



# SPAIN

## CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>182</b>
<b>INTRODUCTION</b>	<b>184</b>
<b>I INSTITUTIONAL ASPECTS</b>	<b>186</b>
1.1 The general institutional framework	186
1.2 The role of the Banco de España	189
1.3 The role of other private and public sector bodies	191
<b>2 PAYMENT MEDIA USED BY NON-BANKS</b>	<b>191</b>
2.1 Cash payments	191
2.2 Non-cash payments	191
2.3 Recent developments	194
<b>3 INTERBANK EXCHANGE AND SETTLEMENT SYSTEMS</b>	<b>194</b>
3.1 General overview	194
3.2 The real-time gross settlement system: Banco de España Settlement Service	194
3.3 The National Electronic Clearing System	198
<b>4 SECURITIES SETTLEMENT SYSTEMS</b>	<b>200</b>
4.1 Trading	200
4.2 Clearing	210
4.3 Settlement	211
4.4 The use of the securities infrastructure by the Banco de España	218

## LIST OF ABBREVIATIONS

AIAF	Association of Securities Dealers – <i>Asociación de Intermediarios de Activos Financieros</i>
BME	Spanish Stock Exchanges and Markets – <i>Bolsas y Mercados Españoles</i>
BOE	Official Spanish Gazette – <i>Boletín Oficial del Estado</i>
CADE	Spanish Public Debt Book-Entry System – <i>Central de Anotaciones del Mercado de Deuda Pública en Anotaciones</i>
CECA	Spanish Confederation of Savings Banks – <i>Confederación Española de Cajas de Ahorro</i>
CNMV	National Securities Markets Commission – <i>Comisión Nacional del Mercado de Valores</i>
Iberclear	Society for the management of the systems for the registration, clearing and settlement of securities – <i>Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores</i>
Iberpay	Commercial name of the Spanish Payment Systems Society (see SESP)
LATIBEX	Market in euro for Latin American securities – <i>Mercado para valores latinoamericanos en euros</i>
MAB	Alternative Stock Exchange – <i>Mercado Alternativo Bursátil</i>
MEFFCLEAR	Spanish central counterparty for debt securities – <i>Entidad de contrapartida central española para los valores de deuda</i>
MEFF RF	Spanish Futures and Options Market (fixed income) – <i>Mercado Español de Futuros Financieros (renta fija)</i>
MEFF RV	Spanish Futures and Options Market (equities) – <i>Mercado Español de Futuros Financieros (renta variable)</i>
MEFF SA	Spanish Futures and Options Market SA – <i>Mercado Español de Futuros Financieros, Sociedad Anónima</i>
MFAO	Market for olive oil futures – <i>Mercado de Futuros del Aceite de Oliva</i>
RENADE	Spanish registry of greenhouse gas emission allowances – <i>El Registro Nacional de Asignación de Derechos de Emisión</i>

SCL Barcelona	Clearing and Settlement Service of the Barcelona Stock Exchange – <i>Servicio de Compensación y Liquidación de la Bolsa de Valores de Barcelona</i>
SCL Bilbao	Clearing and Settlement Service of the Bilbao Stock Exchange – <i>Servicio de Compensación y Liquidación de la Bolsa de Valores de Bilbao</i>
SCL Valencia	Clearing and Settlement Service of the Valencia Stock Exchange – <i>Servicio de Compensación y Liquidación de la Bolsa de Valores de Valencia</i>
SCLV	Securities Clearing and Settlement Service – <i>Servicio de Compensación y Liquidación de Valores</i>
SENAF	Fixed Income Electronic Trading System – <i>Sistema Electrónico de Negociación de Activos Financieros</i>
SESP	Spanish Payment Systems Society (see Iberpay) – <i>Sociedad Española de Sistemas de Pago</i>
SIBE	Spanish Stock Market Interlinking System – <i>Sistema de Interconexión Bursátil Español</i>
SLBE	Banco de España Settlement Service – <i>Servicio de Liquidación del Banco de España</i>
SNCE	National Electronic Clearing System – <i>Sistema Nacional de Compensación Electrónica</i>
SON	Multilateral Trading Facilities – <i>Sistema Organizado de Negociación</i>
SPI	Spanish Interbank Payment Service – <i>Servicio Español de Pagos Interbancarios</i>

## INTRODUCTION

Spanish payment systems have recently undergone a process of reform that has led to a significant reconstruction of these systems. One of the consequences of this reform has been the disappearance of the Spanish Interbank Payment Service (Servicio Español de Pagos Interbancarios; SPI)<sup>1</sup>. Thus, only two payment systems coexist in Spain: the Banco de España Settlement Service (Servicio de Liquidación del Banco de España; SLBE) for the processing of large-value payments, and the National Electronic Clearing System (Sistema Nacional de Compensación Electrónica; SNCE) for retail payments.

The SLBE, created and managed by the Banco de España, started operations in 1996 and is the Spanish RTGS system connected to TARGET. Besides settling cross-border transfers, it also settles domestic transfers and payments stemming from market operations and multilateral net systems.

The SNCE was created by the credit institutions and the Banco de España. Originally, it was managed by the central bank, but the reform has led to the transfer of those competences to the Spanish Payment Systems Society (SESP SA), known as Iberpay, which is a private company owned by the credit institutions participating in the system. Nevertheless, the Banco de España is still responsible for approving the rules of the system and, of course, its oversight. The SNCE clears low-value payment instruments which the participants exchange bilaterally, settling their final positions on their accounts at the Banco de España.

Direct debits and payment cards are the payment instruments most commonly used by consumers. Cheques, which used to be the leading form of payment instrument, are practically the least used instrument nowadays. In terms of value, credit transfers are the main form of payment instrument, while payment cards have the lowest average value per transaction. The shift in the means of communication used by

customers has continued, promoted by the credit institutions themselves, and the use of the internet instead of paper or magnetic media to initiate financial transactions has increased significantly.

Payment systems oversight is a task explicitly conferred on the Banco de España under Spanish law. The central bank's competences in this area have recently been reinforced with the modification of what is known as the Autonomy Law.<sup>2</sup>

As for the securities settlement industry, there have been significant developments over the past few years, both in institutional and in operational terms.

With regard to institutional developments, the holding company Bolsas y Mercados Españoles (BME) was created in 2003. It integrates most securities markets and all securities clearing and settlement systems in Spain. The group comprises the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges (including the local settlement systems of the last three exchanges), MF Mercados Financieros (the MEFF, AIAF, SENAF and MEFFCLEAR platforms), Iberclear (the securities registration, depository, clearing and settlement institution) and BME Consulting. As a result of this integration process and the subsequent demutualisation, BME was first listed on 14 July 2006.

As for operational changes, it is worth mentioning that corporate bonds and government debt are now processed on the same settlement platform and that central counterparty services have been extended to transactions not involving derivatives (MEFFCLEAR).

<sup>1</sup> The SPI ceased its operations in December 2004. It was a net settlement system which cleared and settled large-value payments in euro, both national and cross-border. Operations were settled by their end-of-day net balance in the accounts held by participants at the Banco de España. The transactions that used to be processed by this system have been channelled, according to their typology or amount, through the SLBE or through the SNCE.

<sup>2</sup> Law 13/1994 of 1 June, called the Autonomy Law of the Banco de España (*Ley de Autonomía del Banco de España*).

In addition to the markets integrated in BME, the company MTS España also operates a regulated market for Spanish public debt. MTS España began operations in May 2002 and settles operations via Iberclear.

As for securities settlement systems (SSSs), Spanish law establishes the requirements which these must meet in order to be recognised as designated systems governed by the European Settlement Finality Directive. This Directive was transposed into Spanish law by way of Law 41/1999. All of these systems were assessed as being eligible for use in the Eurosystem's credit operations and meeting the ESCB's standards.

## I INSTITUTIONAL ASPECTS

### I.1 THE GENERAL INSTITUTIONAL FRAMEWORK

The most important aspects of the payment and settlement systems were regulated through the enactment of Law 41/1999 – as referred to above – of 12 November on payment and securities settlement systems, also known as the Settlement Finality Law. This important measure transposes, inter alia, Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems into Spanish law.

Furthermore, Law 41/1999 on settlement finality defines the criteria which payment and securities settlement systems must meet in order to be legally recognised as such under Spanish law, as well as the complete legal regime with which they must comply. It specifically mentions the payment and securities settlement systems which, according to this Law, are officially recognised in Spain. Currently, the systems listed in the Law are as follows:

- the SLBE;
- the SNCE;
- SCLV and the regional SSSs, i.e. the securities clearing and settlement systems of the different Spanish stock exchanges which were recently integrated into the holding company BME;
- CADE and SCLV-AIAF, also integrated into BME and managed under the same platform; and
- the clearing and settlement systems of the derivatives markets managed by MEFF SA, which is also a subsidiary of BME.

In accordance with the Settlement Finality Law, the overseers of the payment and securities settlement systems are the Banco de España

and the National Securities Markets Commission (Comisión Nacional del Mercado de Valores; CNMV).

Another important piece of legislation in the field of payment and settlement systems is Law 44/2002 on measures for the reform of the financial system. Among other measures, this Law transposes into Spanish law Directive 2000/46/EC, which regulates electronic money institutions and their supervision.

#### I.1.1 THE REGULATION OF PAYMENT SETTLEMENT SYSTEMS

The main law governing payment settlement systems is the above-mentioned Law 41/1999 of 12 November on payment and securities settlement systems. In addition, each system has its own internal regulations, which must comply with Law 41/1999.

The Banco de España determines the internal regulations of the SLBE. These rules are published in the form of circulars, technical applications, etc. issued by the Banco de España and addressed to the member credit institutions. The Manual of the SLBE consists of all of these norms taken together. Circular 3/2000 of 31 May, which adapts the functioning of the SLBE to the rules established in Law 41/1999, is of particular significance in this regard.

The SNCE was created by Royal Decree 1369/1987 of 18 September and the Ministerial Order of 29 February 1988, which regulated the creation of the system. Since the system has been transferred to Iberpay in the context of the reform of the Spanish payment systems (see Introduction), this society is now responsible for the elaboration of the internal regulations of the system. Consequently, its internal operating rules are currently determined by Iberpay's Regulation on the National Electronic Clearing System, which came into effect on 15 March 2007, replacing Banco de España Circular 8/1988 of 14 June. A number of internal rules issued by the Banco de España as former manager of the system have also been replaced by new ones issued by Iberpay; others are still

applicable, but will progressively be phased out.

### 1.1.2 THE REGULATION OF SECURITIES SETTLEMENT SYSTEMS

All activities related to the Spanish securities markets are regulated by Law 24/1988 of 28 July on the securities market. This Law establishes the general principles to be observed in the organisation and operation of the primary and secondary securities markets, as well as the basic rules governing the activity of individuals and institutions participating in those markets and their control and supervision.

