management provided for in Article 37(2) of Law 10/2014 of 26 June 2014, credit institutions:

a) Shall establish reporting channels to the board of directors covering all the major risks and risk management policies and amendments thereto.

b) Shall ensure that the board of directors can access without difficulties the information on the institution's risk situation and, if necessary, the risk management function and specialised external advisory services.

2. The board of directors shall determine, together with the risk committee, the nature, quantity, format and frequency of the information on risk that said committee and the board of directors must receive.

Article 45. *Application of the internal capital adequacy assessment process.*

1. The internal capital adequacy assessment process provided for in Article 41 of Law 10/2014 of 26 June 2014 shall be carried out:

a) On a consolidated basis, in accordance with the scope of application and with the prudential consolidation methods provided for in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013 of 26 June 2013, by:

1.- Parent credit institutions.

2.- Institutions controlled by financial holding companies and parent mixed financial holding companies. Notwithstanding the foregoing, when a financial holding company or a parent mixed financial holding company controls more than one credit institution or investment firm, the internal capital adequacy assessment process shall be carried out solely by the credit institution or investment firm subject to supervision on a consolidated basis in accordance with Article 81.

b) On an individual basis by:

1.- Credit institutions that are not subsidiaries, parent companies or institutions permanently affiliated to a central body in accordance with Article 10 of Regulation (EU) No 575/2013 of 26 June 2013.

2.- Credit institutions that are not included in the scope of consolidation in accordance with Article 10 of Regulation (EU) No 575/2013 of 26 June 2013.

c) On a sub-consolidated basis by subsidiary credit institutions authorised in Spain when these institutions or their financial holding company or parent mixed financial holding company have credit institutions, investment firms or financial institutions as subsidiaries in non-European Union countries or own a holding in a company of this nature.

For the purposes of this point, financial institutions shall be taken to be those defined in Article 40 of Law 10/2014 of 26 June 2014.

2. The strategies and procedures referred to in Article 40 of Law 10/2014 of 26 June 2014 shall be summarised in an annual internal capital adequacy assessment report that shall be submitted to the Banco de España before 30 April of each year, or earlier when so established by the Banco de España.

In order to prepare this report credit institutions must take into account the criteria published for this purpose by the Banco de España.

Article 46. *Credit risk and counterparty risk.*

In the area of credit risk and counterparty risk, institutions must:

a) Base credit-granting on sound and well-defined criteria.

b) Establish a clear process for approving, amending, renewing and refinancing credits.

c) Have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level.

The internal methodologies shall not rely solely or mechanically on external credit ratings. Where own funds requirements are based on a rating by an external credit assessment institution or based on the fact that an exposure is unrated, this shall not exempt institutions from considering other relevant information for assessing their allocation as internal capital.

d) Use effective systems for the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures.

e) Identify and manage problem credits, and make adequate value adjustments and provisions.

f) Diversify credit portfolios adequately, given their target markets and overall credit strategy.

Article 47. *Residual risk.*

Institutions must have written policies and procedures, among other means, to manage the possibility that the credit risk mitigation techniques referred to in Article 801 of Regulation (EU) No 575/2013 of 26 June 2013 are less effective than expected.

Article 48. *Concentration risk.*

Institutions must have written policies and procedures, among other means, to control concentration risk arising from:

a) Exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, in the terms determined by the Banco de España.

b) The application of credit risk mitigation techniques, including risks associated with large indirect credit exposures, such as a single collateral issuer.

Article 49. *Securitisation risk.*

1. The risks arising from securitisation transactions in relation to which the credit institution is investor, originator or sponsor, including reputational risk, shall be evaluated and addressed through appropriate policies and procedures to ensure, in particular, that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

2. Credit institutions originating revolving securitisation transactions which include early amortisation clauses shall have liquidity plans to address the implications of both scheduled and early amortisation.

Article 50. *Market risk.*

Credit institutions shall implement policies and processes to identify, measure and manage all material sources and effects of market risk.

In particular, the internal capital level of institutions must be adequate for material market risks that are not subject to an own funds requirement.

Article 51. *Interest rate risk arising from non-trading book activities.*

Institutions shall implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect their non-trading activities.

Article 52. Operational risk.

1. Institutions shall implement policies and processes to evaluate and manage the exposure to operational risk, including, where appropriate, model risk, and to cover low-frequency high-severity events.

To this end, model risk shall be taken to be the risk of potential loss which an institution might incur as a consequence of decisions based mainly on the results of internal models, due to errors in the creation, application or use of those models.

Institutions shall specify what constitutes operational risk for the purposes of these policies and processes.

2. Institutions shall establish contingency and business continuity plans to ensure their ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

Article 53. Liquidity risk.

1. Institutions must have robust strategies, policies, processes and systems to identify, manage and measure liquidity risk, proportionate to the nature, scale and complexity of their activities. For these purposes, the Banco de España shall require institutions to:

a) Develop methodologies to monitor funding positions.

b) Identify the unencumbered assets available in crisis situations, taking into account the possible legal limits on potential liquidity transfers.

c) Study the impact of various scenarios on their liquidity profiles.

2. Institutions, bearing in mind the nature, scale and complexity of their activities, must maintain liquidity risk profiles consistent with those required for a well-functioning and robust system. The Banco de España shall monitor developments in the liquidity risk profiles maintained by the institutions, focusing on elements such as product design and volumes, risk management, funding policies and funding concentrations. In particular, the Banco de España shall require institutions to:

a) Have in place liquidity risk mitigation tools such as liquidity buffers or adequately diversified funding sources that enable them to withstand situations of financial stress.

b) Develop contingency plans in order to withstand the scenarios envisaged in point (c) of the preceding paragraph and plans to address possible liquidity shortfalls. The latter plans must be tested by the institution at least once a year.

3. When the Banco de España considers that an institution's liquidity levels are lower than appropriate in accordance with the criteria established in this Article and its implementing legislation or in Article 42 of Law 10/2014 of 26 June 2014, it may adopt, inter alia, any of the measures envisaged in Article 68(2) of the aforementioned law.

These measures shall be applied without prejudice to the corresponding penalties as provided for in Title IV, Chapter III of Law 10/2014 of 26 June, and they must be related to the

institution's liquidity position and the stable funding requirements provided for in the solvency regulations.

4. Also, when the developments in relation to an institution's liquidity risk profiles might give rise to instability at another institution or to systemic instability, the Banco de España shall report the measures adopted to resolve this situation to the European Banking Authority.

Article 54. *Risk of excessive leverage.*

1. Institutions must have policies and processes in place to identify, manage and monitor the risk of excessive leverage.

2. The indicators of the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 of 26 June 2013 and mismatches between assets and obligations.

3. Institutions shall address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in that risk caused by reductions in the institution's own funds through expected or realised losses, depending on the applicable accounting rules. For these purposes, institutions must be able to withstand a range of different stress events with respect to the risk of excessive leverage.

Article 55. *Solvency regime applicable to the branches of credit institutions of non-European Union countries.*

In accordance with Article 60(1) of Law 10/2014 of 26 June 2014, the Banco de España shall determine the solvency regime applicable to the branches of credit institutions with headquarters in non-European Union countries. This regime may exempt the aforementioned branches, in full or in part, from the provisions of the solvency regulations on the basis of the following criteria:

a) The institution is subject in its home country to equivalent requirements to those established by the solvency regulations.

b) The branch is integrated with the rest of the institution for the purpose of compliance with the solvency regulations.

c) The institution undertakes to endorse at all times, and whenever requested to do so by the Banco de España, the obligations of its branch, providing it with the necessary means to meet these obligations in Spain.

d) In the event of insolvency, liquidation, resolution or equivalent situations concerning the credit institution there is equal treatment of the depositors of the branch with respect to the rest of the institution's depositors, in particular to those of its home country, except when the Banco de España deems the deposits to be of limited significance.

e) The institution has in place restructuring and resolution plans that are comparable to those required by the regulations on credit institution resolution.

f) There is reciprocity in the solvency requirements applicable in the home country to the branches of Spanish credit institutions.

Notwithstanding the foregoing, the obligations applicable to branches of credit institutions with headquarters in non-European Union countries may not be less strict than those applicable to branches of European Union Member States.

Article 56. *Exposures to the public sector.*

1. By virtue of the provisions of Article 115(2) of Regulation (EU) No 575/2013 of 26 June 2013, exposures to Spanish regional and local governments shall be treated as exposures to central government.

2. In accordance with the provisions of Article 116(4) of Regulation (EU) No 575/2013 of 26 June 2013, when, in exceptional circumstances and in the opinion of the Banco de España, there is no difference in risk because of the existence of appropriate guarantees, the following exposures may receive the same weighting as the exposures to the government unit to which they report:

a) Exposures to autonomous agencies and public corporations regulated by Title III of Law 6/1997 of 14 April 1997 on the organisation and functioning of central government.

b) Exposures to other institutions or agencies governed by public law that are related to or report to central government.

c) Exposures to management entities, common services and mutual insurance companies of the social security system.

d) Exposures to the Official Credit Institute.

e) Exposures to autonomous agencies and public entities that report to regional governments, provided that, in accordance with the applicable laws, they have a similar nature to that envisaged for agencies reporting to central government.

f) Exposures to administrative bodies and public entities that report to Spanish local governments, provided that they are not-for-profit and perform the administrative activities specific to said institutions.

g) Exposures to consortiums comprising Spanish regional governments or local governments, or the latter and other government units, insofar as, through their composition, these units bear the majority of the financial liabilities of the consortium.

Article 57. *Adoption of measures to restore compliance with solvency regulations.*

1. When a credit institution or a consolidated group or sub-group of credit institutions has a shortfall of eligible own funds with respect to the solvency regulation requirements, the institution or the obliged entity of the consolidated group or sub-group, as appropriate, shall report this, immediately, to the Banco de España and within one month it shall submit a programme setting out the plans for restoring compliance, unless the situation has been corrected in this period. The programme must contain, at least, the matters referring to the identification of the determining causes of the own funds shortfall, the plan to restore compliance which may include restricting the performance of activities that entail high risk, the divestment of specific assets, or measures to raise the level of own funds and the foreseeable timeframe for restoring compliance.

In the event that the non-compliant institution belongs to a consolidated group or sub-group of credit institutions, the programme must be endorsed by the obliged entity of the group or sub-group.

This programme must be approved by the Banco de España, which may include the modifications or additional measures that it deems necessary to ensure the return to the minimum levels of eligible own funds. The programme submitted shall be deemed approved if three months after its submission to the Banco de España no express decision has been issued.

The provisions of this paragraph shall not be applicable if the own funds shortfall is lower than the combined buffer requirement, in which case the provisions of Article 75 shall apply.

2. The same action as that provided for in the preceding paragraph shall be taken when there is a decrease in the limits to large exposures established in Part Four of Regulation (EU) No 575/2013 of 26 June 2013, even when this is as a result of a sudden reduction in eligible own funds.

3. When the Banco de España, in accordance with Article 68 of Law 10/2014 of 26 June, requires a credit institution or a group or sub-group to hold own funds in excess of the minimum requirement, and the institution's own funds are insufficient with respect to that requirement, the institution or obliged entity of the group or sub-group, as appropriate, shall submit within one month a programme specifying the plans to comply with the additional requirement, unless the situation is corrected within this period. In the event that the non-compliant institution belongs to a consolidated group or sub-group of credit institutions, the programme must be endorsed by the obliged entity of the group or sub-group.

This programme must be approved by the Banco de España, which may include the modifications or additional measures that it deems necessary. The programme shall include the projected date of compliance with the additional requirement, which shall be the reference to start calculating the period established in Article 92(d) of Law 10/2014 of 26 June 2014. The programme submitted shall be deemed to be approved if three months after its submission to the Banco de España no express decision has been issued.

4. When the Banco de España, in accordance with Article 68 of Law 10/2014 of 26 June 2014, requires a credit institution or a group or sub-group to reinforce the procedures, mechanisms and strategies adopted, it may require the submission of a programme specifying the measures necessary to rectify the deficiencies detected and the timescales envisaged for their implementation. This programme must be approved by the Banco de España, which may include the modifications or additional measures that it deems necessary.