This Law has been developed in various provisions issued by the central government (royal decrees) and the Ministry of Economy and Finance (orders), as well as in other provisions of lower rank issued by the CNMV and the Banco de España (circulars). Specific operational and organisational rules for each securities market have – subject to the general provisions – been issued by the respective market-governing companies or institutions (rules and regulations). In addition, some regional governments with powers in this field have the competence to issue provisions (decrees and orders) in respect of regional markets authorised by them.

Law 24/1988 of 28 July applies to all SSSs, which, since 2003, have been part of BME, the Spanish Stock Exchange and Markets group. This Law has been modified by several other laws, of which the following have been particularly relevant in recent years:

Law 37/1998 of 16 November on the reform of the securities markets incorporates Council Directive 93/22/EEC into Spanish legislation, and Directive 95/26/EC regarding investment services in the field of traded securities. It is worth pointing out two aspects of this reform: first, with regard to secondary markets, it establishes the rules on access to membership, regulates the lending facilities and amends the operational regime; second, the new provisions governing financial intermediaries reorganise

the types of entity participating in the markets and establish the regime governing them.

Law 37/1998 was the first law to regulate the investment guarantee funds (IGFs), as required by Directive 97/9/EC on investor compensation schemes, so that no investment firm authorised in any EU Member State can conduct investment business unless it belongs to such a scheme. IGFs ensure that investors are covered in the event of insolvency or where investment services firms (ISFs) are for any other reason unable to meet their obligations to investors. They are similar to the deposit guarantee funds of credit institutions. Law 37/1998 also makes certain amendments to Royal Legislative Decree 18/1982 of 24 September on the deposit guarantee funds of credit institutions, in order to afford protection to investors which have entrusted money, securities or other financial instruments to them for the provision of an investment service. Royal Decree 948/2001 of 3 August implemented investor compensation schemes, both for ISFs and for credit institutions.

Law 44/2002 of 22 November on measures to reform the financial system, in addition to transposing a number of EC directives not directly related to the securities market into Spanish law, also aims to promote efficiency in this sector. Before its implementation, securities clearing and settlement services in Spain were provided by a wide range of institutions. To resolve this situation, the Law put in place a flexible and open legal system in order to enable the existing clearing and settlement systems to be integrated, providing for the creation of the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Securities Registration, Clearing and Settlement Systems Management Company; referred to hereafter by its commercial name “Iberclear”) through a merger of SCLV and CADE.

To facilitate integration, the clearing and settlement systems were to be demutualised, as was the case with the stock exchange

management companies under Law 14/2000 of 29 December 2000 on fiscal, administrative and social measures. This enables non-market participants to have a stake in the capital of these systems.

Law 44/2002 also provides for the creation of one or more central counterparties, which eliminate counterparty risk in transactions by interposing themselves between the buyer and the seller. Prior to this reform, such an arrangement was only used for derivatives.

The Law also modifies the regulation of cross holdings between firms that administer secondary markets and their counterparts abroad, making it more flexible in order to facilitate the cross-border integration of markets, while ensuring some control over the suitability of Spanish market shareholders. In addition, companies that administer Spanish secondary markets (exchanges) are authorised to have holdings in similar companies in other countries, with the prior authorisation of the CNMV.

Further, in the field of securities market regulations, Law 44/2002 transposes into Spanish law Directive 2000/64/EC, which amends a number of other directives relating to the exchange of information in the field of insurance, securities and collective investment undertakings.

Although Law 24/1988 has a general purpose, there are specific laws which regulate particularly relevant aspects in greater detail, such as Law 2/1981 of 25 March on the mortgage market (which refers to securitisation of mortgage claims); Law 19/1992 of 7 July on asset securitisation (except territorial certificates, which are regulated by Law 44/2002); Law 35/2003 of 4 November on collective investment undertakings; and Law 25/2005 of 24 November, which regulates venture capital entities and their management companies.

The set of laws, rules and regulations relating to financial institutions must also be taken into account, considering their important role in the field of securities markets (see Section 1.1.3).

The derivatives markets managed by MEFF SA are governed by Royal Decree 1814/1991 and by the internal MEFF SA rules approved by the CNMV.

### 1.1.3 OTHER LEGAL RULES

Law 41/1999 provides that the disciplinary regime applicable to the members of payment and securities settlement systems supervised by the Banco de España is Law 26/1988 of 28 July on discipline and intervention of credit institutions (Ley de Disciplina e Intervención de las Entidades de Crédito). This same Law applies to the payment and settlement systems with respect to infringements related to the oversight of the systems. With regard to the SSSs supervised by the CNMV, the disciplinary regime is that laid down in Law 24/1988 of 28 July on securities markets.

Another piece of legislation which is of key relevance for Spanish payment and securities settlement systems is the set of laws and regulations on credit institutions. Law 1/1946 on the banking system (Ley de Ordenación Bancaria), the provisions of which have largely been redrafted or repealed, is still partially applicable. This legislation was brought into line with EC regulations by means of Legislative Royal Decree 1298/1986 of 28 June. The creation of new banks in Spain and the entry of foreign credit institutions are governed by Law 3/1994 of 14 April and Royal Decree 1245/1995 of 14 July. The latter regulations adapt Spanish legislation on credit institutions to meet the requirements of the Second Banking Coordination Directive (as amended by Directive 2000/12/EC), allowing the free establishment of EEA credit institutions in Spain. Law 6/2005 of 22 April on the reorganisation and winding up of credit institutions incorporates the provisions of Directive 2001/24/EC into Spanish law.

With respect to investment services firms (securities dealer companies, securities agencies and portfolio management companies), Law 37/1998 (which amended Securities Market Law 24/1988 and transposed Directive 95/26/EC into Spanish law – see Section 1.1.2) was implemented by means of Royal Decree 867/2001 of 20 July 2001 on the legal regime for investment services firms. It repeals Royal Decree 276/1989 of 22 March 1989 on securities dealer companies and securities agencies, as well as Title IV of Royal Decree 1393/1990 governing portfolio management companies.

Antitrust Law (Ley de Defensa de la Competencia) 16/1989 of 17 July, as amended by several subsequent laws (in particular Law 52/1999 of 28 December), is also applicable to payment and settlement systems and prohibits any abuse of a dominant position and any agreements which restrict competition.

As regards customer protection, Law 44/2002, referred to above, regulates a number of administrative bodies entrusted with the function of protecting financial services customers. These bodies are as follows: the Commissioner for the Protection of Bank Customers (attached to the Banco de España); the Commissioner for the Protection of Investors (attached to the CNMV); and the Commissioner for the Protection of Insurance Policyholders and Pension Scheme Participants (attached to the Directorate General for Insurance and Pension Funds). The aim of these bodies is to protect the rights of financial service users in their relevant area. The Law requires financial institutions to have a customer care department or service. In addition, they may appoint an ombudsman, who is to be an independent entity or expert responsible for resolving claims. On the basis of the authority granted to the government in the new Law, further legislation has been enacted: Royal Decree 303/2004 of 20 February, which approves the Regulations for the protection of financial services customers, and Order Eco/734/2004 of 11 March on customer service departments and the ombudsman for financial institutions. The

customer protection rules and the transparency of their transactions were already guaranteed by way of Law 26/1988 of 28 July on the discipline and intervention of credit institutions. These provisions, which concern customer rights, were further detailed in Ministerial Order 31/1989 and Banco de España Circular 8/1990 of 7 September. As for transparency in the securities markets, Law 24/1988 contains the basic regulation, whose rules of conduct for the institutions that operate in the securities market were tightened by Law 44/2002.

Royal Decree-Law 5/2005 of 11 March on urgent reforms to promote productivity and improve public sector procurement inter alia transposes into Spanish law the provisions of Directive 2002/47/EC on financial collateral arrangements.

Another relevant piece of legislation in this area is Law 19/1993 of 28 December 1993 on certain measures to prevent money laundering, as amended by Law 19/2003 of 4 July 2003 on the legal regime governing capital movements and cross-border economic transactions and on certain measures to prevent money laundering.

## 1.2 THE ROLE OF THE BANCO DE ESPAÑA

The main tasks of the Banco de España are defined in Law 13/1994 of 1 June, the Autonomy Law of the Banco de España. The Autonomy Law defines the Banco de España as a government institution subject to public law, which, although reporting to the government in general terms, enjoys full autonomy as far as monetary policy is concerned, with price stability as its main objective. The Autonomy Law was adapted in view of Spain's participation in Stage Three of EMU by way of a reform of the Autonomy Law (Law 12/1998 of 28 April). The aim of this reform was the full integration of the Banco de España into the ESCB and the recognition of the authority of the ECB in the field of monetary policy, given Spain's integration into the euro area. More recent laws have also amended the Autonomy Law, such as

Law 2/2004 of December 27 and Royal Decree-Law 5/2005 of 11 March.

Other fundamental legislative measures which define the nature, purposes and functions of the Banco de España are the Banking System Law (Ley de Ordenación Bancaria) of 31 December 1946, Decree-Law 18/1962 of 7 June on the nationalisation and reorganisation of the Banco de España, and Law 26/1988 of 29 July on the discipline and intervention of credit institutions (Ley de Disciplina e Intervención de Entidades de Crédito).

With regard to payment and securities settlement systems, the Autonomy Law states that the Banco de España must promote the sound functioning and stability of the financial system as a whole and, in particular, of payment systems.

Law 2/2004 makes more explicit the role of the Banco de España in the field of payment and settlement systems. In this respect, the newly drafted Article 16 of the Autonomy Law states that in order to promote the smooth functioning of payment systems, and in its capacity as an ESCB member, the Banco de España is empowered to regulate payment and settlement systems, in particular with a view to complementing or developing any regulation in this field issued by the ECB or to incorporating recommendations of international bodies aimed at ensuring the safety and efficiency of payment systems. The Banco de España is also authorised to directly manage payment systems.

The new wording of Article 16 of the Autonomy Law also mentions explicitly that the Banco de España is entrusted with the oversight of payment systems. To this end, the Banco de España is empowered to obtain the necessary information from payment systems and payment system providers. The oversight of payment systems applies mainly to the SLBE and the SNCE (while also covering other payment arrangements, such as payment card networks or large correspondent agreements, as well as the safety and efficiency of payment

instruments). In order to make its role in the field of payment systems oversight more transparent, the Banco de España has published a report entitled “The Banco de España and the oversight of payment systems”, which was approved by the Executive Commission in January 2005. The report was originally published in the “Financial Stability Review” in May 2005 and is available (in both English and Spanish) in the payment systems section of the Banco de España’s website.

Law 41/1999 establishes the general membership requirements for and operating rules of the different payment and securities settlement systems to be designated and protected under this Law; these requirements and rules must be approved by the Banco de España (or the CNMV in the case of securities markets). On the other hand, for a payment or securities settlement system to be legally recognised, the government must issue a resolution of approval. This decision is taken on the basis of a report issued by the Banco de España and addressed to the government.

The Banco de España (or the CNMV in the case of securities markets) is responsible for reporting to the European Commission on the various payment and securities settlement systems which comply with the requirements laid down in Law 41/1999.

### 1.2.2 OPERATIONAL ROLE

As owner and manager of the SLBE, the Spanish RTGS system integrated into TARGET, the Banco de España also plays an operational role in payment systems. However, since the reform of the Spanish payment systems infrastructure (see Introduction), the central bank is no longer responsible for managing the SNCE, although it still has the final say as regards the approval of the system’s rules and is the overseer of the system.

### 1.2.3 ACTIVITIES IN THE AREA OF SECURITIES CLEARING AND SETTLEMENT SYSTEMS

The main responsibilities of the Banco de España in the securities settlement field are those connected with its role as provider of cash settlement facilities to all of the Spanish settlement systems. These must, by law, settle payments derived from securities transactions through cash accounts held by participants with the Banco de España.

### 1.2.4 COOPERATION WITH OTHER INSTITUTIONS

A further function assigned to the Banco de España under the Autonomy Law is banking supervision. In order to better coordinate the oversight of payment systems and banking supervision, the Banco de España has signed a memorandum of understanding at the European level to promote the efficient cooperation and exchange of information between the two functions, which, in the case of Spain, are the responsibility of the same institution. Along the same lines, the Banco de España has signed a similar memorandum, adopted by national central banks and banking supervisors, on acting jointly in crisis situations.

## 1.3 THE ROLE OF OTHER PRIVATE AND PUBLIC SECTOR BODIES

### 1.3.1 THE NATIONAL SECURITIES MARKETS COMMISSION

The CNMV is a public law institution created under the Law on securities markets (Law 24/1988 of 28 July). This Commission is in charge of the supervision and oversight of the securities markets and of the activity of individuals and institutions participating in such markets. All SSSs are supervised by the CNMV.

## 2 PAYMENT MEDIA USED BY NON-BANKS

### 2.1 CASH PAYMENTS

For a number of historical reasons – with tradition appearing to be an important factor – Spanish customers still have a preference for

cash payments. Not even plastic cards have affected this trend, since the existence of a widespread ATM network (Spain has one of the highest number of ATMs per capita in the entire EU) permits fast cash withdrawals.

### 2.2 NON-CASH PAYMENTS

Non-cash payments are based on transferable deposits, which include current accounts and savings accounts. Credit institutions are free to set the interest rates which they pay on these accounts, provided that they inform both the Banco de España and their customers in a timely manner. This approach reflects the Banco de España's commitment to consumer protection, covering several issues from the provision of information to the resolution of conflicts through its Complaints Service.

Non-cash payments can be processed through organised payment systems or cleared within the credit institutions. In Spain, this internal clearing is fairly important, and is used to settle a significant percentage of the total number of low-value payments. The remaining retail payments are processed mainly through the SNCE, the Spanish retail payment system, with the exception of the net amounts resulting from the clearing of transactions carried out with payment cards, which are settled in the SLBE.

Over the last few years, the use of cheques relative to the use of other payment instruments has continued to decline in Spain. Credit transfers, direct debits and, to a larger extent, debit and credit cards have contributed to this significant decline. In terms of volume, direct debits take the lead (46%), followed by debit and credit cards (31%), credit transfers (16%) and cheques (4%). In terms of value, the most important payment instrument is the credit transfer (76%), followed by direct debits (10%), cheques (9%) and debit and credit cards (0.7%).<sup>3</sup>

<sup>3</sup> Percentages of the sum, in terms of volume and value, of transactions processed through the SNCE and via internal clearing and of customer payments processed through the SLBE and the EBA's payment systems.

### 2.2.1 CREDIT TRANSFERS

Both the public and private sectors use this payment instrument for paying labour-related liabilities, i.e. wages, subsidies and pensions. Since 1992 all transfers processed through the SNCE have been communicated and cleared in a fully automated manner (see Section 3).

Owing to the increasing importance of information technology in the field of banking business – and the possibilities which it affords for realising economies of scale – most credit institutions have been providing customers with alternative means of communicating their transactions.

### 2.2.2 CHEQUES

Cheques have lost some of their importance in the Spanish economy and are being replaced by credit transfers, direct debits and payment cards (both credit and debit).

However, cheques (which, in terms of value, accounted for some 9% of total cashless instruments used in 2006) are still relatively important, owing to ingrained customer habits and their cost-transfer effect, i.e. the beneficiary bears the corresponding charges when presenting the cheque to its credit institution. It should also be noted that both cheques and bills of exchange imply a very strong legal obligation.

### 2.2.3 DIRECT DEBITS

As the most significant payment instrument in terms of volume, direct debits are progressively being used for all manner of public utility services (telephone, water, electricity, etc.). Given the nature of the related obligations, the average amounts are relatively small. Indeed, in terms of value, they are not very significant as compared with other cashless payments.

A direct debit order is issued in a standardised way by the creditor, which has previously been authorised by the debtor to charge the account. Sometimes, before the amount is charged to the payer's account, the payer is sent an advance notification, which provides an opportunity to challenge an incorrect payment.

### 2.2.4 PAYMENT CARDS

Issuers of bank cards in Spain are linked to one of the three local card processors currently in existence. These three companies (ServiRed, Sistema 4B and Euro 6000<sup>4</sup>) are in charge of managing their respective acceptance networks, and it is through a number of bilateral agreements between these companies that full interoperability between the three schemes has finally been ensured. Settlement between the three networks used to be performed via the SNCE, but since January 2005 it has taken place through the SLBE, as is the case for any other ancillary system.

Both principal types of payment card, i.e. credit and debit cards, have gained a substantial market share as compared with other cashless retail payment instruments. During 2006 the volume of card-initiated transactions accounted for more than 30% of all cashless payments in Spain.

ATMs and EFTPOS terminals are far more widely used nowadays than they were a few years ago. Figures for 2006 show that, over the year, approximately 13.63 cash withdrawals per card were made at ATMs, and 23 transactions were made per card at EFTPOS terminals. However, it should be noted that the number of transactions per card is declining slightly at ATMs, while rising at EFTPOS terminals, which could be an indicator of the increasing use of cashless payment instruments. The average value of transactions in 2006 was €51.97 at EFTPOS terminals and €107.73 at ATMs.

The use of debit and credit cards is not regulated; thus, it is up to issuers to establish the conditions applicable to cardholders and retailers when signing a service agreement.

#### *Debit cards*

These payment cards issued by credit institutions allow their customers to have the amounts in

<sup>4</sup> Euro 6000 is a brand of debit and credit card. These cards are issued by some of the Spanish savings banks belonging to CECA.

question directly debited from their current accounts. They can be used at ATMs and for EFTPOS transactions. In the latter case, as with credit cards, retailers receive the proceeds of sales by debit card on their current account on the following day, and their bank, in turn, deducts a percentage of the sales turnover paid by cardholders. Though traditionally free of charge, almost all debit cards now bear a relatively low fixed commission on their issuance and renewal.

Debit cards are still more common than credit cards, although the difference in number is not as significant as in the past. Figures for 2006 showed that there were approximately 706 debit cards for every 1,000 inhabitants.

#### *Credit cards, travel and entertainment cards*

Credit cards are nowadays marketed under various internationally recognised brands such as Visa, MasterCard, American Express or Diners Club. As with debit cards, a (higher) annual fee is charged for credit cards, which is borne by the holder.

Cardholders often enjoy additional benefits, such as life/travel insurance and travel assistance services.

As with debit cards, virtually every single transaction with a credit card takes place electronically, with no recourse to manual intervention, and, furthermore, in an online mode that ensures very low levels of fraud.

#### *Retailer cards*

Retailer cards are typically issued by department stores and can therefore only be used for purchases in the issuer's store or in a chain of stores (or in shops with which a bilateral arrangement exists). It is advantageous for issuers that these cards allow cashless payments, as it makes them less dependent on high levels of liquid assets in cash form. These cards are normally free of charge; some of them also provide additional benefits, such as the ability to pay for goods and services in several instalments at no extra cost or to accumulate

points which are exchangeable for goods or services sold in the issuer's store. Hence these cards are intended as a means of encouraging customer loyalty, increasing the number of customers and, consequently, boosting sales.

#### *Prepaid cards*

Two different multi-purpose prepaid card schemes are currently in operation in Spain under the aegis of the previously existing payment card network providers: Monedero 4B and Euro 6000. A third scheme, Visa Cash, ceased to operate in 2005.

Prepaid cards offer a reloadable electronic purse product, issued by a credit institution, which is supposed to replace banknotes and coins in the case of low-value payments. However, these cards are not widely used: only 988,033 operations, with a total value of €1.84 million, were recorded in 2005, which explains the reduction in the number of accepting terminals.

Loading a card involves an online procedure which is initiated by the holder in ATMs specifically designed for this purpose. By contrast, purchases occur offline, without recourse to a PIN or authorisation by the issuer. Money stored on prepaid cards is subject to compulsory minimum reserve requirements, since it is legally defined as repayable funds by Royal Decree 1245/1995 of 14 July. Similarly, the Spanish deposit guarantee scheme also extends to this type of card, covering an amount up to €20,000.

Single-purpose prepaid card schemes are mainly limited to universities and enterprises, as well as to the telephone cards issued by Spain's leading telecommunications company, which permit national and international calls to be made from public telephone booths.

#### *ATM and POS networks*

Three networks have been operating in Spain since the 1970s: Servired, Sistema 4B and Euro 6000. Virtually all credit institutions are linked to one of these networks, be they a savings bank or another type of credit institution.

These networks are fully interoperable, meaning that any card issued by a credit institution linked to one of the schemes can be used at any ATM or POS, regardless of the scheme's provider.

The large number of ATMs and POS, attributable in part to the extensive network of bank branches, has been increasing steadily in the last few years, and Spain continues to have one of the largest networks in Europe. (In 2006 Spain had 1,307 ATMs and 30,091 POS per million inhabitants, one of the highest proportions in the EU.)