5. When several of the circumstances set forth in the preceding paragraphs arise simultaneously, the programme submitted may be a joint one.

CHAPTER II

Capital buffers

Article 58. *Combined buffer requirement.*

1. In compliance with Article 43 of Law 10/2014 of 26 June 2014, credit institutions must, at all times, meet the combined buffer requirement, that is, the total Common Equity Tier 1 capital needed to meet the requirement for the capital conservation buffer and as applicable:

- a) An institution-specific countercyclical capital buffer.
- b) A buffer for global systemically important institutions.
- c) A buffer for other systemically important institutions.
- d) A systemic risk buffer.

The Common Equity Tier 1 capital required to meet each of the buffers shall be additional to that required to meet the other buffers, the own funds requirements established in Article 92 of Regulation (EU) No 575/2013 of 26 June 2013, and any other requirements that may be established by the Banco de España, by virtue of Article 68(2)(a) of Law 10/2014 of 26 June 2014.

In accordance with Article 43 and the sixteenth additional provision of Law 10/2014 of 26 June 2014, credit institutions must also meet the capital buffers established by the European Central Bank.

2. The capital buffers shall be determined as a percentage of the amount of the institution's corresponding risk exposures for each buffer, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013, and in accordance with any specifications issued by the Banco de España. Notwithstanding the foregoing, in the calculation of the combined buffer requirement these exposures may be adjusted so that the capital requirements together with the combined buffer requirements corresponding to each risk exposure do not result in a value that exceeds that of the respective exposure. The total adjustment of the risk-weighted exposures shall be determined by the sum of the excesses calculated for each exposure subject to weighting with any restrictions determined by the Banco de España.

3. In accordance with Article 5(1) of Council Regulation (EU) No 1024/2013 of 15 October 2013, when the Banco de España intends to establish a capital buffer by virtue of the provisions of this Chapter, it must notify the European Central Bank ten days before taking such decision. In the event that the European Central Bank objects, the Banco de España must duly consider the reasons put forward before adopting the buffer.

Article 59. *Level of application of the capital conservation buffer.*

The capital conservation buffer of 2.5% referred to in Article 44 of Law 10/2014 of 26 June 2014 must be complied with on an individual and consolidated basis, in accordance with Part One, Title II of Regulation (EU) No 575/2013 of 26 June 2013.

Article 60. *Calculation of the percentages of the institution-specific countercyclical capital buffer.*

1. In accordance with Article 45 of Law 10/2014 of 26 June 2014, credit institutions shall have to maintain a countercyclical capital buffer calculated specifically for each institution or group which shall be equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013, and in accordance with any specifications issued by the Banco de España, multiplied by an institution-specific capital buffer rate.

2. The countercyclical capital buffer must be complied with on an individual and consolidated basis, in accordance with Part One, Title II of Regulation (EU) No 575/2013 of 26 June 2013.

3. The institution-specific countercyclical capital buffer rate shall be the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located.

With a view to calculating the weighted average referred to in the preceding sub-paragraph, credit institutions must apply to each applicable countercyclical buffer rate the total amount of their own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013 of 26 June 2013, and corresponding to the relevant credit exposures in the jurisdiction in question, divided by the total amount of their own funds requirements for credit risk corresponding to their total relevant credit exposures.

4. The countercyclical buffer rate applicable to exposures located in Spain shall be determined in accordance with the provisions of Article 61.

5. The countercyclical buffer rates applicable to exposures located in European Union Member States shall be:

a) The rates set by the relevant designated authorities that do not exceed 2.5%.

b) The rates set by the relevant designated authorities that exceed 2.5% and have been recognised by the Banco de España.

For the purposes of the preceding sub-paragraph, the Banco de España shall establish criteria for recognising countercyclical capital buffers exceeding 2.5% and rules for publishing said recognition.

c) 2.5% when the relevant designated authorities have set a higher percentage and it has not been recognised by the Banco de España.

6. The countercyclical buffer rate applicable to exposures located in non-European Union countries shall be:

a) The rate set, as applicable, by the Banco de España when the relevant designated authorities have not set any rate;

b) The rate set by the relevant designated authorities provided that it does not exceed 2.5% and unless the Banco de España decides to set a higher rate.

c) The rate set by the relevant designated authorities provided that it exceeds 2.5% and has been recognised by the Banco de España.

The Banco de España shall establish criteria for setting rates in accordance with the provisions of points (a) and (b), and for recognising those set by the designated authorities of other Member States in accordance with the provisions of point (c).

Also, the Banco de España shall establish rules for publishing the rates set as provided for in the preceding points.

7. The Banco de España shall determine the relevant credit exposures for the purposes of this Article and the manner of identifying their geographical location.

8. For the purposes of the calculations provided for in paragraph 3 the decisions to set a given buffer rate shall be taken as follows:

a) The countercyclical buffer rate corresponding to exposures located in Spain and in other European Union Member States shall be applied as from the date specified in the information published in accordance with Article 61(4) or in accordance with the equivalent applicable national provisions of those Member States, if the effect of the decision is to increase the buffer rate.

b) Without prejudice to the provisions of point (c), the countercyclical buffer rate corresponding to a non-European Union country shall be applied twelve months after the date on which the relevant authority of that country announces a change in said rate, regardless of whether this authority requires the institutions incorporated in that country to apply the change in the shortest possible period, if the effect of the decision is to increase the buffer rate.

c) When the Banco de España sets the countercyclical buffer rate relating to a non-European Union country in accordance with paragraph 6, this rate shall be applied as from the date specified in the information published in accordance with that paragraph.

d) The countercyclical buffer rate shall be applied immediately if the effect of the decision is to decrease the rate.

For the purposes of the provisions of point (b), any change in the countercyclical buffer rate relating to a non-Member State shall be considered to have been announced on the date on which the relevant authority of the third country publishes it in accordance with the national regulations applicable for this purpose.

Article 61. *Setting countercyclical buffer rates.*

1. The Banco de España shall calculate a buffer guide every quarter that it shall take as a benchmark for setting the countercyclical buffer rate relating to exposures located in Spain.

This buffer guide shall be a benchmark parameter consisting of an anticyclical buffer rate and it shall be calculated and published in accordance with the criteria and procedures determined by the Banco de España. In any event, it must reflect in a transparent manner the credit cycle and the risks deriving from all the excessive lending growth in Spain and it must take due account of the specific features of the Spanish economy. Moreover, it must be based on the deviation of the credit-to-GDP ratio from its long-term trend.

2. The Banco de España shall assess and set the appropriate countercyclical buffer rate for credit exposures in Spain on a quarterly basis and, in doing so, it shall take the following into account:

a) The buffer guide calculated in accordance with paragraph 1.

b) The current recommendations and guidelines issued, as the case may be, by the European Systemic Risk Board on setting anticyclical buffer rates.

c) Any other variables deemed relevant by the Banco de España.

3. The anticyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013, and in accordance with any specifications issued by the Banco de España, and applicable to institutions with credit exposure in Spain by virtue of Article 60(3), shall be between 0% and 2.5%, calibrated in multiples of 0.25 percentage points. When so justified by the assessment referred to in paragraph 2, an anticyclical buffer rate above 2.5% may be set.

4. The Banco de España shall announce the quarterly setting of the anticyclical buffer rate by means of its publication on its website, accompanied by the minimum information determined by the latter.

Article 62. *Identification of global systemically important institutions.*

1. In accordance with Article 46 of Law 10/2014 of 26 June 2014, the Banco de España shall identify those institutions which, on a consolidated basis, are global systemically important institutions (hereinafter G-SIIs) for the purposes of calculating the buffer for G-SIIs.

Credit institutions, financial holding companies and mixed financial holding companies that are parents of a group of financial institutions including at least one credit institution may be identified as G-SIIs.

Notwithstanding the foregoing, credit institutions that are subsidiaries with parents in a European Union Member State of credit institutions or of investment firms, of financial holding companies or of mixed financial holding companies may not be G-SIIs.

2. The Banco de España shall determine the method of identifying G-SIIs based on the various circumstances of the institution in accordance with the provisions of Article 46(2) of Law 10/2014 of 26 June 2014. These circumstances shall be given equal weighting and they shall be measured using quantifiable indicators.

The method prepared by the Banco de España shall enable the assessed institution to be designated as a G-SII or not and to be allocated to a sub-category as described in Article 46(2) of Law 10/2014 of 26 June 2014.

3. Without prejudice to the provisions of paragraph 1, the Banco de España may, in the exercise of sound supervisory judgment:

a) Re-allocate a G-SII from a lower sub-category to a higher sub-category.

b) Allocate an institution as referred to in paragraph 1 that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

Article 63. *Identification of other systemically important institutions.*

1. In accordance with Article 46 of Law 10/2014 of 26 June 2014, the Banco de España shall identify those institutions which, on an individual, sub-consolidated or consolidated basis, are other systemically important institutions (hereinafter O-SIIs) for the purposes of calculating the buffer for O-SIIs.

O-SIIs may be credit institutions, financial holding companies or mixed financial holding companies that are parents of a group of financial institutions including at least one credit institution.

2. The Banco de España shall determine the method of identifying O-SIIs taking into account at least one of the criteria established in Article 46(3) of Law 10/2014 of 26 June 2014.

Article 64. *Setting the buffer for other systemically important institutions.*

1. When the Banco de España requires that an O-SII buffer be held in accordance with Article 46(5) of Law 10/2014 of 26 June 2014, it shall comply with the following:

a) The O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other European Union Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market.

b) The O-SII buffer must be reviewed at least annually.

2. Before setting or resetting an O-SII buffer, the Banco de España shall notify the Commission, the European Systemic Risk Board, the European Banking Authority and the competent and designated authorities of the Member States concerned one month before the

publication of the decision referred to in Article 46(5) of Law 10/2014 of 26 June 2014. That notification shall describe in detail:

a) The justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk.

b) An assessment of the likely positive or negative impact of the O-SII buffer on the single market, based on information which is available.

c) The O-SII buffer rate that it wishes to set.

3. Without prejudice to Articles 46(5) and 47 of Law 10/2014 of 26 June 2014, where an O-SII is a subsidiary of either a G-SII or an O-SII which is a European Union parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the higher of:

a) 1% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of 26 June 2013.

b) The G-SII or O-SII buffer rate applicable to the group at consolidated level.

Article 65. *Combined application of G-SII and O-SII buffers and the systemic risk buffer.*

The Banco de España shall determine the rules for the combined application of G-SII and O-SII buffers and the systemic risk buffer.

Article 66. *Banco de España reporting obligations in relation to G-SIIs and O-SIIs.*

1. The Banco de España shall notify the European Commission, the European Systemic Risk Board and the European Banking Authority of the names of the G-SIIs and O-SIIs and the corresponding sub-categories to which the former have been allocated, and it shall publish their names. The Banco de España shall publish the sub-category into which each G-SII has been allocated.

On an annual basis the Banco de España shall review the identification of the G-SIIs and O-SIIs and the allocation into sub-categories of the former, and it shall report the results thereof to the systemically important institution in question, and to the European Commission, the European Systemic Risk Board and the European Banking Authority, and it shall also publish both the up-to-date list of the systemically important institutions identified and the sub-category into which each of the G-SIIs has been allocated.

2. In the event that the Banco de España takes a decision pursuant to Article 62(3)(b) it will inform the European Banking Authority of this decision and the reasons therefor.

Article 67. *Setting the systemic risk buffer.*

1. In accordance with Article 47(1) of Law 10/2014 of 26 June 2014, the Banco de España may require all institutions or one or more subsets of institutions to maintain, in addition to the Common Equity Tier 1 capital to comply with the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013 of 26 June 2013, a systemic risk buffer of at least 1% of Common Equity Tier 1 capital, based on the exposures to which this buffer is applied, in accordance with paragraph 3, on an individual, consolidated or sub-consolidated basis in accordance with Part One, Title II of Regulation (EU) No 575/2013 of 26 June 2013. The Banco de España may require the institutions to maintain the systemic risk buffer on both an individual and consolidated basis.