Spanish-issued debit cards can also be used internationally as a result of various agreements with other international network providers (particularly in Europe), as is the case with Sistema 4B in Portugal, Andorra, Italy, the United Kingdom and Belgium. Trademarks such as Visa, American Express or Diners Club are internationally recognised, and Euro 6000 cards are compatible with ATMs belonging to members of EUFISERV (European Savings Banks Financial Services Company). In the case of credit cards, the fact of being co-branded implies that they can be used worldwide.

#### 2.2.5 POSTAL INSTRUMENTS

The use of postal instruments in Spain is negligible. Furthermore, the Spanish Post Office, though still a public enterprise, does not have credit institution status. Thus, the Post Office cannot directly provide any payment instrument-related services; this can only be done by a credit institution which offers its services through the Post Office. Clearing and settlement is therefore performed by the relevant credit institution, in the manner explained above.

### 2.3 RECENT DEVELOPMENTS

All credit institutions are working on the implementation of EMV.

Mobile banking (m-banking) continues to grow, with a whole new range of services to be

announced over the short to medium term. M-banking is also being implemented through several agreements reached between the country's main credit institutions and telecommunications operators. Although these are for low-value transactions, no limits on the amounts have as yet been set.

Other initiatives are slowly catching up in the Spanish retail payment market, such as the extensive application of ATM devices as cash dispensing centres for a section of the population that currently remains unbanked.

## 3 INTERBANK EXCHANGE AND SETTLEMENT SYSTEMS

### 3.1 GENERAL OVERVIEW

Since the reform (see Introduction), the payment system sector in Spain has been structured around two payment systems: the SLBE for large-value payments, and the SNCE for retail payments. The aforementioned reform clearly distinguishes the types of payment that may be channelled into each of the systems. Cheques and credit transfers over €50,000 must be settled in the SLBE. Credit transfers below this threshold can also be settled in the SLBE, but normally they are processed in the SNCE. Apart from the interbank payments processed by these systems, there are many other payments processed internally in the same institution or group of institutions, as stated in Section 2.2.

Both systems are designated payment systems under the provisions of Law 41/1999, which transposes the Settlement Finality Directive into Spanish law.

### 3.2 THE REAL-TIME GROSS SETTLEMENT SYSTEM: BANCO DE ESPAÑA SETTLEMENT SERVICE

The SLBE is the Spanish RTGS system connected to TARGET. It has been in operation since 1996.

The system was developed by the Banco de España, which also acts as the operator and overseer of the system. Most of the credit institutions in the Spanish financial system are direct participants in the SLBE. It settles domestic and cross-border transfers, secondary market transactions, multilateral net systems and monetary policy operations. Besides these, cheques and credit transfers with values above €50,000 that are submitted to the SNCE are transmitted to the SLBE, which settles them on a gross basis in real time; in the latter system, such operations are referred to as *operaciones bilaterales* (bilateral operations). The SLBE also settles the net balances that arise from the clearing of operations carried out with payment cards; these net balances are calculated and communicated to the Banco de España by the three card networks. The SLBE also offers additional services, such as the matching, registering and procurement of market transaction statistics.

Through the SLBE, the participating institutions can manage the liquidity of all their accounts held at the different branches of the Banco de España. The participants can initiate money transfers between those accounts depending on their liquidity needs, with the purpose of keeping all of the liquidity available in the RTGS account.

### 3.2.1 OPERATING RULES

The system's rules are laid down in the circulars and technical applications issued by the Banco de España, which are contractually binding on participants. These contracts and the obligation to open an RTGS account in the SLBE books are the main preconditions for participation in the system.

### 3.2.2 PARTICIPATION

The SLBE system is open to credit institutions that are based in the EEA and are subject to prudential supervision in accordance with Directive 2000/12/EC on banking coordination. Furthermore, investment companies subject to the same criteria (Council Directive 93/22/EEC), treasury institutions (and their equivalents at

the regional level) and clearing houses may also participate in the system.

Remote access to the SLBE may also be granted to credit institutions with a permanent base in any EEA country.

In December 2006 there were 179 direct participants in the SLBE, 30 of which were branches (subsidiaries) of foreign credit institutions, of which 25 were from EU countries.

### 3.2.3 TYPES OF TRANSACTION HANDLED

The SLBE settles the large-value payments of its participants, both on their own behalf and on behalf of their customers.

In terms of value, the main financial transactions settled in the SLBE are the cash leg of transactions relating to public debt registered in CADE and the cross-border credit transfers channelled through the national Interlinking component. These are followed by transfers relating to money market operations and domestic credit transfers. Next in importance are the operations above €50,000 that are sent from the SNCE to the SLBE for settlement (bilateral operations). In addition, there are multilateral net systems which settle their net balances in the SLBE (stock exchanges, SNCE settlement, derivatives, card networks, etc.).

In terms of volume, the most numerous are the bilateral operations, followed by domestic and cross-border transfers, operations related to the cash leg of transactions relating to public debt and, finally, the operations related to the final settlement of the ancillary systems that settle in the SLBE.

Transactions on behalf of the Banco de España are also processed and settled in the SLBE, given that the Banco de España is also a normal participant in the system.

### 3.2.4 OPERATION OF THE TRANSFER SYSTEM

The entry of payment orders into the SLBE can be performed through the SWIFT network or by

means of a single-purpose terminal workstation with an online connection to the Banco de España computer. In both cases, the participants may choose between the transmission of files (batches of payments) or the manual entering of payments on a transaction-by-transaction basis. Where the SWIFT network is used, SWIFT guarantees the necessary security measures (authentication, confidentiality, integrity and non-repudiation). If an online connection to the Banco de España is used, the necessary security checks (institution codes, operator codes, message encryption, etc.) are performed by the software designed by the Banco de España.

The SLBE participants can choose one of the various types of communication procedure or a combination thereof to enter their payment orders into the system and receive payments addressed to them. The fact that they can choose the way in which they participate enables credit institutions to take into account their business requirements (number of operations, available resources for internal development, etc.), makes the system more flexible and facilitates the participation of both large and small institutions.

The possibility of using an alternative system for access as a backup contributes to the very high degree of availability and reliability of the SLBE.

In general, only sending institutions are required to communicate their transactions; however, transactions originating from the secondary market (interbank deposits and the cash leg of transactions with public debt registered in CADE) must be communicated by both participants involved in the operation in order to be matched, registered and settled in the SLBE. For these kinds of operation, the SLBE offers online information on transaction discrepancies between the parties in order to resolve incidents swiftly.

The SLBE also settles the balances arising from the clearing of multilateral net systems. The manager of each system reports the final

positions to the SLBE by simply using a computer terminal. The SLBE carries out clearing, ensuring that credit positions are not credited before all debit positions have been debited.

### **3.2.5 TRANSACTION PROCESSING**

The transfers received at the SLBE are processed in real time, by debiting the originating institution's account and crediting the beneficiary account, as the case may be. Where insufficient funds or collateral are available for a possible overdraft, the order will be queued. The position of the order in this queue will depend on the priority assigned to that type of transaction and if two or more transactions have the same priority, they will appear according to the FIFO principle. The participating institutions may give top priority to one of their transactions. Once funds are received, the first transaction in the queue is settled, unless its value is higher than the new available balance. In this case, the system will continue the search until it finds a transaction which can be settled (bypass FIFO mechanism).

Payments and their final settlement are fully transparent for credit institutions, because the whole process can be monitored online by the terminals connected to the Banco de España's computer. The same applies to those orders entered through SWIFT. From these terminals credit institutions can also obtain detailed information on the status of a participant's account (balance, settled and queued transactions, payments in its favour retained on account of a lack of funds on the originating side, statement of the multilateral net systems settlement, statement of cross-border transactions, etc.). This gives all participants an overview of the settlement process, facilitating both payment flows and cash management.

### **3.2.6 SETTLEMENT PROCEDURES**

Transactions are settled as and when they are received, provided that there are sufficient funds or collateral.

In order to optimise liquidity management, the SLBE has several optimisation mechanisms. If a participant enters a payment order and there are no funds available, the SLBE checks whether the receiving institution also has payments for the first participant which are queued. If this is the case, it will try to match, and, if possible, settle them. This process is performed continuously and automatically during the whole session.

In order to resolve gridlock situations, the SLBE operators may start optimisation processes which take into account the queued transactions, the multilateral systems' credit transfers which are pending owing to unsettled debit positions, public debt transactions registered in CADE and available balances. With the aid of this information, a virtual balance is calculated as though all of the transactions were going to be settled. If there are sufficient funds, the transactions are settled; if not, the institution faced with a lack of liquidity is required to supply more funds or else its transactions will be excluded. These optimisation processes can be initiated on a discretionary basis whenever necessary.

At the end of the day, unsettled transactions are cancelled.

### 3.2.7 CREDIT AND LIQUIDITY RISK

As the system is an RTGS system, it does not carry any credit risk.

In order to reduce liquidity risk, the SLBE has specified a settlement timetable for the different multilateral net systems. In this way, institutions can manage their liquidity efficiently and avoid the accumulation of unsettled payments.

Credit institutions can also obtain intraday credit, at no cost, by pledging securities or by means of repurchase agreement operations. The greater part of intraday credit in Spain is obtained through such repo operations.

Repo operations are determined the afternoon before, D-1, and are settled at the start of day

D. If a credit institution finds that its liquidity is higher than expected, it can reduce the surplus during the session by cancelling repos in advance; these operations can be performed immediately on account of the fact that Iberclear settles on a DvP basis. The remaining transactions will be cancelled at the end of the day.

If the intraday credit cannot be returned at the end of the day, credit institutions can use the Eurosystem's standing facilities, turning their intraday credit into overnight credit, provided that the institution has sufficient collateral.

A novel feature of the system, introduced in January 2005, is the liquidity reservation mechanism. This procedure, designed to further improve the participants' liquidity management, allows them to reserve liquidity in their accounts (the amount being specified by the participating institution) for the settlement of important payments. Participants may apply various criteria for the use of this liquidity: in the first place, they may reserve funds for specific payments to be designated afterwards; in the second place, the institution can define the types of payment (by their transaction code) that are allowed to use the reserved liquidity; finally, a participant may decide that the reserved funds are to be used for payments addressed to certain participants. The second and third criteria can be applied simultaneously.

### 3.2.8 PRICES

The SLBE has set a monthly fee and a price per transaction, which depends on the additional services provided for each type of transaction (matching, registering, reports, statistics, etc.). Both fees are calculated according to the principle of cost recovery. The Banco de España, as manager of the system, publishes the list of prices in the Payment Systems section of its website.

In addition to the fees charged by the SLBE, participants bear the connection and communication charges. Access to the SLBE

through a computer requires a PC with specific software, and a flat rate must be paid for the telecommunication connection. When accessing the SLBE through SWIFT, the costs are those inherent to the technical requirements of the SWIFT network plus the fee per transaction.

### 3.2.9 STATISTICAL DATA

In 2006 the SLBE processed a daily average of 37,439 payments, with a value of €296 billion. This total comprises cross-border payments sent (with a daily average of 4,046 payments, totalling €27 billion) and domestic payments (with a daily average of 33,393 payments, totalling €269 billion).

## 3.3 THE NATIONAL ELECTRONIC CLEARING SYSTEM

The Spanish retail payment system SNCE was established in 1990 as an ACH. Its management was initially assigned to the Banco de España, but, as a result of the reform of the Spanish payment system, this task has been transferred to Iberpay, a private company owned by the credit institutions participating in the SNCE. However, the Banco de España still has the authority to approve the rules of the system and carry out its oversight.

The SNCE is a decentralised system that processes transactions related to retail payment instruments. Owing to the variety of payment instruments, the SNCE's operating scheme relies on several clearing sub-systems, each of which specialises in a single instrument. Currently, according to its Regulation, these subdivisions are as follows: cheques, credit transfers, direct debits, bills of exchange and other operations. The Other Operations sub-system was created in October 2001 for the processing of a diverse range of transactions (non-standardised documents, commissions and fees from credits and/or documentary remittances, foreign currency exchange, etc.). The Petrol and Traveller's Cheques sub-system<sup>5</sup> was integrated in the Cheques sub-system at end-March 2006.

Most commercial banks, savings banks and credit cooperatives belong to the SNCE, since it has proved to be the fastest and most efficient way of communicating all of the data necessary for the rapid clearing of retail payments. This has been facilitated by a well-structured legal framework entailing various market-efficient solutions – in particular truncation (cheques and bills of exchange below the truncation limit established in interbank arrangements are not physically exchanged but immobilised at the payee's bank) and liability agreements.

The system takes advantage of the paperless communication networks by providing each associated participant with an infrastructure through which all the relevant payment data are bilaterally exchanged between the interested parties. Thereafter transactions are cleared, and settlement takes place at the Banco de España once the net amount has been confirmed. Nevertheless, credit transfers and cheques over €50,000 have been settled individually in the SLBE since June 2005 and are thus not included in the clearing process.

### 3.3.1 PARTICIPATION IN THE SYSTEM

The following institutions are entitled to become participants in the SNCE: the Banco de España (as a member of the system, in order to channel the retail payments of the public administration); and commercial banks, savings banks and credit cooperatives which meet the criteria (compliance with the rules and requirements related to adequate technical capacity, scale of activity, discipline and financial support for the system, etc.) for membership of the SNCE.

There are two forms of participation:

- Direct participation, i.e. participation in the exchanging stage of clearing on the institution's own behalf (with the additional possibility of representing one or more

<sup>5</sup> Petrol cheques are a special kind of payment order on a customer's current account by which the customer can pay at petrol stations.

indirect participants), and subsequent participation in the settlement process.

- Indirect participation (i.e. representation by a direct participant), the requirements for indirect participation are less stringent. Indirect participants do not take part in the settlement stage of clearing, although they may choose to have the individual transactions (credit transfers and cheques over €50,000) directly settled on their own accounts at the Banco de España. In any case, indirect participants never take part in the exchanging stage.

According to figures for 2006 there were 23 direct and 202 indirect participants in the system.

### 3.3.2 TYPES OF TRANSACTION HANDLED

Clearing is carried out for cheques, bills of exchange, credit transfers, direct debits and other operations. At the end of 2006, €686 billion was exchanged in cheque-related transactions, whereas the figure was €719 billion for credit transfers, €168 billion for bills of exchange, €321 billion for direct debits and €5 billion for other operations.

### 3.3.3 OPERATION OF THE TRANSFER SYSTEM AND TRANSACTION PROCESSING ENVIRONMENT

The SNCE has adopted an intermediate solution which constitutes neither a completely centralised nor a completely decentralised clearing and settlement system. Information is exchanged bilaterally between the parties involved without a physical exchange of documents, thanks to truncation agreements that allow the immobilisation of documents at the sender's bank. Clearing is performed in a centralised manner by the SESP (Iberpay), and settlement can take place (likewise in a centralised manner) on the RTGS accounts which each credit institution holds with the Banco de España. All communications are carried out on a private virtual network which complies with a set of security standards.

Documents are no longer physically exchanged, but rather the relevant data contained therein; thus, telecommunication lines are the main channel for member institutions to communicate, via common software, the required information both among themselves and to Iberpay, which permits rapid clearing. Only in the case of documents relating to an amount which exceeds the specified threshold does a traditional exchange become necessary, although the electronic procedures for transmitting the information also take place. However, since November 2003 the physical transfer of some documents has been replaced by the electronic transmission of images. Thus, the vast majority of documents (99.6% in 2006) are processed electronically, i.e. without requiring a physical exchange.

Each transaction is processed in its respective sub-system, so that a net balance for each pair of institutions is obtained in each of the sub-systems. These bilateral balances are reported to Iberpay.

In order to prevent the system from suffering prolonged downtimes or hardware/software crashes, several recovery procedures have been established. In exceptional circumstances, recourse can be had both to a second consecutive session of the SNCE and (as a last resort) to communication via magnetic tapes.

The timetable for communications is not the same in every sub-system. The earliest communications are made at 3.30 p.m. CET in the direct debit sub-system, followed by the credit transfer sub-system, which starts at 7 p.m. CET. The rest of the sub-systems start at 9 p.m. CET.

### 3.3.4 SETTLEMENT PROCEDURES

Since June 2005 there have been two types of settlement. On the one hand, credit transfers and cheques over €50,000 are settled individually on a bilateral basis on the accounts that the participants hold with the Banco de España, which has removed the risk which operations of this magnitude represented for

the SNCE. On the other hand, the remaining transactions are included in the clearing process, which is performed on an electronic basis. Each pair of institutions reports its bilateral net balances to Iberpay, and the latter is entitled to verify their matching, resolving the possible discrepancies in an automatic manner in accordance with a set of established rules. Regardless of this automatic conciliation process, Iberpay informs the institutions of such discrepancies.

Once the bilateral balances have been reported, Iberpay obtains a net net balance (either credit or debit) by consolidating the bilateral balances for each institution in each sub-system. The latter are then settled on the participant's RTGS accounts at the Banco de España by debiting short participants' accounts before crediting those of long participants.

In the event of any incident of a technical nature that prevents communication within a set timetable, Iberpay is free to extend the timetable, to open a special session or, as a last resort, to use the established contingency procedures.

### 3.3.5 PRICING

Participating institutions are subject to the fees established by the system's operator, which include the costs related to connectivity (stemming both from the use of communications and from the compulsory rate charged for the software licence). These fees result from distributing the operational costs of the system among the participants, which is done once a year.

In addition, institutions have established interbanking fees for those transactions whose costs are borne exclusively by the sender. These fees depend on the degree of automatism of the transaction (STP versus non-STP). Finally, each institution must also pay the SLBE's fees for each entry made in its centralised accounts.

### 3.3.6 MAIN PROJECTS AND POLICIES BEING IMPLEMENTED

The process of transferring competences from the Banco de España to Iberpay has virtually been completed. Iberpay took charge of coordinating participant working groups in March 2006 and is in the process of adapting the rules governing the system to the new situation. The Regulation of the SNCE, which contains the basic operating rules of the system, has recently been published. In addition, Iberpay has undertaken the complete management of the clearing process, establishing its own infrastructure and developing its own software, with which it replaced the software owned by the Banco de España in January 2007.

In view of the implementation of the SEPA project, Iberpay has begun work on adapting the SNCE to the new environment. It is envisaged that the SNCE will start to process the new standard SEPA instruments (credit transfers and direct debits) as soon as they are available to the public in 2008.

## 4 SECURITIES SETTLEMENT SYSTEMS

### 4.1 TRADING

#### 4.1.1 INSTITUTIONAL ASPECTS

##### 4.1.1.1 Securities markets and their specific regulation

Law 24/1988 defines official secondary securities markets as those which operate in complete conformity with the provisions of that Law and its implementing provisions, in particular with regard to the conditions of access, admission to listing, operating rules and information procedures. The Law also provides for the creation of other markets and the multilateral trading facility (MTF), which is commonly referred to in Spain as "Sistemas Organizados de Negociación" (SON). These must all be authorised by the central government, if they have a national scope, or by the legally competent regional governments, subject to a

prior opinion of the securities regulator (CNMV).

The official list of regulated secondary securities markets in Spain comprises the four stock exchanges (Madrid, Valencia, Bilbao and Barcelona), the Public Debt Book-Entry Market, the Spanish corporate debt market (AIAF), the financial futures and options markets (MEFF Renta Fija and MEFF Renta Variable) and the futures market for olive oil (MFAO).

BME brings together all the regulated equity, fixed income and futures and options markets, except MFAO, and the clearing and settlement systems. BME integrates the Barcelona, Bilbao, Madrid and Valencia Stock Exchanges, MF Mercados Financieros (comprising MEFF Renta Fija, MEFF Renta Variable, AIAF and the electronic trading platform for debt securities SENAF) and Iberclear, as well as other companies providing complementary services.

#### *Governance of the market*

The Banco de España is entrusted with the regulation of the Public Debt Book-Entry Market. In the stock markets, the stock exchange-governing companies are special private limited companies. They are legally in charge of the organisation and operation of the Market. The Sociedad de Bolsas is also a private limited company held by the four stock exchange-governing companies and is responsible for the management of the SIBE, the electronic trading platform connecting the four Spanish stock exchanges. Lastly, AIAF, MEFF Renta Fija, MEFF Renta Variable and MFAO act as ruling bodies in their relevant markets.

#### *Specific aspects of the Spanish secondary securities markets*

##### – Public Debt Book-Entry Market

Royal Decree 505/1987 of 3 April 1987 created and specifically regulates this market. It was elaborated on the basis of the Ministerial Order

of 19 May 1987, a number of Treasury resolutions and, in addition, Banco de España circulars.

Until 2003 the SSS for the Spanish public debt book-entry system (CADE) was managed by the Banco de España as a division without autonomous legal status, and was legally regarded as a public service for the registration and organisation of the trading and settlement system of this market. In 2003 the public limited company Iberclear was created as a result of the merger between CADE and a private SSS (SCLV), and the Banco de España transferred its function as manager of the Spanish public debt book-entry system to Iberclear.

To promote the smooth functioning and sound regulation of the market there is an Advisory Committee, the members of which are representatives of the Banco de España, the CNMV, the national Treasury, the local governments with public debt listed in the market and the market's participants.

The Spanish Public Debt Book-Entry Market is a decentralised market – comprising various national and European electronic trading platforms and the stock exchange – in which operations are primarily OTC.