2. The buffer shall be set in gradual or accelerated steps of adjustment of 0.5 percentage points, and different requirements may be introduced for different subsets of the sector, as determined by the Banco de España.

3. The systemic risk buffer may apply to exposures located in Spain, and it may also apply to exposures in third countries, as determined by the Banco de España. It may also apply to exposures located in other Member States, subject to the provisions of Article 133(15) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and of Article 68(2) of this Royal Decree.

4. When requiring a systemic risk buffer to be maintained the Banco de España shall comply with the following:

a) The systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market.

b) The systemic risk buffer must be reviewed at least every second year.

5. When the Banco de España sets a systemic risk buffer pursuant to this Chapter, it may ask the European Systemic Risk Board to issue a recommendation, as referred to in Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board, to one or more Member States which may recognise the systemic risk buffer rate.

Article 68. *Procedure for setting the systemic risk buffer below 3%.*

1. Before setting or resetting a systemic risk buffer rate of up to 3%, the Banco de España shall notify the Commission, the European Systemic Risk Board, the European Banking Authority and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in Article 71. If the buffer applies to exposures located in non-European Union countries it shall also notify the supervisory authorities of those countries.

That notification shall describe in detail:

a) The systemic or macroprudential risk in Spain.

b) The reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at the national level justifying the systemic risk buffer rate.

c) The justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk.

d) An assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on the information available.

e) The justification for why none of the existing measures in Regulation (EU) No 575/2013 of 26 June 2013, excluding Articles 458 and 459 of that Regulation, or in Law 10/2014, of 26 June 2014, or in this Royal Decree, alone or in combination, are sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures.

f) The systemic risk buffer rate that it wishes to require.

2. Once the notification referred to in paragraph 1 has been made, the Banco de España may apply the buffer to all exposures. However, if the buffer is set on the basis of exposures in other Member States, it shall be set equally on all exposures located within the European Union.

Article 69. *Procedure for setting the systemic risk buffer between 3% and 5%.*

1. When setting the systemic risk buffer between 3% and 5% the procedure established in Article 68 must be complied with.

Notwithstanding the preceding sub-paragraph, systemic risk buffers above 3% that are applicable to exposures located in other European Union Member States shall be set in accordance with the procedure established in Article 70.

2. Notwithstanding the provisions of paragraph 1, the Banco de España shall await the opinion issued by the European Commission in accordance with Article 133(14) of Directive 2013/36/EU of 26 June 2013 before adopting the systemic risk buffer.

Where the opinion of the Commission is negative, the Banco de España shall comply with that opinion or give reasons for not so doing.

3. Notwithstanding the above, where one subset of the financial sector is a subsidiary whose parent is established in a European Union Member State, the Banco de España shall also issue the notification referred to in Article 68 to the competent authorities or the authorities designated by the Member State concerned for the setting of capital buffers.

Also, the Banco de España shall await the opinion of the European Commission and the recommendation issued by the European Systemic Risk Board by virtue of Article 133(14) of Directive 2013/36/EU of 26 June 2013 before adopting the buffer.

Where the Banco de España and the competent or designated authorities referred to in the first sub-paragraph of this paragraph disagree, or in the event that the opinion of the European Commission and the recommendation of the European Systemic Risk Board are both negative, the Banco de España shall refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010. The decision to set the buffer for those exposures shall be suspended until the European Banking Authority has taken a decision.

Article 70. *Procedure for setting the systemic risk buffer above 5%.*

1. Before setting or resetting the systemic risk buffer rate above 5%, the Banco de España shall notify the Commission, the European Systemic Risk Board, the European Banking Authority and the competent and designated authorities of the Member States concerned. If the buffer applies to exposures located in non-European Union countries it shall also notify the supervisory authorities of those countries. The notification shall describe in detail:

a) The systemic or macroprudential risk in the Member State.

b) The reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at the national level justifying the systemic risk buffer rate.

c) The justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk.

d) An assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Member State.

e) The justification for why none of the existing measures in Regulation (EU) No 575/2013 of 26 June 2013, excluding Articles 458 and 459 of that Regulation, or in Law 10/2014, of 26 June 2014, or in this Royal Decree, alone or in combination, are sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures.

f) The systemic risk buffer rate that it wishes to require.

2. The Banco de España shall only adopt or reset the systemic risk buffer referred to in paragraph 1 if it receives the relevant authorisation from the European Commission in accordance with Article 133(15) of Directive 2013/36/EU of 26 June 2013.

Article 71. *Disclosure of the systemic risk buffers.*

The Banco de España shall announce the setting of the systemic risk buffer by publication on an appropriate website. The announcement shall include at least the following information:

a) The systemic risk buffer rate.

b) The institutions to which the systemic risk buffer applies.

c) A justification for the systemic risk buffer.

d) The date from which the institutions must apply the setting or resetting of the systemic risk buffer.

e) The names of the countries in which exposures are located to which the systemic risk buffer is applied.

The information indicated in point (b) shall not be included in the announcement if its publication could jeopardise the stability of the financial system.

Article 72. *Recognition of a systemic risk buffer rate.*

1. The Banco de España may recognise the systemic risk buffer rate set by a competent authority or an authority designated by another Member State and may apply that buffer rate to Spanish institutions for the exposures located in the Member State that sets that buffer rate.

2. If the Banco de España recognises the systemic risk buffer rate set by a competent authority or an authority designated by another Member State for domestically authorised institutions it shall notify the European Commission, the European Systemic Risk Board, the European Banking Authority and the Member State that sets that buffer.

3. When deciding whether to recognise a systemic risk buffer rate, the Banco de España shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with the national legislation that transposes Article 133(11), (12) or (13), as applicable, of Directive 2013/36/EU of 26 June 2013.

Article 73. *Calculation of the maximum distributable amount.*

1. In accordance with the provisions of Article 48(2) of Law 10/2014, of 26 June 2014, credit institutions that fail to meet the combined buffer requirement or that make a distribution of Common Equity Tier 1 capital that reduces that capital to a level where the combined buffer requirement is not

longer met must calculate the maximum distributable amount (MDA) in accordance with paragraph 2.

2. The institutions shall calculate the MDA as specified by the Banco de España and, in any event, on the basis of the following:

a) Interim profits for the year.

b) Year-end profits.

c) Amounts which would be payable as tax if the items specified in points (a) and (b) were to be retained.

d) A multiplication factor based on the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013 of 26 June 2013, in accordance with the following criteria:

1.- Where the Common Equity Tier 1 capital is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

2.- Where the Common Equity Tier 1 capital is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

3.- Where the Common Equity Tier 1 capital is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

4.- Where the Common Equity Tier 1 capital is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

Lower bound of the quartile = Combined buffer requirement / 4 × (Q_n - 1)

Upper bound of the quartile = Combined buffer requirement / 4 × Q_n

where "Q_n" indicates the ordinal number of the quartile concerned.

3. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the Banco de España on request.

Article 74. *Obligations in the event of failure to meet the combined buffer requirements.*

Where an institution fails to meet the combined buffer requirement and intends to distribute all or a portion of its distributable profits or undertake an action referred to in Article 48(2) of Law 10/2014 of 26 June 2014, it shall notify the competent authority and provide the following information:

a) The amount of capital maintained by the institution, subdivided as follows:

1.- Common Equity Tier 1 capital.

2.- Additional Tier 1 capital.

3.- Tier 2 capital.

- b) The amount of its interim and year-end profits.
- c) The MDA calculated in accordance with Article 73.
- d) The amount of distributable profits it intends to allocate between the following:
 - 1.- Dividend payments.
 - 2.- Share buybacks.
 - 3.- Payments on Additional Tier 1 instruments.
 - 4.- The payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

Article 75. *Content of the capital conservation plan.*

In accordance with Article 49 of Law 10/2014 of 26 June 2014, where a credit institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and shall submit it to the Banco de España no later than five working days after it identified that it was failing to meet that requirement, unless the Banco de España authorises a longer delay up to ten days. This plan shall include the following:

- a) Estimates of income and expenditure and a forecast balance sheet.
- b) Measures to increase the capital ratios of the institution.
- c) A plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement.
- d) Any other information that the Banco de España considers to be necessary to carry out the assessment required by Article 49(2) of Law 10/2014 of 26 June 2014.

TITLE III
Supervision

CHAPTER I
Objective scope of the supervisory function

Article 76. *Content of the supervisory review and evaluation.*

1. In accordance with Articles 51 and 52 of Law 10/2014 of 26 June 2014, and taking into account the technical criteria set out in Article 77, the Banco de España shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with the solvency regulations, and it shall evaluate:

- a) Risks to which the institutions and their consolidated groups are or might be exposed.
- b) Risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 of 24 November 2010, or recommendations of the European Systemic Risk Board.
- c) Risks revealed by stress testing.

On the basis of this review and evaluation, the Banco de España shall determine whether the arrangements, strategies, processes and mechanisms implemented by the institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

2. The Banco de España shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis.

3. Where the Banco de España considers that institutions have similar risk profiles such as, inter alia, similar business models, the geographical location of their exposures or the nature or scale of the risks to which they are exposed or which they might pose to the financial system, the Banco de España may decide to apply a supervisory review and evaluation process to those institutions in a similar or identical manner.

The Banco de España shall notify the European Banking Authority of any decision taken under the preceding sub-paragraph.

4. The Banco de España shall inform the European Banking Authority of the functioning of the supervisory review and evaluation process and of the methodology implemented to make use of the supervisory powers provided for in Title III of Law 10/2014 of 26 June 2014 and in Chapter IV of this title whenever the review process shows that a credit institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 of 24 November 2010.

Article 77. *Criteria applicable to the supervisory review and evaluation.*

1. In addition to credit, market and operational risks, the review and evaluation performed by the Banco de España pursuant to the preceding Article shall include at least:

a) The results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 of 26 June 2013 by institutions applying an internal ratings based approach.

b) The exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 of 26 June 2013 and Article 48 of this Royal Decree.

c) The robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques.

d) The extent to which the own funds held by an institution in respect of assets which it has securitised.

e) The exposure to, measurement and management of liquidity risk by institutions.

f) The impact of diversification effects and how such effects are factored into the risk measurement system.

g) The results of stress tests carried out by institutions using internal approaches to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013 of 26 June 2013.

h) The geographical location of institutions' exposures.

- i) The business model of the institution.
- j) The assessment of systemic risk.
- k) The exposure of institutions to interest rate risk arising from non-trading activities.

l) The exposure of institutions to the risk of excessive leverage. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, the Banco de España shall take into account the business model of these institutions.

m) The corporate governance systems of institutions, their corporate culture and values, and the capacity of members of the board of directors to perform their duties. In conducting this review and evaluation, the Banco de España shall, at least, have access to agendas and supporting documents for meetings of the board of directors and its committees, and the results of the internal or external evaluation of the performance of the board of directors.

2. For the purposes of paragraph 1(e), the Banco de España shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions promote the development of sound internal methodologies.

While conducting those reviews the Banco de España shall have regard to the role played by institutions in the financial markets and the potential impact of its decisions on the stability of the financial system in the other European Union Member States concerned.

3. The Banco de España shall monitor whether an institution has provided implicit support to a securitisation. In the event that an institution has provided implicit support to a securitisation on more than one occasion, thus failing to achieve a significant transfer of risk, the Banco de España shall take appropriate measures reflective of the increased expectation that it will provide future support to the securitisation.

Article 78. *Internal approaches for the calculation of own funds requirements.*

1. The Banco de España shall, taking into consideration the nature, scale and complexity of the activities of the institution, monitor that the latter does not solely or mechanically rely on external credit ratings for assessing the creditworthiness of an entity or a financial instrument.

2. Without prejudice to the fulfilment of criteria laid down for the trading book in Part Three, Title I, Chapter 3 of Regulation (EU) No 575/2013 of 26 June 2013, the Banco de España shall encourage institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach to calculate their own funds requirements for credit risk when their exposures are material in absolute terms and when they have at the same time a large number of material counterparties.

3. Without prejudice to the fulfilment of the criteria for using internal approaches to calculate the own funds requirements laid down in Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013 of 26 June 2013, the Banco de España shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal specific risk assessment capacity and to increase use internal approaches for the calculation of their own funds requirements for specific risk of debt instruments in the trading book, together with internal approaches for the calculation of own funds requirements for default and migration risk

where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

4. In order to promote the use of internal approaches, the Banco de España may, among other measures, publish technical guidelines for the preparation and application of these approaches for the calculation of own funds requirements.

Article 79. *Supervisory benchmarking of internal approaches for calculating own funds requirements.*

1. Institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk shall report to the Banco de España the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios prepared by the European Banking Authority in accordance with Article 78(8)(b) of Directive 2013/36/EU of 26 June 2013.

2. The institutions referred to in the preceding paragraph shall submit the results of their calculations to the Banco de España and the European Banking Authority, together with an explanation of the methodologies used to produce them, at least annually.

Institutions shall submit these results using the template developed by the European Banking Authority for these communications.

3. Notwithstanding the provisions of the preceding paragraph, the Banco de España may, in consultation with the European Banking Authority, develop specific portfolios to evaluate the internal approaches used by the institutions. In such cases, the institutions shall report these results separately from the results of the calculations for the portfolios of the European Banking Authority.

4. The Banco de España shall, on the basis of the information submitted by institutions in accordance with paragraphs 2 and 3, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolios resulting from the internal approaches of those institutions. At least annually, the Banco de España shall make an assessment of the quality of those models paying particular attention to the approaches that:

- a) Exhibit significant differences in own fund requirements for the same exposure.
- b) Reflect a particularly high or low diversity.
- c) Significantly and systematically underestimate own funds requirements.

5. Where an institution diverges significantly from the majority of its peers or where there is little commonality in approach leading to a wide variance of results, the Banco de España shall investigate the reasons therefor.

If it can be clearly identified that an institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, the Banco de España shall take corrective action.

6. The corrective actions adopted in accordance with the preceding paragraph must not:
- a) Lead to standardisation or preferred methods.
 - b) Create inappropriate incentives.
 - c) Cause herd behaviour.

Article 80. *Ongoing review of the permission to use internal approaches.*

1. The Banco de España shall review on a regular basis, and at least every three years, institutions' compliance with the requirements regarding models that require permission before they can be used for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 of 26 June 2013.

In the event that material deficiencies are identified in risk capture by an institution's internal model, the Banco de España may require that they are rectified or take steps to mitigate their consequences, such as imposing higher multiplication factors, increasing own funds requirements or other measures deemed appropriate and effective.

2. If for an internal market risk model numerous overshootings with respect to the value-at-risk calculated by the institution's model, in accordance with Article 366 of Regulation (EU) No 575/2013 of 26 June 2013, indicate that the model is not or is no longer sufficiently accurate, the Banco de España may revoke the permission to use the internal model or impose measures to ensure that the model is improved promptly.

3. If an institution has received permission to apply an approach that requires the permission of the Banco de España before using such a method for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 of 26 June 2013 but no longer meets the requirements for applying that approach, the institution must either demonstrate that the effect of non-compliance is immaterial in accordance with Regulation (EU) No 575/2013 of 26 June 2013 or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.

The institution shall make improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the institution is unlikely to be able to restore compliance within an appropriate deadline and does not satisfactorily demonstrate that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

4. The Banco de España shall take into account the analysis of the internal approaches and the benchmarks developed by the European Banking Authority for the review of the permissions they grant to institutions to use those models.

CHAPTER II

Subjective scope of the supervisory function

Article 81. *Supervision of consolidated groups.*

1. In accordance with Article 57 of Law 10/2014 of 26 June 2014, the Banco de España shall be responsible for the supervision on a consolidated basis of:

a) Consolidated groups of credit institutions the parent of which is a credit institution authorised in Spain.

b) Consolidated groups in which the parent is a financial holding company or a mixed financial holding company the subsidiaries of which are credit institutions or investment firms authorised in Spain, provided that the credit institutions' balance sheets exceed those of the investment firms.

c) Consolidated groups in which the parent is a financial holding company or a Spanish mixed financial holding company the subsidiaries of which are credit institutions or investment firms

authorised in Spain and in other European Union Member States. Additionally, the balance sheets of the credit institutions authorised in Spain must exceed those of the investment firms authorised in Spain.

d) Consolidated groups in which the parent is more than one financial holding company or mixed financial holding company with registered office in Spain and in another European Union Member State the subsidiaries of which are credit institutions or investment firms authorised in each of the European Union Member States in which the parent financial holding companies or mixed financial holding companies have their headquarters, provided that the credit institution authorised in Spain has the largest balance sheet.

e) Consolidated groups comprising credit institutions or investment firms authorised in other European Union Member States of which the parent is a financial holding company or mixed financial holding company with registered office in a Member State other than the Member States in which the subsidiary credit institutions or investment firms were authorised, provided that the credit institution authorised in Spain has the largest balance sheet.

f) Groups deemed to be consolidated in application of Article 18(6) of Regulation (EU) No 575/2013 of 26 June 2013, in the terms established by the Banco de España.

g) Institutional protection schemes envisaged in the fifth additional provision of Law 10/2014 of 26 June 2014.

2. Notwithstanding the provisions of points (b), (c), (d) and (e) of paragraph 1, the Banco de España may, by common agreement with the CNMV or with the authorities of other European Union Member States responsible for the supervision on an individual basis of the credit institutions or investment firms of a group, waive the criteria referred to in those points if the relative importance of the activities of the group in one of the other Member States in which it operates makes it advisable that the supervision on a consolidated basis should be exercised by a competent authority other than the Banco de España.

In the cases envisaged in the preceding sub-paragraph, the Banco de España shall give the financial holding company, mixed financial holding company, or Spanish credit institution with the largest balance sheet of the group, as appropriate, an opportunity to state its opinion on that decision.

The Banco de España shall notify the European Commission and the European Banking Authority of any agreement adopted in accordance with this paragraph.

Article 82. *Inclusion of holding companies in consolidated supervision.*

1. Financial holding companies and mixed financial holding companies shall be included in consolidated supervision.

2. Where the subsidiary credit institutions of the financial holding company and the mixed financial holding company are not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013 of 26 June 2013, the Banco de España may ask the parent undertaking for information which may facilitate its supervision of that subsidiary.

3. Where the Banco de España is the consolidating supervisor, it may ask the subsidiaries of an institution, a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis, for the information referred to in

Article 83. In such a case, the procedures for transmitting and checking the information set out in that Article shall apply.

4. The Banco de España, as consolidating supervisor, shall draw up a list of the financial holding companies and mixed financial holding companies referred to in Article 11 of Regulation (EU) No 575/2013 of 26 June 2013. This list must be communicated by the Banco de España to the other competent authorities of other Member States, to the European Banking Authority and to the European Commission.

Article 83. *Requests for information and inspections of the activity of mixed-activity holding companies.*

1. Where the parent undertaking of one or more Spanish institutions is a mixed-activity holding company, the Banco de España shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

2. The Banco de España may carry out, or have carried out by auditors, on-the-spot inspections to check information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in Article 67 of Law 10/2014 of 26 June 2014 may also be used.

In the event that the check is carried out by auditors, the provisions on the independence of auditors established in Chapter III of the consolidated text of the Audit Law, approved by Royal Legislative Decree 1/2011 of 1 July 2011, shall apply.

If a mixed-activity holding company or one of its subsidiaries is located in another European Union Member State, the on-the-spot inspections to check information shall be carried out in accordance with the procedure set out in Article 87.

CHAPTER III **Collaboration among supervisory authorities**

Article 84. *Collaboration of the Banco de España with other competent authorities.*

1. In accordance with the provisions of Articles 61 and 62(1)(e) of Law 10/2014 of 26 June 2014, in the exercise of its collaboration with the supervisory authorities of other countries the Banco de España shall facilitate all relevant information requested by those authorities and, in any event, ex officio, any information that may have a significant influence on the evaluation of the financial soundness of a credit institution or financial institution of another country.

In particular, the information referred to in the first sub-paragraph shall include:

- a) The legal and governance structure of a consolidated group of credit institutions.
- b) Procedures for collecting information from members of a group, and for checking that information.
- c) Adverse developments in institutions or in other group companies that could seriously affect the credit institutions.
- d) Penalties for serious or very serious infringements and exceptional measures taken by the Banco de España, including the imposition of a specific own funds requirement under Article 68(2)(a) of Law 10/2014 of 26 June 2014 and the imposition of any limitation on the use of the

advanced measurement approach to calculate the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013 of 26 June 2013.

2. The planning and coordination, in collaboration with the competent authorities concerned and with central banks, of supervisory activities in preparation for and during emergency situations pursuant to Article 62(1)(c) of Law 10/2014 of 26 June 2014 shall include the preparation of joint assessments, the implementation of contingency plans and communication to the public.

3. The Banco de España shall provide the European Banking Authority with all the information it needs to carry out the tasks entrusted to it in Directive 2013/36/EU of 26 June 2013, Regulation (EU) No 575/2013 of 26 June 2013 and Regulation (EU) No 1093/2010 of 24 November 2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

4. The Banco de España may inform and request assistance from the European Banking Authority where the competent authorities of other European Union Member States involved in the supervision of institutions in the consolidated group:

a) Do not communicate essential information.

b) Refuse a request for cooperation and, in particular, a request to exchange relevant information, or fail to act upon such a request within a reasonable time.

c) Do not correctly carry out the tasks attributed to them as consolidating supervisors.

Article 85. *Collaboration of the Banco de España with authorities of other countries in the framework of the supervision of branches.*

1. With a view to supervising the activity of the Spanish institutions that operate through a branch in other countries, the Banco de España shall collaborate closely with the competent authorities of such countries.

Within the framework of this collaboration, the Banco de España shall report relevant information on the management and ownership of these institutions that may facilitate their supervision and the examination of the conditions for their authorisation, and any other information that may facilitate the supervision of these institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting organisation and internal control mechanisms.

The reporting of information referred to in the preceding sub-paragraph shall, in the case of non-European Union countries, be conditional upon the foreign supervisory authorities being bound by obligations of professional secrecy equivalent, at least, to those established in Article 82 of Law 10/2014 of 26 June 2014.

2. With regard to liquidity, the Banco de España shall immediately report to the competent authorities of countries where branches of Spanish credit institutions operate:

a) Any information or findings pertaining to liquidity supervision, in accordance with Part Six of Regulation (EU) No 575/2013 of 26 June 2013 and Title III of Law 10/2014 of 26 June 2014, on the activities pursued by the institution through its branches, insofar as such information or findings are relevant for the protection of depositors or investors of the host country.

b) Any liquidity crisis that occurs or can reasonably be expected to occur. That information shall also include the prudential supervision measures applied in this respect and the details of the recovery plan and of any prudential supervision measures taken in that context.

3. The Banco de España, in its capacity as competent authority of the host country of a branch of a credit institution of another country, may request that the competent authorities of the home country communicate and explain how the information and findings provided by the former have been taken into account.

Where, following these explanations, the Banco de España considers that appropriate measures have not been taken by the authorities of the home country, it may take measures to protect the interests of depositors and investors and the stability of the financial system, after informing the competent authorities of the home country and also, in the case of competent authorities of a European Union Member State, the European Banking Authority.

4. Where the Banco de España is the supervisor of a Spanish credit institution with branches in another European Union Member State and it disagrees with the measures to be taken by the competent authorities of the Member State in which the branch is located, it may refer the matter to the European Banking Authority and request its assistance, in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010.