The national trading platforms are as follows:

- SENAF (Sistema Electrónico de Negociación de Activos Financieros) is the electronic platform for the trading of Spanish public debt, including bonds, Treasury bills and corporate bonds. It was designated a Sistema Organizado de Negociación (SON) on 23 February 2001.
- MTS Spain is a branch of MTS and was launched on 27 May 2002, after being licensed as an SON.

Spanish public debt is traded on two European trading platforms: EuroMTS and Brokertec.

All transactions traded on such platforms are settled by Iberclear (CADE platform). MEFFCLEAR, the central counterparty for outright and repo transactions traded on the Spanish public debt market, was set up in 2003.

#### – Stock exchange

The stock exchanges have three trading systems: the SIBE (Stock Exchange Interlinking System), the stock exchange open outcry trading and the fixed income electronic market.

The SIBE is a common trading platform for highly traded securities which interconnects the four local stock exchanges (Madrid, Barcelona, Bilbao and Valencia) operating in Spain. At the request of the issuer and on the basis of a prior report by the Sociedad de Bolsas, the CNMV determines which of those securities listed on at least two stock exchanges are to be traded on the SIBE. The Sociedad de Bolsas manages the SIBE, and the four stock exchange-governing companies own its capital in equal proportions.

Until recently there were two special trading segments in the SIBE: the New Market (Nuevo Mercado) and Latibex. These are supervised by the CNMV and run by the Sociedad de Bolsas. These have now been joined by a new segment, the MAB (Alternative Stock Exchange Market).

Iberclear (SCLV platform) is in charge of the settlement of the SIBE and the operations of the Madrid Stock Exchange. The securities traded on the stock exchange outcry sessions of more than one stock exchange are also settled by Iberclear (SCLV platform). Every regional stock exchange has its own SSS (SCL Bilbao, SCL Barcelona and SCL Valencia).

The New Market is intended for securities issued by firms which focus mainly on innovative high-technology industries or sectors offering strong growth opportunities. The creation of this new market was authorised by

the Ministerial Order of 22 December 1999, pursuant to which the CNMV was authorised to set the general criteria for determining which firms' securities are to be traded on this market, as well as the listing requirements. This Ministerial Order was developed by CNMV Circular 1/2000.

The creation of Latibex (the market in euro for Latin American securities) as an organised system for trading securities and other financial instruments was authorised by a resolution of the Council of Ministers of 29 October 1999. The CNMV is responsible for the supervision of this market. Equities and debt securities can be traded on Latibex.

The Alternative Stock Exchange Market (MAB) is a multilateral trading facility for equities and other securities issued by collective investment institutions, for equities and other instruments issued by companies with a low degree of capitalisation, and for other securities requiring a special regime. This new market was authorised by the national government on 30 December 2005. Testing on the new system began in February 2006 in order to prepare it for the commencement of operations in June 2006.

The electronic debt securities segment of the stock exchange trades securities issued by private, public or semi-public companies. Settlement is carried out by Iberclear (SCLV platform).

#### – The AIAF market

The AIAF market (the Spanish Corporate Debt Market) is regulated by the Ministerial Order of 1 August 1991, as amended by the Ministerial Orders of 11 May 1993 and 19 November 1996. The AIAF is the market-governing company. The registration, clearing and settlement functions are carried out by Iberclear (CADE platform). The CNMV is the supervisory authority.

## – Derivatives markets

There are derivatives markets in Spain for the trading of financial futures and options contracts. These markets were initially governed by Royal Decree 1814/1991. Subsequently, this regulation was amended, among others, by Royal Decree 695/1995, which included commodities as underlying assets by establishing special rules applicable to the official secondary markets for citrus fruit futures and options (this market ceased to exist in 2003). Law 37/1998, amending Law 24/1988 on the securities market, included futures and options markets as official secondary securities markets in addition to stock exchanges and the government debt market, whatever the type of underlying asset. By virtue thereof, Ministerial Order Eco/3235/2002 of 5 December 2002 was enacted in order to implement the particular features applicable to the official secondary markets for olive oil futures and options. The Order's salient feature is the provision whereby other non-financial entities that habitually engage in the production, marketing, mediation and/or distribution of olive oil may gain market member status. The specialisation, professionalism and solvency requirements which those industrial market members must fulfil were set forth in CNMV Circular 1/2003.

Ministerial Order EHA/1094/2006 of 6 April establishes the particular features applicable to the official secondary markets for energy derivatives. Industrial members will also be allowed access to these markets.

There are currently two markets for futures and options on financial underlying assets, one for equities and another for fixed income, and they are run by MEFF Renta Variable and MEFF Renta Fija respectively, both of which are subsidiaries of BME. Each of these two companies integrates trading, clearing and settlement into one single entity acting as central counterparty. The rules and regulations of these markets were approved by two Ministerial Orders of 8 July 1992.

### 4.1.1.2 Financial intermediaries operating in the securities markets: types and rules of access to membership

#### *Investment services and investment services firms*

Law 24/1988 (as amended on several occasions, most notably by way of Law 37/1998 – see Section 1.1.3) reflects the essence of Directive 93/22/EEC by including a list of investment services and complementary activities. The category ISFs encompasses three types of entity: securities dealer companies (which may carry on business for own account and for third parties on a professional basis and provide all the investment and non-core services), securities agencies (which may carry on business solely for third parties on a professional basis and may provide investment and non-core services other than dealing for own account, underwriting the subscription of new issues and public offers and granting credit or loans to investors) and portfolio management companies (which may manage portfolios of investments and provide non-core services related to the provision of advice). The creation of ISFs is authorised by the Ministry of Economy and Finance on the basis of a prior proposal from the CNMV. In addition, the government may regulate the creation of other entities and may also allow business access to other individuals or entities which, not being ISFs, perform some of the activities included in the investment services list or promote developments in the securities markets. Credit institutions may also provide all investment and non-core services, provided that their legal regime, articles of association and specific authorisation allow them to do so.

#### *Market members*

In accordance with Law 24/1988, the following institutions are eligible for membership of the official secondary securities markets:

- Spanish securities dealer companies and securities agencies;
- Spanish credit institutions;

- ISFs and credit institutions authorised in other EU Member States, provided that, in addition to fulfilling the requirements laid down in Law 24/1988 for operating in Spain, they are empowered to provide investment services in their home country;
- ISFs and credit institutions authorised in a non-EU state, provided that, in addition to fulfilling the requirements for operating in Spain laid down by this Law, they are authorised to provide investment services in their home country. The Ministry of Economy and Finance may deny membership to such entities or impose conditions for prudential and reciprocity reasons; and
- such others as are deemed eligible by the competent regional governments in this area.

Access to each market is conditional both on the fulfilment of its specific requirements and on admission by the market-governing company. Admission is based on the legal, technical and operational capacity of the applicants and their commitment to respecting the market rules. With regard to the Public Debt Book-Entry Market, the Banco de España and other entities (as stated in government regulations) may, alongside those entities admitted to the official secondary markets in general, be entitled to have the status of market member. Access to membership of this market is also granted to entities engaged in securities clearing and settlement activities.

In order to be accepted as a member of a securities market, it is necessary to be recorded in one of the financial institutions' official registers and thus be subject to supervision by the body in charge of the relevant register.

Market members are authorised to introduce orders into the trading systems, either on their own account, on the account of customers only, or on the accounts of both, depending on the type of institution. In addition, any transaction carried out on the markets requires the

participation of a market member in order to provide the relevant information on trading between parties. Market membership currently allows access to the respective SSS.

#### **Market-makers in the Public Debt Book-Entry Market**

There is a special category of member of the Public Debt Book-Entry Market: the market-makers. Their status is regulated by the Ministerial Order of 10 February 1999 and implemented by resolutions of the Directorate General of the Treasury and Financial Policy. These provisions detail their rights and obligations, as well as access and exit criteria. The Resolution of 20 February 2002 eliminated another special category of member – the dealer entities, regulated by the Resolution of 4 March 1999 – on account of the fact that the conditions justifying their existence had changed.

Market-makers are entitled, inter alia, to the following: participation in state public debt auctions; exclusive access to the second round of such auctions; stripping and reconstituting state bond securities; debt management and placement operations that can be performed by the Treasury, such as syndicated issues in euro, swap transactions and issues in foreign currency; the receipt of information on the Treasury's financing policy; and – where applicable – participation in the setting of targets for the issuance of medium and long-term Treasury instruments. As for their obligations, they must participate in tenders by submitting bids with a minimum value and a maximum price and ensure liquidity on the secondary market (by providing quotations in organised trading systems with a minimum value and a maximum price).

#### **4.1.1.3 Supervision of the markets and their members and the role of public institutions**

The Spanish public institutions in charge of supervising the securities markets and their members are the CNMV, the Banco de España and some regional governments which have competence for a specific regional market.

The Investment Services Directive, introducing the principle of the Community passport or single licence for investment firms – like that which has existed for credit institutions since 1994 – has already been transposed into Spanish law. According to this principle, competence for the oversight of firms established in other EU Member States but operating on Spanish markets is shared between the authorities of both countries: their solvency is controlled by the Member State in which the entity is established, and their activity on the Spanish markets by the Spanish authorities.

Law 5/2005 of 22 April on the supervision of financial conglomerates and amending other laws of the financial sector incorporates into Spanish law part of Directive 2002/87/EC. In this respect, the competent Spanish authorities must conclude coordination agreements with the other authorities which are competent to supervise the same financial conglomerate. Royal Decree 1332/2005 of 11 November was enacted to implement Law 5/2005. The entities subject to this system are credit institutions, investment firms and insurance and reinsurance undertakings, as well as CII management companies and pension funds forming part of a financial conglomerate.

In Spain, the competent supervisory authorities are: the Banco de España, for credit institutions; the CNMV, for ISFs and CIIs; and the Directorate General for Insurance and Pension Funds, for insurance and reinsurance undertakings, as well as for pension funds and their management companies. All three institutions cooperate closely with one another in the performance of their tasks.

#### *The National Securities Markets Commission*

The CNMV was created under Law 24/1988 as a public law institution with its own legal identity. The entities under its supervision include the market-governing companies, the central depositories and the specific securities market intermediaries (i.e. the ISFs). Nevertheless, its oversight competence extends to all other individuals and entities involved in

the investment services business, as far as their activities on the markets are concerned.

The CNMV exercises its competence, inter alia, through the following functions: registration of entities and qualified shareholders, solvency supervision, inspection, imposition of penalties, regulation (circulars) and advisory assistance to the government and the Minister for Economy and Finance.