Article 86. *Functioning of colleges of supervisors.*

1. The Banco de España shall establish and preside over colleges of supervisors in order to facilitate exercise of the tasks referred to in Articles 62(1)(a) to (d), 65 and 81 of Law 10/2014 of 26 June 2014, where:

a) It is responsible for consolidated supervision of a group of credit institutions.

b) It is the supervisor of a credit institution with branches deemed to be significant in accordance with Article 59(2) of Law 10/2014 of 26 June 2014.

2. In the situations envisaged in the preceding paragraph the Banco de España shall:

a) Decide which competent authorities participate in a meeting or an activity of the college of supervisors.

b) Keep all members of the college fully informed of the organisation of meetings, the decisions adopted and the measures taken.

c) Report to the European Banking Authority, subject to the confidentiality requirements provided for in Article 82 of Law 10/2014 of 26 June 2014, on the activities of the college of supervisors, in particular those performed in emergency situations, and inform it of any information that is of particular interest for the purposes of supervisory convergence.

3. Notwithstanding the provisions of the preceding paragraph, the following may participate in colleges of supervisors:

a) The European Banking Authority as deemed appropriate in order to promote and monitor the efficient, effective and consistent functioning of said colleges in accordance with Article 21 of Regulation (EU) No 1093/2010 of 24 November 2010.

b) The competent authorities responsible for supervision of the subsidiaries of a European Union parent credit institution or of a European Union parent financial holding company or mixed financial holding company.

c) The competent authorities of the Member State in which significant branches are established.

d) Central banks.

e) The competent authorities of third countries subject to confidentiality requirements equivalent, in the opinion of all the competent authorities, to those established in Article 82 of Law 10/2014 of 26 June 2014.

4. The Banco de España, as member of a college of supervisors, shall collaborate closely with the other competent authorities comprising said college. The confidentiality requirements under Article 82 of Law 10/2014 of 26 June 2014 shall not prevent the Banco de España and other competent authorities from exchanging confidential information within colleges of supervisors.

5. The Banco de España may raise with the European Banking Authority, by virtue of Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, any disagreement with other competent authorities comprising the college, and request its assistance.

6. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the Banco de España set out in the solvency regulations.

Article 87. Article 87. *Exchange of information in relation to supervision on a consolidated basis and to supervision of mixed financial holding companies.*

1. Where a parent undertaking and any of its subsidiaries that are institutions are situated in different European Union Member States, the Banco de España shall communicate to the competent authorities of each of those Member States all relevant information which may aid the exercise of supervision on a consolidated basis

2. Where the Banco de España is responsible for the supervision of a parent undertaking not situated in Spain pursuant to Article 81, it may invite the competent authorities of the Member State in which the parent undertaking is situated to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit such information to the Banco de España.

3. In the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of the information referred to in the preceding two paragraphs shall not imply that the Banco de España is required to play a supervisory role in relation to those institutions or undertakings standing alone.

4. Where a parent undertaking is a mixed-activity holding company and such undertaking and any of its subsidiaries that are institutions are situated in different European Union Member States, the Banco de España shall communicate to the competent authorities of each of those Member States the information referred to in Article 83.

The collection or possession of information in accordance with the preceding subparagraph shall not imply that the Banco de España plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or in relation to the subsidiaries referred to in Article 82(3).

Article 88. *On-the-spot checks of the activity of branches.*

1. In order to supervise branches of Spanish credit institutions in other European Union Member States, the Banco de España, after consulting the competent authorities of the host Member State, may carry out on-the-spot checks of the information envisaged in Article 85. Those checks may also be carried out through the competent authorities of the Member State in which the branch operates or through auditors or experts.

In the event that the checks are carried out by auditors, the provisions on the independence of auditors established in Chapter III of the consolidated text of the Audit Law, approved by Royal Legislative Decree 1/2011 of 1 July 2011, shall apply or, in the event that the auditors are established in other European Union Member States, provisions on independence comparable to the Spanish provisions.

2. In order to supervise branches in Spain of credit institutions authorised in other European Union Member States, the competent authorities of those Member States, after consulting the Banco de España, may carry out on-the-spot checks of the information envisaged in Article 85. Those checks shall be carried out, in any event, without prejudice to applicable Spanish law.

Article 89. *Checks on information relating to institutions in other European Union Member States.*

1. In the framework of application of the solvency regulations, the Banco de España may request that the competent authorities of other Member States check information on the following institutions established within their territory:

- a) Credit institutions.
- b) Investment firms.
- c) Financial holding companies.
- d) Mixed financial holding companies.
- e) Financial institutions.
- f) Ancillary services firms.
- g) Mixed-activity holding companies.
- h) Subsidiaries, located in another European Union Member State, of:

1.- Financial holding companies, mixed financial holding companies or mixed-activity holding companies that are insurance undertakings or other investment firms not envisaged in Article 4(1)(2) of Regulation (EU) 575/2013 of 26 June 2013 which are subject to authorisation.

2.- Credit institutions, investment firms, financial holding companies or mixed financial holding companies that are not included in the scope of consolidated supervision.

2. When the Banco de España receives a request similar to that envisaged in paragraph 1 from the competent authorities of other European Union Member States, it must act on it, within the framework of its competence, through one of the following methods:

- a) Carrying out the check itself.

b) Allowing the competent authorities that made the request to carry it out.

c) Allowing an auditor or expert to carry it out.

Also, the Banco de España shall allow the competent authority that made the request to participate in the check, if it so wishes, where it does not carry out the check itself.

In the event that the check is carried out by auditors, the provisions on the independence of auditors established in Chapter III of the consolidated text of the Audit Law, approved by Royal Legislative Decree 1/2011 of 1 July 2011, shall apply.

Article 90. *Joint decision-making.*

1. In the collaboration framework established in Article 62 of Law 10/2014 of 26 June 2014 the Banco de España, as the consolidating supervisor of a group or as the competent authority responsible for supervision of the subsidiaries of a European Union parent credit institution or of a European Union parent financial holding company or mixed financial holding company in Spain, shall do its utmost to reach a consensus decision with the other supervisory authorities of the European Union on:

a) Applying Articles 41 and 51 of Law 10/2014 of 26 June 2014 to determine whether the consolidated own funds level of a group is appropriate in view of its financial situation and risk profile, and the own funds level needed to apply Article 68 of that Law to each of the institutions of the group and on a consolidated basis.

b) The measures to be used to settle any significant questions and key findings relating to supervision of liquidity.

2. The joint decision referred to in paragraph 1 shall be adopted:

a) For the purposes of paragraph 1(a), in a period of four months from submission by the consolidating supervisor to the other relevant competent authorities of a report that includes risk assessment at a group level, in accordance with Articles 41, 51 and 68(2)(a) of Law 10/2014 of 26 June 2014.

b) For the purposes of paragraph 1(b), in a period of one month from submission by the consolidating supervisor to the other relevant competent authorities of a report that includes assessment of the group's liquidity risk profile, in accordance with Article 53 of this Royal Decree and Article 42 of Law 10/2014 of 26 June 2014.

3. The joint decision shall be set out in a document containing the fully reasoned decision which shall be submitted by the Banco de España, where it is the consolidating supervisor, to the European Union parent credit institution.

In the event of disagreement, the Banco de España, on its own initiative or at the request of any of the other competent authorities concerned, shall consult the European Banking Authority before taking the decision referred to in the following paragraph. The outcome of the consultation shall not be binding on it.

4. If no such joint decision is reached between the competent authorities within the periods referred to in paragraph 2, the Banco de España, where it acts as the consolidating supervisor, shall take the decision regarding the application of Articles 41, 42, 51 and 68(2)(a) of Law 10/2014 of 26 June 2014 and Article 53 of this Royal Decree, on a consolidated basis, after taking into due consideration the risk assessment of the subsidiaries performed by the relevant competent

authorities and, as the case may be, the outcome of the consultation to the European Banking Authority, explaining any significant variations with respect to the opinion issued by the latter.

If at the end of the periods referred to in paragraph 2 any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the Banco de España shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of the Regulation. Subsequently, it shall take its decision in conformity with the decision of the European Banking Authority. The periods referred to in paragraph 2 shall be deemed conciliation phases within the meaning of Article 19 of the Regulation.

The matter shall not be referred to the European Banking Authority after the end of the four-month or one-month period, as appropriate, or after a joint decision has been reached.

5. Also, if no such joint decision is reached, the Banco de España, as the party responsible for supervising the subsidiaries of a European Union parent credit institution or of a European Union parent financial holding company or mixed financial holding company, shall take a decision on the application of Articles 41, 42, 51 and 68(2)(a) of Law 10/2014 of 26 June 2014 and Article 53 of this Royal Decree, on an individual or sub-consolidated basis, after taking into due consideration any observations or reservations expressed by the consolidating supervisor and, as the case may be, the outcome of the consultation to the European Banking Authority, explaining any significant variations with respect to the opinion issued by the latter.

If at the end of the four-month or one-month periods, as appropriate, any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the Banco de España shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of the Regulation. Subsequently, it shall take its decision in conformity with the decision of the European Banking Authority. The periods referred to in paragraph 2 shall be deemed the conciliation phases within the meaning of Article 19 of the Regulation.

The matter shall not be referred to the European Banking Authority after the end of the four-month or one-month period, as appropriate, or after a joint decision has been reached.

6. The decisions referred to in the two preceding paragraphs shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment and any observations and reservations expressed by the other competent authorities throughout the periods referred to in paragraph 2.

The Banco de España, where it acts as the consolidating supervisor, shall submit the document to all the competent authorities concerned and to the European Union parent credit institution or subsidiary concerned.

7. The joint decisions referred to in paragraph 1 and the decisions taken by the consolidating supervisors of other European Union Member States affecting Spanish subsidiary credit institutions of the consolidated groups to which such decisions refer shall have the same legal effects as the decisions adopted by the Banco de España.

8. The joint decision referred to in paragraph 1 and the decisions adopted in the absence of a joint decision in accordance with paragraphs 4 and 5 shall be updated each year or, in exceptional circumstances, when a competent authority responsible for the supervision of subsidiaries of a European Union parent credit institution or investment firm or of a European Union parent financial holding company or mixed financial holding company submits to the consolidating supervisor a fully

reasoned written request to update the decision on the application of Articles 42 and 68(2)(a) of Law 10/2014 of 26 June 2014. In the second case, the consolidating supervisor and the competent authority that submitted the request may carry out the update bilaterally.

Article 91. *Declaration of branches as significant and the Banco de España's reporting obligations in this regard.*

1. As regards branches of Spanish credit institutions established in another Member State, the Banco de España shall:

a) Promote the adoption of a joint decision on their designation as significant in a maximum period of two months from receipt of the request referred to in Article 62(1)(f) of Law 10/2014 of 26 June 2014. In the event that no joint decision is adopted, the Banco de España must recognise and apply the decision adopted in this regard by the competent authority of the host Member State.

b) Report to the competent authorities of the European Union Member State in which a significant branch of a Spanish credit institution is established the information referred to in Article 61(2)(c) and (e) of Law 10/2014 of 26 June 2014 and perform the tasks referred to in Article 61(2)(c) of that Law, in collaboration with the competent authorities of the Member State in which the branch operates.

Also, the Banco de España shall notify the Spanish credit institution of the decision adopted in this regard by the competent authority of the host Member State.

2. With regard to branches in Spain of credit institutions of other European Union Member States, the Banco de España may request that the competent supervisory authorities initiate the appropriate actions to recognise that such branches are significant and, as the case may be, to take a decision in that regard. To this end, if in the two months following receipt of the request made by the Banco de España a joint decision has not been reached with the supervisor of the home Member State, the Banco de España shall have an additional two-month period within which to take its own decision. In doing so, the Banco de España shall take into account any opinions and reservations expressed by the consolidating supervisor or the competent authorities of the host Member State.

3. In the actions referred to in paragraphs 1(a) and 2, the Banco de España must:

a) Take into account any opinions and reservations expressed by the competent authorities of the Member States concerned.

b) Consider factors such as the market share of the branch in terms of deposits, in particular, if it exceeds 2%; the likely impact of the suspension or cessation of the operations of the credit institution on market liquidity and payment, clearing and settlement systems; and the size and importance of the branch in terms of number of customers.