As a member of the IOSCO and the FESCO, the CNMV has also signed two multilateral memorandums of understanding on cooperation and the exchange of information. In addition, the CNMV has also signed agreements on consultation and technical assistance with national authorities – e.g. in Latin America.

#### *Other authorities*

The Banco de España also has supervisory competence in this field. It is the prudential supervision authority for credit institutions and the regulator and supervisor of the Public Debt Book-Entry Market (the Ministry of Economy and Finance also exercises its authority in this market).

In 2004 the Banco de España and the CNMV signed a memorandum of understanding on cooperation between these public authorities.

#### *Transparency in the operations of regulated securities markets*

The Securities Market Law (Law 24/1988) and the secondary legislation regulating the various secondary markets establish the transparency regime. Law 24/1988 entitles the CNMV, the Banco de España and the market regulatory bodies to determine what constitutes public information subject to public disclosure. This issue is dealt with in particular by CNMV Circular 3/1999 of 22 September.

Three provisions have recently contributed to enhancing transparency, efficiency and competitiveness in Spanish financial markets. First, Law 44/2002 (referred to above) has increased the protection of financial market

customers and users and tightened the auditing and accounting rules for Spanish firms. Second, Law 26/2003 of 17 July (also known as the Transparency Law) was enacted to strengthen the transparency of public limited companies whose shares are traded in an official securities market by fostering the transmission of information both to investors and to the market. Finally, Law 62/2003 of 30 December on fiscal, administrative and social measures requires listed corporate groups to adopt international accounting standards, extends the obligation to appoint an audit committee to all issuers of securities listed on official secondary securities markets and changes certain aspects of savings bank corporate law. This was the background to the publication of Ministerial Order Eco/3722/2003 of 26 December on the annual corporate governance report and other information channels of listed public limited companies and other entities, and the issuance of CNMV Circular 1/2004, which implemented it. Ministerial Order EHA/3050/2004 of 15 September regulates the reporting requirements in respect of operations with related parties to be met by companies issuing securities traded on official secondary markets, and was implemented by way of CNMV Circular 1/2005.

Royal Decree-Law 5/2005 of 11 March transposes into Spanish law Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading. Royal Decree 1310/2005 implements the Securities Market Law in respect of the admission to listing of securities on official secondary markets, public offerings and the prospectus required for such purposes.

The transposition into Spanish law of the various EC directives on insider dealing and market manipulation (market abuse) was effected by means of Royal Decree 1333/2005 of 11 November, which develops Law 24/1988 in this area. Its provisions encompass, inter alia, insider information, market manipulation, fair presentation of investment recommendations, conflicts of interest, accepted

market practices and notification of suspicious transactions.

## 4.1.2 OPERATIONAL ASPECTS

### 4.1.2.1 Types of instrument

The three securities markets (book-entry government debt, stock exchange, and private sector fixed income) trade securities exclusively by book entry. These markets employ high-tech methods, as they use computer networks for the quotation, trading and communication of transactions.

Equities, which can only be traded on the stock exchanges, include ordinary and common shares, preference shares, convertible debt securities and securities bearing acquisition or subscription rights. Those determined by the CNMV (such as debt securities, public and corporate) can also be traded on these markets. All listed securities on the stock exchange markets are dematerialised and kept at the central depository, Iberclear, and in the regional SSSs, where relevant. The majority of the shares registered in Iberclear are, from a legal point of view, bearer shares. Warrants are also listed on the Madrid Stock Exchange.

Public debt securities, which are traded on the Public Debt Book-Entry Market, can be grouped into the following instruments: (i) Treasury bills (Letras del Tesoro) issued by the Spanish Treasury, which are discounted instruments with maturities of 3, 6, 12 and 18 months; (ii) government notes (Bonos del Estado) issued by the Spanish Treasury, which are fixed rate, bearer instruments with maturities of 3 and 5 years; (iii) government bonds (Obligaciones del Estado), which have the same features as government notes, differing only as regards the term of maturity – 10, 15 or 30 years; (iv) public debt securities issued by regional governments, other public entities and corporations, and by international bodies to which Spain belongs, as well as securities issued by the ECB and the NCBs; and (v) strippable bonds with maturities of 3, 5, 10, 15 and 30 years which can be stripped into principal strips and coupon strips;

these are traded separately. Issues can be grouped, and consecutive tranches of a single issue can be placed, thereby ensuring the volumes of homogeneous securities necessary for liquidity in the secondary markets.

The fixed income securities traded on the AIAF market are commercial paper (issued by private and public companies), medium and long-term bonds, mortgage bonds, mortgage-backed bonds, matador bonds, securitised bonds and preferred participation units. All these instruments are dematerialised and registered in Iberclear.

#### 4.1.2.2 Description of the trading systems and operating hours

##### *Stock exchanges*

Equities, corporate bonds and public debt instruments are traded on the stock exchanges via three systems: the SIBE, the traditional open outcry and the fixed income electronic market.

1. The SIBE is a continuous market for trading shares and is in charge of accepting orders, allowing access to the market on a real-time basis and providing market information. This is an order-driven market that provides centralised and automated equity trading for the four stock exchange markets. This trading system is composed of three modules: principal trading, trading by blocks of shares, and special operations trading.

- Principal trading represents around 67% of the daily turnover. It is divided into four systems: the general system, the fixing system, the New Market and Latibex. The general system has been established for the most liquid shares. Trading hours for transactions are from 9 a.m. to 5.30 p.m. CET. In 2001 a maximum price fluctuation for each security was established, subject to static and dynamic variation levels according to the historical volatility of each security. If the limits are exceeded, trading is interrupted, and the securities concerned are

listed in a special volatility auction. The fixing system is reserved for less liquid securities, and its prices are published periodically. The orders are grouped together in two sessions, one at 12 noon and the other at 4 p.m. CET, in order to reduce volatility and achieve price efficiency. Limited and market orders with special conditions are accepted. Orders are assigned priority on the basis of price and input time. There is a similar system of fluctuation to that of the fixing system. Latibex was launched in December 1999 to list Latin American securities denominated in euro. Shares are traded from 11.30 a.m. to 5.30 p.m. CET. The New Market, set up in December 1999, has different operating rules and requires that the risks associated with the company's activity be described in the listing prospectus, that lock-ups affecting shareholders with significant holdings be disclosed and that – at least once a year – a report on the progress of the business and its future prospects be published. Lastly, as regards quotation, the fluctuation limits are higher and more flexible than in the traditional markets. The New Market is open from 9 a.m. to 5.30 p.m. CET.

- Trading by blocks is a specific market for large investors in shares. The operations take place within normal trading hours and must be communicated to the stock exchange. There are two types of trading by blocks: agreed blocks and blocks subject to parameters. The first (only for IBEX35 securities) is used to communicate previously matched blocks of over €600,000 and above 2.5% of the daily trading average for such a security. The second block (for any share) is used to trade and communicate blocks whose volume is above 5% of the daily trading average and over €1.2 million, or blocks with a 15% variation over and above the reference price (25% in the case of New Market securities).
- The special operations market trades blocks of equities between previously agreed

counterparties, attempting to interchange a significant number of shares within a specified period (from 5.30 p.m. to 8 p.m. CET). There are two types of special operation: communicated special operations and authorised special operations. In the first type, trading takes place outside of normal trading hours and the operations in question must be communicated to the stock exchange. In addition, such operations must meet certain requirements as to price and amount. Depending on the size of the trade, exceptional authorisation may be required (for the SIBE when values exceed €1.5 million; for open outcry the minimum value is €300,000).

2. Securities of small companies (equities and corporate bonds) which do not fulfil the requirements for listing on the continuous market are traded by open outcry. At present, the activity in this market accounts for less than 1% of the combined trading of the four stock exchange markets. Trading takes place from 10 a.m. to 12 noon CET on the floor of the four exchange markets, in ten-minute rings which are organised by sector. Prices may fluctuate by  $\pm 10\%$ ; variations over and above this limit cause trading to be suspended for 30 minutes. Thereafter, the outcry is re-opened, with 20% being the maximum variation admitted. Special operations may take place outside of normal trading hours, at a price agreed between the counterparties.

3. The fixed income electronic market is a blind market in which trading of public and corporate debt takes place continuously between 9 a.m. and 4 p.m. CET. Prices may not fluctuate by more than  $\pm 10\%$  in relation to the previous day's closing price. Should that be the case, trading for that issue must be suspended. There are two types of trading: multilateral and bilateral. Multilateral trading is anonymous, screen-based and used in two markets: the order market (where operations are automatically closed on the basis of the best price and sequence of introduction, without volume limit) and the block market for operations above a

certain minimum volume (for public debt over €300,000 and for corporate bonds over €150,000 in nominal terms). In bilateral trading, the transactions are agreed beforehand by the members and subsequently introduced into the system. There is no limit on the value for public debt, but for fixed income securities the effective trading value must be higher than €150,000.

#### *Public Debt Book-Entry Market*

The design of public debt instruments and the primary market channels aims at developing the secondary market for Spanish public debt. On the one hand, the Spanish Treasury has always endeavoured to issue public debt through open tenders and with a simplified list of instruments. On the other hand, adequate mechanisms have been established to achieve a deep and liquid official secondary market on which government debt securities can be traded.

Trading on the secondary public debt market can take place in different segments:

- On the two national electronic trading platforms: SENAF and MTS España.
- Access to SENAF is restricted to public debt dealers (market-makers), which access the system directly or through a blind broker. Trading is electronic, at the best price and anonymous. It constitutes the core of the public debt market, since the agents who participate in this segment commit themselves to list buy and sell prices with reduced differentials, ensuring liquidity for the market as a whole. In order to manage market risk, SENAF marks to market the daily positions of each participant. The settlement of the margins is carried out through the SLBE (the RTGS system of the Banco de España). On the maturity date of the operation, the corresponding amounts are given back to the participants. The settlement of transactions is carried out by Iberclear (CADE platform).

- In MTS Spain there are three types of member: market-makers, price takers and brokers. Outright transactions can be carried out from 8.15 a.m. to 5.30 p.m. CET. There is also a repo segment, created in 2003, for the trading of buy and sell back agreements (from 8 a.m. to 6.30 p.m. CET).
- Securities transfers, which are normally the result of a purchase and sale operation between a participant and a third party (customer) which has no own account at the central register. In such a case, it is necessary to transfer securities between the participant's own account and the segregated account, in which the participant may act as depository or registrar for the third party.
- Bilateral trading, direct or through a broker, is a decentralised segment (also referred to as “second step”) through which the rest of the trading between account holders is performed. Maturity operations and double operations are permitted.
- The third trading segment includes transactions between direct participants and their customers.