These decisions shall be set out in a document containing the decision and the reasons for it and shall be notified to the other competent authorities and the institution concerned.

4. The Banco de España shall report to the competent authorities of the host Member States in which the significant branches of Spanish credit institutions are established:

a) The outcome of the risk assessments of institutions with significant branches performed in accordance with Articles 51 and 52 of Law 10/2014 of 26 June 2014.

b) The decisions adopted by virtue of Article 68(2) of Law 10/2014 of 26 June 2014 insofar as those assessments and decisions are relevant to the branches.

Also, the Banco de España shall consult the competent authorities of the host Member States about the operational measures taken by institutions to ensure that liquidity recovery plans can be implemented immediately, where relevant for liquidity risks in the host Member State's currency.

5. The Banco de España may appeal to the European Banking Authority for assistance as provided for in Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010 where:

a) The competent authorities of the home Member State of a significant branch that operates in Spain have not consulted the Banco de España when establishing the liquidity recovery plan.

b) The Banco de España upholds that the liquidity recovery plans imposed by the competent authorities of the home Member State of a significant branch that operates in Spain are not adequate.

CHAPTER IV **Reporting and disclosure requirements**

Article 92. *Banco de España disclosure requirements.*

1. The Banco de España must disclose on its website:

a) The texts of the legal and regulatory provisions, as well as the general guidelines adopted in the area of the solvency regulations.

b) The manner in which it has exercised the options and powers granted by European Union law.

c) The criteria and methodology followed by the Banco de España to review the agreements, strategies, procedures and mechanisms applied by the institutions and their groups in order to comply with the solvency regulations and assess the risks to which the institutions are or may be exposed.

d) The general criteria and methods used to verify compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013.

e) A summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No 575/2013 of 26 June 2013.

f) The other requirements provided for in Article 80 of Law 10/2014 of 26 June 2014.

2. Also, where the Banco de España, in accordance with Article 7(3) of Regulation (EU) No 575/2013 of 26 June 2013, decides to exempt an institution from compliance with Article 6(1) of the Regulation, it must publish the following information:

a) The criteria applied to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities.

b) The number of parent institutions that benefit from this exemption and, of them, the number that have subsidiaries located in a non-European Union country.

c) On an aggregate basis for Spain:

1.- The total amount of consolidated own funds of the parent institution in Spain to which this exemption applies held in subsidiaries located in non-European Union countries.

2.- The percentage of the total consolidated own funds of parent institutions in Spain to which this exemption applies represented by own funds held in subsidiaries located in non-European Union countries.

3.- The percentage of the total consolidated own funds required, under Article 92 of Regulation (EU) No 575/2013 of 26 June 2013, of parent institutions in Spain to which this exemption applies represented by own funds held in subsidiaries located in non-European Union countries.

3. Where the Banco de España, in accordance with Article 9(1) of Regulation (EU) No 575/2013 of 26 June 2013, authorises an institution to incorporate, in the calculation of their requirement under Article 6(1) of the aforementioned Regulation, subsidiaries that meet the conditions laid down in Article 7(1)(c) and (d) of the Regulation and whose material liabilities or exposures are to those parent institutions, it must disclose the following information:

a) The criteria applied to determine that there is no current or foreseen material practical or legal impediment to the immediate transfer of own funds or repayment of liabilities.

b) The number of parent institutions that have been granted this authorisation and, of them, the number that have subsidiaries located in a non-European Union country.

c) On an aggregate basis for Spain:

1.- The total amount of own funds of the parent institutions to which this authorisation has been granted held in subsidiaries located in non-European Union countries.

2.- The percentage of the total own funds of parent institutions to which this authorisation has been granted represented by own funds held in subsidiaries located in non-European Union countries.

3.- The percentage of the total own funds required under Article 92 of Regulation (EU) No 575/2013 of 26 June 2013 of parent institutions to which this authorisation has been granted represented by own funds held in subsidiaries located in non-European Union countries.

Article 93. *Prudential information of credit institutions.*

1. Pursuant to Article 85 of Law 10/2014 of 26 June 2014, consolidated groups of credit institutions and credit institutions not belonging to one of these consolidated groups shall disclose, duly included in a single "Prudential information" document, specific information on their financial situation and activity that may be of interest to the market and other interested parties in order to assess the risks facing those groups and institutions, their market strategy, their risk control, their internal organisation and their situation with a view to meeting the minimum own funds requirements envisaged in the solvency regulations.

2. The same disclosure obligations shall be required, on an individual or sub-consolidated basis, of Spanish or foreign credit institutions incorporated in another European Union Member State, subsidiaries of Spanish credit institutions, where the Banco de España deems appropriate in view of their activity or relative significance within the group. In the event that the obligation affects foreign subsidiaries, the Banco de España shall send the corresponding decision to the Spanish parent institution, which shall have to adopt the measures necessary to effectively comply therewith.

3. Institutions may omit non-material information and, with the appropriate warning, data they consider proprietary or confidential. They may also determine the medium, place and means of disclosing that document.

4. The “Prudential information” document must be published at least on an annual basis and as promptly as possible, and in any event not after the date of approval of the institution’s annual accounts.

Notwithstanding the foregoing, credit institutions shall assess the need to disclose some or all information with greater frequency in view of the nature and characteristics of their activities.

Also, the Banco de España may determine the information to which credit institutions must pay particular attention when they assess whether it should be disclosed more frequently than once a year.

5. Credit institutions may determine the most appropriate medium, place and means of verification to comply effectively with the disclosure requirements laid down in Article 85 of Law 10/2014 of 26 June 2014. Insofar as possible, all disclosures shall be made in one medium or place.

**First additional provision.
Prior approval of Additional Tier 1 and Tier 2 capital instruments.**

The calculation of Additional Tier 1 and Tier 2 capital instruments of credit institutions as such shall be conditional on their prior approval by the Banco de España in accordance with the criteria established by Regulation (EU) No 575/2013 of 26 June 2013.

**Second additional provision.
Integration of the Banco de España in the Single Supervisory Mechanism.**

1. The authorisation and supervisory powers of the Banco de España set forth in this Royal Decree shall be applied in the framework of the powers attributed to the European Central Bank and to the Single Supervisory Mechanism in European Union legislation and, in particular, in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, and in Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.

2. In particular, it is for the European Central Bank to authorise credit institutions, withdraw such authorisation and notify its objection or non-objection to the acquisition of a qualifying holding, in the terms set forth in the Regulations mentioned in the preceding paragraph. In these cases the Banco de España, as the competent national authority, shall submit to the European Central Bank projects for granting of authorisation or for acquisition of a qualifying holding and, where appropriate, proposals for withdrawal of authorisation.

3. The powers and obligations attributed to the Banco de España in Chapter IV of Title I and Titles II and III shall be attributed or exercised by the European Central Bank in accordance with the provisions of the Regulations mentioned in paragraph 1, in particular in cases where the latter is deemed the competent authority in application of Article 6(4) and (5) of Council Regulation (EU) No 1024/2013 of 15 October 2013.

**Third additional provision.
Securities market-related activities.**

Where in accordance with the administrative procedures provided for in Title I, Chapter I, a credit institution intends to pursue securities market-related activities, the Banco de España shall notify the CNMV of this circumstance, specifying the activities to be performed and indicating, where appropriate, whether the credit institution intends to pursue such activities as a member of an official secondary market, another regulated market located in the European Union or a multilateral trading facility.

**Fourth additional provision.
Authorisation for transformation of existing companies into banks.**

Authorisation for transformation into a bank may be granted to existing companies only in the case of credit cooperatives or specialised lending institutions.

In order to obtain authorisation it shall be necessary to meet the requirements set forth in Title I, Chapter I of this Royal Decree, but in relation to Article 4(b) they shall be deemed met provided that the sum of the equity on the balance sheet for the year prior to the transformation request, which must have been audited, and the cash contributions amount to €18 million.

Also, the authorisation may exempt them from fulfilment of the time limits provided for in Article 8.

**Fifth additional provision.
Composition of the board of trustees of banking foundations and commercial and professional repute requirements.**

1. Persons with specific financial knowledge and experience, as set forth in Article 39(3)(e) of Law 26/2013 of 27 December 2013 on savings banks and banking foundations, shall form the board of trustees of banking foundations in the following percentages:

- a) At least one fifth of the members of the board of trustees, in general.
- b) At least one third of the members of the board of trustees, in the case of banking foundations with a holding in a credit institution that is equal to or greater than 30% of capital.
- c) At least one half of the members of the board of trustees, in the case of banking foundations with a holding in a credit institution that is equal to or greater than 50% or that grants them control of the credit institution in the terms of Article 42 of the Commercial Code.

2. The trustees referred to in the preceding paragraph must meet the suitability requirements specified by the applicable legislation for the members of the management body and equivalent positions at credit institutions.

The other members of the board of trustees must meet the commercial and professional repute requirements specified for members of the management body and equivalent positions at credit institutions.

**Sixth additional provision.
Representatives of the member institutions of the Deposit Guarantee Fund Management Committee.**

The representatives of the member institutions that must be designated by the associations representing banks, as provided for in the fourth sub-paragraph of Article 7(2) of Royal Decree-Law 16/2011 of 14 October 2011 creating the Credit Institution Deposit Guarantee Fund, shall be

distributed among the various associations representing those credit institutions in proportion to the volume of guaranteed deposits of their represented institutions.

Also, the representatives of the member institutions that must be designated by the associations representing savings banks and credit cooperatives shall be attributed to the associations representing those credit institutions that have the largest volume of guaranteed deposits of their represented institutions.

In order to calculate the volume of guaranteed deposits, the guaranteed deposits existing at 31 December of the previous year shall be taken into consideration. In the event that a single association represents different classes of credit institution, only the deposits of the credit institution of the same class as the representative to be designated shall be taken into account.

**Seventh additional provision.
References to repealed legislation.**

Any references made in law to rules repealed under the single repealing provision shall be understood to be made to the corresponding provisions of this Royal Decree.

**First transitional provision.
Transitional arrangements for the application of Article 458 of Regulation (EU) No 575/2013 of
26 June 2013.**

Repealed by the single repealing provision of Royal Decree 102/2019 of 1 March 2019.

**Second transitional provision.
Existing procedures.**

The procedures for authorisation, withdrawal of authorisation and lapse of authorisation of credit institutions commenced prior to 4 November 2014 and not resolved upon the entry into force of this Royal Decree shall be substantiated in accordance with the procedures provided for in this Royal Decree.

**Single repealing provision.
Regulatory repeal.**

All provisions of equal or lower rank that are inconsistent with this Royal Decree are repealed, and in particular the following:

- a) Royal Decree 1245/1995 of 14 July 1995 on the creation of banks, cross-border activity and other issues relating to the legal regime of credit institutions.
- b) Royal Decree 216/2008 of 15 February 2008 on own funds of financial institutions, with the exception of the provisions relating to investment firms.
- c) Order of 20 September 1974 on capital increases.

**First final provision.
Amendment of the Regulation implementing Law 13/1989 of 26 May 1989 on credit
cooperatives, approved by Royal Decree 84/1993 of 22 January 1993.**

The Regulation implementing Law 13/1989 of 26 May 1989 on credit cooperatives, approved by Royal Decree 84/1993 of 22 January 1993, is amended as follows:

One. The first sub-paragraph of Article 1(1) shall read as follows:

“The Banco de España shall submit to the European Central Bank proposed authorisation to take up the business of a credit institution, following a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds, in their respective areas of competence.”

Two. Article 4(1)(d) and (e) shall read as follows:

“d) List of the persons who are to form the first board of directors and exercise the functions of general managers or similar officers, and the persons responsible for internal control and other key positions for the day-to-day activity of the cooperative, with detailed information on the professional activity and career of all such persons.

e) Evidence that a cash deposit has been made with the Banco de España or that public debt securities have been pledged to the Banco de España for an amount equal to 20% of the minimum share capital required.”

Three. Article 5(1) shall read as follows:

“1. Without prejudice to the powers of the European Central Bank to refuse a request for authorisation proposed by the Banco de España, the latter, by means of a reasoned decision, shall refuse the authorisation where the requirements of Article 2 are not met or where, taking into account the financial or equity situation of the promoters that are to own a qualifying holding in the share capital, the sound and prudent management of the projected institution is not assured, all of the foregoing in accordance with the provisions of the legislation on credit institutions. Also, the Banco de España may refuse the authorisation where the project presented does not reveal the existence of shared economic needs or interests that must form the associative basis of the cooperative.”

Four. Article 8 shall read as follows:

“1. Once the creation of a credit cooperative is authorised it must commence operations within a period of one year from notice thereof. Otherwise, except for reasons not attributable to the entity, the authorisation shall lapse, as provided for in Article 10 of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

2. The deposit provided for in Article 4(1)(e) shall be released ex officio once the company has been incorporated and inscribed in the corresponding credit cooperative register, and also in the event of refusal, lapse and, if it has not been released previously, withdrawal or waiver of the authorisation.”

Five. Article 30 shall read as follows:

“Article 30. Spin-offs and mergers: instances.

1. Spin-offs and mergers affecting credit cooperatives require prior administrative authorisation in the following terms:

a) Spin-offs that are intended to promote a credit cooperative, whether on the basis of other institutions or a credit section of other classes of cooperatives, as well as those that affect, in full or in part, the assets and liabilities and the stakeholders of any credit cooperative.

b) Mergers between other classes of cooperatives – except insurance cooperatives – to promote a credit cooperative, and mergers between existing credit cooperatives or between the latter and other deposit-taking institutions where the other companies in the cooperative sector do

not participate in the merger proposal within three months from receiving the relevant information from the board of directors of the credit cooperative concerned.

c) Mergers between credit cooperatives and other classes or levels of cooperatives, also excluding insurance cooperatives, provided that they have a credit section or that the core corporate purpose, at least, can be validly taken on, as supplementary or ancillary services, by the new or absorbing credit cooperative.

d) Global or partial transfer of assets and liabilities involving a credit cooperative. Partial transfer of assets and liabilities shall be taken to be the transaction defined in Article 11(2) of Royal Decree 84/2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

e) Any agreement that has economic or legal effects similar to the instances set forth in the previous points.

2. Mergers, spin-offs or global or partial transfers of assets and liabilities affecting credit cooperatives other than the instances set forth in paragraph 1 above may not be performed.

3. Prior administrative authorisation must be requested by the directors of the institutions concerned once the merger or spin-off project has been approved and before it is submitted to the respective general assemblies.

4. The authority with the power to authorise the merger or spin-off shall also have the power to approve the acts and resolutions required to complete the transaction; if it were to give rise to the creation of a new credit cooperative, Article 1 must also be applied.”

Six. A new Article 39 is added which reads as follows:

“Article 39. Withdrawal of authorisation to operate as a credit institution.

1. The Banco de España shall be competent to initiate, process and submit to the European Central Bank a proposal for withdrawal of authorisation. The Banco de España may only commence this procedure ex officio in the terms set forth in Article 69 of Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure, and in the instances provided for in Article 8 of Law 10/2014 of 26 June 2014 or in any other rule with the status of law. A resolution to withdraw authorisation adopted by decision of the European Central Bank may be appealed through the appeals system envisaged in European Union legislation, in particular in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

2. The Banco de España shall offer the interested parties a consultation process once the proceedings have begun and immediately prior to drafting the proposed resolution, granting them a period of fifteen days in which to make submissions and present any documents and evidence they deem relevant.

3. Also, the Banco de España shall submit to the European Central Bank a proposal for withdrawal of authorisation where the credit institution waives the authorisation granted, or it shall expressly refuse the waiver, within three months from notification thereof.

Credit institutions shall attach to the notice of waiver a plan for the cessation of activity.

4. The waiver procedure shall be governed by the rules provided for withdrawal, with there being no requirement to wind up and liquidate the institution if it intends to continue to pursue unrestricted activities.

5. In the event that the waiver is refused, the Banco de España must explain the reasons why it considers cessation of activity may give rise to serious risks to financial stability. For these purposes, it shall take into account the need to:

a) Ensure the continuity of activities, services and transactions which, if interrupted, could disrupt the economy or the financial system and, in particular, systemically important financial services and payment, clearing and settlement systems.

b) Avoid harmful effects for the stability of the financial system.

c) Protect depositors and other repayable funds and assets of the customers of credit institutions.”

Seven. A new Article 40 is added which reads as follows:

“Article 40. Lapse of authorisation.

1. The Banco de España shall expressly declare authorisation to operate as a credit institution to have lapsed if, within the twelve months following the notification date, the institution has not commenced the specific activities included in the programme of activities to which the authorisation refers owing to causes attributable to the institution. A resolution on lapse may be appealed through the appeals system provided for in Law 13/1994 of 1 June 1994 on the Autonomy of the Banco de España and in Law 30/1992 of 26 November 1992.

2. The procedure for declaring a lapse may only be commenced ex officio in the terms provided for in Article 69 of Law 30/1992 of 26 November 1992.

3. Once the commencement of the procedure has been agreed upon it shall be notified to the interested parties within ten days so that they may make submissions and provide any documents or other evidence at any time prior to the consultation process referred to in the following paragraph.

4. The Banco de España shall offer the interested parties a consultation process once the proceedings have begun and immediately prior to preparing the draft decision, granting them a period of fifteen days to draft allegations and to submit the documents and evidence that they deem relevant.”

Second final provision.

Amendment of Royal Decree 2660/1998 of 14 December 1998 on the changing of foreign currency in establishments open to the public other than credit institutions.

Royal Decree 2660/1998 of 14 December on the changing of foreign currency in establishments open to the public other than credit institutions is amended as follows:

One. Article 1(1) shall read as follows:

«Article 1. Scope of application.

1. Foreign exchange transactions, whatever their denomination, are unrestricted, with no limits other than those established in exchange control legislation. However, the professional activity

of providing foreign exchange, whatever the denomination, in establishments open to the public (hereafter, currency-exchange bureaux), is subject to the authorisations and regime established in this Royal Decree and in its implementing regulations.

This foreign exchange activity consists of the purchase and sale of foreign currency banknotes and traveller's cheques in the terms provided for in this Royal Decree."

Two. Article 2(4), (5) and (6) are deleted and Article 2(1), (2) and (3) are amended and read as follows:

«Article 2. Transactions of currency-exchange bureaux.

1. Natural or legal persons, other than credit institutions, intending to perform transactions comprising the purchase of foreign currency banknotes or traveller's cheques, with payment in euro, in establishments open to the public, must meet the requirements established in Article 4(1) and (3) of this Royal Decree and obtain the prior authorisation of the Banco de España to pursue this activity and be inscribed in its register of currency-exchange bureaux.

This activity may be carried out either exclusively or in addition to the business comprising the main activity.

2. Persons who, without prejudice to their ability to perform the transactions referred to in the preceding paragraph, intend to perform transactions comprising the sale of foreign currency banknotes in establishments open to the public, must meet the requirements established in Article 4 of this Royal Decree and obtain the prior authorisation of the Banco de España to pursue this activity and be inscribed in its register of currency-exchange bureaux.

3. For the purposes of the provisions of the preceding paragraph, the sale of foreign currency banknotes and traveller's cheques in exchange for delivery of their equivalent value in euro or in other foreign currency banknotes shall be deemed to be transactions comprising the sale of foreign currency banknotes and traveller's cheques."

Three. Article 3(1) is amended and reads as follows:

"It is the prerogative of the Banco de España, following a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences, for those matters under its remit, to authorise the pursuit of foreign exchange activity in the currency-exchange bureaux provided for in this Royal Decree. This authorisation shall be granted pursuant to the procedure established in Title VI of Law 30/1992 of 26 November 1992 on the general government legal regime and common administrative procedure. The authorisation shall specify the activities that the aforementioned currency-exchange bureaux may perform.

The Banco de España, by means of a reasoned decision, shall refuse the authorisation of a currency-exchange bureau where the requirements established in Articles 4 and 5 of this Royal Decree are not met. An appeal may be filed with the Minister of Economy and Finance against the refusal of the request."

Four. Article 4 is amended and reads as follows:

"Article 4. Requirements for obtaining and maintaining authorisation to pursue foreign exchange activities.

1. In order to obtain and maintain authorisation for the performance of transactions comprising the purchase of foreign currency banknotes or traveller's cheques, with payment in euro,

the owners of currency-exchange bureaux and, as the case may be, the shareholders and directors and members of the board of directors of their parent institution, if any, must be persons of recognised commercial and professional repute. The good repute requirement must also be met by the general managers or similar officers, and by the persons responsible for internal control and other key posts for the day-to-day performance of the activity of the institution and its parent, as established by the Banco de España.

For these purposes, the suitability requirements of the members of the board of directors, and of the general managers or similar officers and the persons responsible for internal control and other key posts for the day-to-day performance of the activity of the institution, shall be assessed in accordance with the good repute control procedures and criteria established in Article 30 of Royal Decree 84/2015 of 13 February 2015 implementing Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

2. In order to obtain and maintain authorisation to perform the transactions referred to in Article 2(2), a currency-exchange bureau must also meet the following requirements:

a) It must be a public limited company organised by the simultaneous formation method. Its incorporation as such and inscription in the Mercantile Register shall be prior to its inscription in the register of currency-exchange bureaux held at the Banco de España, a procedure that must be completed within six months from the notification of authorisation.

b) Its sole corporate purpose shall be to perform transactions comprising the purchase and sale of foreign currency banknotes and traveller's cheques. This requirement shall not be applicable to payment institutions or electronic money institutions.

c) It must have minimum share capital of €60,000 fully subscribed and paid in cash, represented by registered shares.

d) It must have appropriate internal control and reporting procedures and bodies to prevent and block transactions relating to money laundering, in the terms established in Articles 31 to 40 of the Regulations of Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing, approved by Royal Decree 304/2014 of 5 May 2014.

3. In the case envisaged in Article 2(1), the commercial and professional repute requirements shall be deemed met if there is an establishment open to the public in which the applicant's main activity is being conducted."

Five. Article 5(5) is amended and reads as follows:

"5. Any change in any data included in the requests for authorisation to which this Article refers, the opening of new premises and the cessation of foreign exchange activities by the currency-exchange bureau must be notified to the Banco de España within one month following the date of their occurrence.

Where the owner of an establishment that only performs transactions comprising the purchase of foreign currency banknotes or traveller's cheques with payment in euro intends to extend its transactions to those set forth in Article 2(2), the owner shall follow the procedure established to obtain prior authorisation and must meet the requirements envisaged in Article 4(2) and submit a new request accompanied by the corresponding documents and information, in the terms provided for in this Article."

Six. Article 11 is amended and reads as follows:

“Article 11. Register of transactions.

Currency-exchange bureaux must register the transactions they perform subject to this Royal Decree, separately identify the persons involved in those transactions and inform the Banco de España and the competent bodies of the tax authorities in the manner and with the limits established by law and in the regulations implementing this Royal Decree, for the purposes of statistical and fiscal monitoring of such transactions.”

Seven. The sole additional provision is amended and reads as follows:

“Sole additional provision. Application of other regulations.

Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing and its implementing regulations shall be applicable to the currency-exchange bureaux regulated by this Royal Decree.”

Third final provision.

Amendment of Royal Decree 1332/2005 of 11 November 2005 implementing Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates, amending other financial sector legislation.

Royal Decree 1332/2005 of 11 November 2005 implementing Law 5/2005 of 22 April 2005 on the supervision of financial conglomerates, amending other financial sector legislation, is amended as follows:

One. The fourth paragraph of the preamble reads as follows:

“Chapter I of this Royal Decree establishes the scope of the regulation, delimiting the entities subject to the supplementary supervision regime, the system for their identification and determination of the relevant competent authorities.”

Two. Article 2(2) is deleted, Article 2(3) and (4) becomes Article 2(2) and (3), respectively, and the new Article 2(2) reads as follows:

“2. In the case of the groups referred to in the last indent of the second sub-paragraph of Article 2(5) of the Law, the coordinator and the relevant competent authorities may decide, by common accord:

a) That they are not subject to the set of obligations established in this Royal Decree, save for reporting of the information necessary for the identification of financial conglomerates envisaged in Article 13(2), and the provisions of Articles 5, 6 and 7 of the Law that are necessary for compliance with that reporting requirement.

b) That they are subject to the obligations envisaged in this Royal Decree, with the exception of those established in Articles 8 to 11.

The aforementioned authorities may take the decisions referred to in this paragraph if they consider that the application of the set of obligations envisaged in this Royal Decree is unnecessary or inappropriate or could lead to error in respect of the supplementary supervision goals. Those authorities shall reassess, at least annually, the decisions on total or partial exemption envisaged in this paragraph and shall review the quantitative indicators established in Article 2 of the Law and the assessment of the risks associated with each group.”

Three. Article 3(1)(c) and (2) is amended as follows:

“c) Venture capital firms.

2. The banking and investment services sector will consist of the credit institutions and investment firms of the financial conglomerate, and all the other entities that form a consolidated group or subgroup of credit institutions or a consolidated group or subgroup of investment firms.

The insurance sector will consist of the insurance and reinsurance undertakings of the financial conglomerate, and all the other undertakings that form a consolidated group or subgroup of insurance undertakings.

Management companies of collective investment institutions and management companies of venture capital entities will be added to the sector to which they belong within the group. If the latter do not belong exclusively to one sector within the group, they will be added to the smallest financial sector.”

Four. Article 4(1) and (3) is amended as follows:

“The calculations envisaged in Article 2 of the Law will be made twice a year in all groups that include at least one entity belonging to the insurance sector and at least one entity belonging to the banking and investment services sector.

3. The relevant competent authorities may, by common accord:

a) Exclude an entity when the calculations referred to in Article 2(4) and (5) of the Law are made, unless there is evidence that the entity has moved from a European Union Member State to a third country in order to elude the regulation.

b) Take into consideration whether the thresholds envisaged in the Law are respected over three consecutive years, to prevent abrupt changes in systems, and cease to take this into account if the structure of the group undergoes significant changes.

c) Exclude one or more holdings in the smallest sector if those holdings are decisive for the identification of a financial conglomerate and are, collectively, of no significant interest for the supplementary supervision goals.

For financial conglomerates that are already identified as such, the aforementioned decisions will be taken on the proposal of the coordinator of the conglomerate.”

Five. Article 5(c) is amended as follows:

“c) Other competent authorities concerned, when so decided by common accord among the authorities referred to in the two preceding sub-paragraphs; to that effect, and in the absence of rules issued by the European Supervisory Authorities in this respect, the authorities referred to in points (a) and (b) shall especially take into account the market share of the regulated entities of the conglomerate in other European Union Member States, in particular if it exceeds 5%, and the importance in the conglomerate of any regulated entity established in another Member State.”

Six. Article 6(1), (2) and (4) reads as follows:

“1. Where the parent entity of the conglomerate is a Spanish regulated entity, or where all the relevant competent authorities are Spanish, the rules established in paragraphs 2, 3 and 4 will apply.

In all other cases, the coordinator will decide, after consulting with the other relevant competent authorities and with the reporting entity of the financial conglomerate, which method of those described in the annex will be used to calculate the capital adequacy requirements of the regulated entities of the financial conglomerate.

2. The eligible own funds of the financial conglomerate will consist of the sum of:

a) The eligible own funds of the credit institution or consolidated group of credit institutions that form part of the financial conglomerate, as defined in Part Two of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

b) The eligible own funds of the investment firm or consolidated group of investment firms that form part of the financial conglomerate, as defined in Part Two of Regulation (EU) No 575/2013 of 26 June 2013.

c) The uncommitted own equity of the insurance undertaking or consolidated group of insurance undertakings that form part of the financial conglomerate, as defined in the regulations on the organisation and supervision of private insurance approved by Royal Decree 2486/1998 of 20 November 1998.

The following will be deducted from that sum:

1.- Cross-shareholdings between entities of the financial conglomerate, unless the amount of those shareholdings has already been eliminated by consolidation or deducted from the eligible own funds of the entities or consolidated groups making up the conglomerate. The deductions will be made for the book value of the entity holding the shareholdings.

2.- Any excess of those elements making up eligible own funds or uncommitted own equity that are not classed as such according to the legislation applicable to individual financial institutions or consolidated financial groups supervised by the Spanish authority that acts as coordinator of the financial conglomerate, over the minimum own funds or uncommitted equity requirements of the individual financial institution or consolidated group in which they are eligible. To determine that excess, any lower-quality eligible own funds in accordance with the provisions of the applicable sectoral legislation will be applied first, and the requirements covered by the own funds of the same group will be distributed on a pro-rata basis to those of the elements to be excluded.

The coordinator may determine that the sum of any financial commitments or transactions performed, either between any of the financial institutions belonging to the conglomerate that are not consolidated or between any of the financial institutions belonging to the group and any third party, that lead to double-counting of the own funds of the financial conglomerate or that undermine the effectiveness of the own funds to cover losses or address the risks assumed by the financial conglomerate overall, be deducted from the financial conglomerate's effective own funds.

In addition, the coordinator may authorise that the eligible own funds of the financial conglomerate be calculated on the basis of the sectoral consolidated statements, which to that end shall be understood to be those statements that group together the credit institutions and investment firms, on the one hand, and the insurance and reinsurance undertakings, on the other.”

“4. The coordinator may decide not to include a particular entity in the calculation of the supplementary capital adequacy requirements if:

a) The entity is situated in a third country where there are legal impediments to the transfer of the necessary information, unless there is evidence that the entity has moved from a European Union Member State to a third country in order to elude the regulation.

b) The entity on an individual basis is of negligible interest with respect to the supplementary supervision goals. If several companies of the group fit this description, they will not be excluded unless, overall, they are of negligible interest for the purpose indicated.

c) The inclusion of the entity would be inappropriate or misleading with respect to the supplementary supervision goals. In this case, and except in cases of urgency, the coordinator will consult the other relevant competent authorities before taking a decision.

Notwithstanding the foregoing, the coordinator must reassess the grounds justifying the exclusion annually.

In addition, if a regulated entity is excluded on the basis of points (b) and (c), the competent authority entrusted with its supervision on an individual basis may ask the reporting entity of the financial conglomerate for information to facilitate the supervision of the regulated entity.”

Seven. Two new paragraphs 6 and 7, which read as follows, are added to Article 11:

“6. The reporting entities in financial conglomerates shall report, annually to the coordinator, detailed information on their legal structure and on their governance and organisational structure, including all the regulated entities, non-regulated subsidiaries and main branches. The coordinator will convey that information to the Joint Committee of the European Supervisory Authorities. In addition, the reporting entities must publish annually, at the level of the financial conglomerate, in full or by reference to equivalent information, a description of their legal structure and their governance and organisational structure.

7. The coordinator may perform stress tests at the level of the financial conglomerate with the frequency and scope determined in each case. To that end, further parameters may be added to the stress tests performed at the sectoral level envisaging the specific risks associated with financial conglomerates.”

Eight. Article 13(2) is drafted as follows:

“2. In the case of the groups envisaged in Article 4(1), the reporting entity shall submit to the coordinator any information that may be requested by the latter relating to the calculations envisaged in Article 2 of the Law, for the purposes of verifying that the group is subject to the obligations relating to supplementary supervision, and in respect of the calculation of any additional capital requirements that may be imposed upon it should it acquire the status of financial conglomerate.

In addition, the groups envisaged in Article 2(3)(b) shall submit information on the calculation of capital adequacy equivalent to that envisaged for financial conglomerates as a consequence of the application of paragraph 1.

The reporting entity referred to in the preceding sub-paragraph will be the corresponding entity by application of similar criteria to those envisaged in Article 5(5) of the Law.”

Nine. Article 15(1) and (2) reads as follows:

“1. The Banco de España, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGSFP) shall cooperate closely with each

other and with the other competent authorities to identify financial conglomerates that include Spanish entities. To that effect, they may approach the regulated entities under their remit to request of them any information, not already in their power, necessary to make that identification.

If a competent authority considers that a regulated entity authorised by it belongs to a group that could be a financial conglomerate as yet unidentified in accordance with the Law and this Royal Decree, it shall report this to the other competent authorities involved and to the Joint Committee of the European Supervisory Authorities.

2. Once a financial conglomerate has been identified, the coordinator will inform the reporting entity of the financial conglomerate referred to in Article 5(5) of the Law of that circumstance, of its capacity as coordinator and of the scope of the obligations of the conglomerate as provided for in the first sub-paragraph of Article 2(1) of this Royal Decree.

The same procedure shall apply, for the purposes of Article 12, in the case of the groups referred to in Article 2(3)(a) and (b).”

Ten. Article 16(a) and (d) reads as follows:

“a) Identification of the group’s legal structure and its governance and organisational structure, including all the regulated entities, non-regulated subsidiaries and main branches belonging to the financial conglomerate and the holders of qualifying holdings at the level of the ultimate parent company, and of the competent authorities of the group’s regulated entities. This information will be supplied by the coordinator to the Joint Committee of the European Supervisory Authorities.”

“d) Identification of the main shareholders and of the management of the financial conglomerate and its regulated entities.”

Eleven. The first transitional provision is repealed.

Twelve. Method 3 of the annex is repealed and method 4 becomes method 3 and reads as follows:

“Method 3: Combined method

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate may be carried out using a combination of the two previous methods.”

**Fourth final provision.
Enabling provisions.**

1. This Royal Decree is issued under the provisions of Article 149(1) rules (11) and (13) of the Spanish Constitution, which give the State power over the rules of organisation for credit, banking and insurance, and coordination of the general planning of economic activity, respectively.

2. The provisions of the foregoing paragraph are understood without prejudice to the powers attributed to the regions regarding the supervision of credit institutions and within the framework established by European Union law.

**Fifth final provision.
Incorporation of European Union legislation.**

This Royal Decree incorporates into Spanish legislation Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities forming part of a financial conglomerate.

**Sixth final provision.
Implementation powers.**

Without prejudice to the provisions of this Royal Decree and of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, the Banco de España may:

a) Make use of the options conferred on national competent authorities by Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, and by Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

b) Make use of the options conferred on Member States by Articles 412(5), 413(3) and 493(3) of Regulation (EU) No 575/2013 of 26 June 2013.

c) Urge credit institutions and their groups to have reviews performed by independent experts on the matters deemed relevant for the purposes of the entities' or groups' obligations established in the solvency regulations and, in particular, with regard to the consistency and quality of the internal method data provided for therein.

d) Determine the types of financial institutions that must be included in the consolidated group of credit institutions.

e) Receive the communications of the other bodies responsible for supervision on an individual or sub-consolidated basis of the institutions belonging to a consolidated group comprising institutions other than credit institutions where the Banco de España is responsible for supervision of that group. The aforementioned communications shall be made whenever necessary and at least twice a year. They shall relate to the minimum own funds requirements established, in accordance with the specific rules, on an individual or sub-consolidated basis, for the institutions subject to its supervision, any shortfall they present with respect to such minimum requirements and the correction measures adopted.

f) Issue the provisions necessary for the due enforcement of this Royal Decree.

Any regulation that is issued to implement the provisions of this Royal Decree and that might directly affect financial institutions subject to the supervision of the CNMV or the Directorate General of Insurance and Pension Funds shall require a prior report by these bodies.

**Seventh final provision.
No increase in expense.**

The measures provided for in this Royal Decree shall not involve any increase in remuneration, provisions or other staff costs.

**Eighth final provision.
Entry into force.**

This Royal Decree shall enter into force on the day following its publication in the Official State Gazette.

Notwithstanding the foregoing, credit institutions shall have a period of three months from the date on which the Banco de España publishes the envisaged implementing provisions in which to post on their websites the information provided for in Article 37 of this Royal Decree.