#### **The AIAF market**

The AIAF, the regulated secondary market for the trading of corporate debt securities, is a decentralised market with two segments: one for short-term financial instruments (commercial paper) and the other for bonds (long-term instruments). Most of the securities are dematerialised, although there is a small percentage of physical securities. Trading is mainly conducted through the OTC market, and the information on offers and prices is available on screen.

#### **4.1.2.3 Types of transaction handled**

Two types of transaction are commonly conducted in the Spanish securities markets:

- Purchase and sale transactions among market members. These entail the dual settlement of cash and securities accounts. In the Public Debt Book-Entry Market and the AIAF market, outright (spot or forward), sell and buy back transactions and repo operations (generally two-stage operations) can be carried out. On the stock market, only outright operations are possible, and trading is currently concentrated on the spot market.

Another type of transaction is the total or partial immobilisation of the securities balance in order to issue certificates for collateral purposes.

#### **4.1.2.4 Connection to other systems**

Since September 1999 the securities traded on the Spanish Public Debt Book-Entry Market have also become tradable on the EuroMTS platform, and since 2000 in Brokertec. Transactions in Spanish public debt securities carried out in the EuroMTS electronic trading system are settled in Iberclear (CADE platform) on T+3.

In this context, it should be noted that the cross-border links established by Iberclear with foreign central securities depositories allow trading in foreign securities on the Spanish domestic securities markets under the same conditions as for domestic securities.

SENAF and Eurex have reached an agreement whereby SENAF members will be able to trade a financial instrument called Basis using the SENAF platform. A Basis trade is a purchase/sale of futures contracts and a simultaneous sale/purchase of debt securities. The futures will be those of Eurex, and the debt securities will be Spanish issues traded in the SENAF market. SENAF has become a Eurex service provider and is authorised to give its clients access to the Eurex German futures market.

## 4.2 CLEARING

### 4.2.1 INSTITUTIONAL AND LEGAL ASPECTS

The Securities Market Law (Law 24/1988), as amended by Law 44/2002 of 22 November 2002 on measures to reform the financial system, provides for the creation of one or more central counterparties, the purpose of which is to eliminate counterparty risk from transactions by interposing a central counterparty between the buyer and the seller. Prior to this reform, such an arrangement was only used for derivatives.

The central counterparty or counterparties must carry on their activities in accordance with the relevant regulations, which must be approved by the Ministry of Economy and Finance on the basis of reports from the CNMV, the Banco de España and the regional (autonomous) governments whose “statutes of autonomy” authorise them to regulate securities trading centres. The central counterparty is subject to supervision by the CNMV and the Banco de España in their respective areas of competence and is entitled, under the Law, to enter into agreements with other resident and non-resident entities that have similar functions or that manage securities clearing and settlement systems, to hold shares in such entities and to allow them to have holdings in its own capital. Such agreements require the approval of the CNMV.

MEFF Renta Fija and MEFF Renta Variable (MEFF RF and MEFF RV) are the official Spanish exchanges for financial futures and options (see Section 4.1.1.1) and are integrated into BME. MEFF RF governs the exchange and clearing house for fixed income futures and options, as well as MEFFCLEAR, the central counterparty for debt securities. MEFF RV governs the exchange and clearing house for equity futures and options.

#### *Participation in the systems*

For derivatives, MEFF has three types of member in its system: clearing members, trading members and clients. The clearing

member is responsible, on its own account or on behalf of customers, for compliance with obligations in respect of posting margins and making adjustments and settlements as a result of transactions made on the market. It also makes cash payments and collections and buys and sells underlying assets on its own account or on behalf of its customers. The trading member trades on the market on its own account or on behalf of its customers. Customers open accounts through a member; their accounts and the margins derived from their positions are segregated in the clearing house, which is their direct counterparty.

Participants in MEFFCLEAR can be clearing members or customers. Clearing members are participants with a direct responsibility for both their own and their customers’ accounts vis-à-vis MEFFCLEAR.

### 4.2.2 OPERATIONAL ASPECTS

There are currently two central counterparties in Spain: MEFF, for the transactions carried out on the derivatives market, and MEFFCLEAR for transactions with debt securities traded on electronic trading systems or the OTC market.

MEFF integrates the trading, clearing and settlement of financial futures and options into one single system. When the members of the derivatives market register a trade on MEFF, it assumes the rights and obligations inherent in the trade, acting as the seller to the buyer and the buyer to the seller. MEFF carries out a multilateral settlement. The system calculates all debits and credits, taking into consideration the margins to be posted in cash, the settlement of the profits and losses (daily price adjustments), the settlement of fees (if applicable), and the settlement of premiums. The cash settlement takes place in the RTGS of the Banco de España accounts in a single batch (9 a.m. CET) on the settlement date.

For the purpose of evaluating and minimising the risk that it takes, MEFF has implemented different risk control mechanisms, such as a daily trading limit, intraday margin calls, an

open position limit and filters for each kind of contract based on volatility and liquidity.

MEFFCLEAR acts as central counterparty for government debt securities traded on electronic trading systems or OTC between clearing members and/or clients. When a trade is registered in MEFFCLEAR, the rights and obligations of the parties as regards that transaction are automatically understood to be novated, and MEFFCLEAR becomes the counterparty, creating new rights and obligations for the clearing members and/or customers with MEFFCLEAR, replacing those of the original trade. The settlement of the securities transactions is carried out by Iberclear, with which an agreement is established. MEFFCLEAR does not offset settlement positions, but takes into account the net positions in calculating margins. The cash settlement of the margins is carried out in the multilateral settlement cycle of MEFF.

### 4.3 SETTLEMENT

#### 4.3.1 INSTITUTIONAL AND LEGAL ASPECTS

##### *General legal aspects*

Settlement, as an activity relating to the securities markets, is regulated in Spain by Securities Market Law 24/1988 of 28 July, as amended by several laws, in particular Law 37/1998 of 16 November and Law 44/2002 of 22 November (see Section 1.1.2). The Securities Market Law establishes the general principles to be observed by SSSs and has been elaborated through a number of different provisions.

The last of these amendments is particularly significant inasmuch as it provides for the creation of the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (company managing the systems for the registration, clearing and settlement of securities), commonly known by its commercial name “Iberclear”, through a merger of the SCLV and the CADE systems. According to Law 24/1998, as amended, the new company has the following functions:

- to keep the accounting records for book-entry securities listed on stock exchanges or on the Public Debt Book-Entry Market, as well as the securities listed on other secondary markets, when their governing bodies so request;
- to manage the settlement and, where applicable, the clearing of securities and cash arising from ordinary transactions carried out on those secondary markets;
- to provide technical and operating services directly related to those functions, and any others that may be necessary for Iberclear to coordinate its activities and cooperate with other securities recording, clearing and settlement areas and systems and to be able to participate in the latter;
- such other functions as may be assigned to it by the government on the basis of a report from the CNMV and, where applicable, from the Banco de España.

The regional (autonomous) governments with powers in relation to securities according to their “Statutes of Autonomy” have, under the Securities Market Law, set up their own clearing and settlement services for the securities listed on their respective stock exchanges (the Barcelona, Bilbao and Valencia Stock Exchanges).

At the same time, the Law provides that the government, on the basis of a report from the CNMV and the Banco de España, may authorise other financial institutions to carry out all or any of the functions assigned to Iberclear. Such institutions must comply with the minimum requirements laid down in the relevant regulations and are subject to the same supervision and disciplinary arrangements as Iberclear.

Although not related to securities settlement, it is worth noting that Iberclear was authorised by the government on 19 November 2004 to maintain and manage the Spanish registry of

greenhouse gas emission allowances (RENADE) as part of the integrated Community registries system, in application of the Kyoto Protocol and, in particular, of Directive 2003/87/EC. Law 1/2005 of 9 March and Royal Decree 1264/2005 regulate the organisation and functions of RENADE, which entered into operation on 20 June 2005. At the moment only free-of-payment operations are possible.

Law 41/1999 of 12 November, which incorporates the provisions of the Settlement Finality Directive, recognises the following SSSs in Spain:

- CADE, the central registry providing settlement services for the Public Debt Book-Entry Market. The securities eligible for deposit and settlement in CADE are Treasury bills and bonds issued by the central government and regional governments and other public bodies. It is also possible to register public debt securities issued in EU CSDs through the existing links.
- SCLV, the SSS for the Madrid Stock Exchange and for securities traded on more than one stock exchange. In addition, there are three regional systems in Spain with limited scope: SCL Barcelona, SCL Bilbao and SCL Valencia, managed by their respective stock exchanges. This regulatory framework is similar to that described for SCLV. The CNMV and the respective regional governments provide for their regulation.
- SCLV-AIAF, the clearing, settlement and safekeeping system for the securities traded on the AIAF market, is managed by Iberclear. The settlement platform used for these securities is the same as for CADE.

Law 41/1999 establishes the settlement finality rules applicable in the event that insolvency proceedings are brought against a participant. Thus, there is no chance of revoking the sale of securities or the granting of collateral the

instructions for which have been delivered and accepted by the system prior to initiation of the proceedings, or even following initiation, if cleared and settled on the same day. Article 11 of Law 41/1999 establishes the validity and finality of both the funds and securities transfer orders.

#### *Legal basis*

The regulatory framework adopted by the Spanish financial authorities for the Spanish SSSs is as follows:

- CADE: Securities Market Law 24/1988 of 28 July, as amended in this respect by, in particular, Laws 37/1998 and 44/2002; Law 41/1999 of 12 November on payment and securities settlement systems; Royal Decree 505/1987 on the creation of a book-entry system for government debt; and several orders of the Ministry of Economy and Finance and circulars of the CNMV and the Banco de España on a range of relevant aspects. Once the requirements of Law 44/2002 had been met and the time periods specified had elapsed, Order Eco/689/2003 of 27 March 2003 approving the Iberclear Regulation was enacted. This Regulation draws on the existing rules governing the registration and settlement system of CADE.
- SCLV and SCLV-AIAF: Securities Market Law 24/1988 of 28 July, amended in this respect by, in particular, Laws 37/1998 and 44/2002; Law 41/1999 (referred to above); Royal Decree 116/1992 on dematerialised securities and clearing and settlement of stock exchange transactions; several orders of the Ministry of Economy and Finance and circulars of the CNMV; and Order Eco/689/2003 approving the Iberclear Regulation, which also draws on the existing Regulation on the organisation and functioning of the Securities Clearing and Settlement Service (SCLV), with some additions and modifications.

- Regional SSSs for the Barcelona, Bilbao and Valencia Stock Exchanges: the legislation of the autonomous governments together with the body of legislation applicable to SCLV.

### *Regulation and supervision*

In addition to the aforementioned general legislation, rules on clearing and settlement procedures are issued by the governing companies of each system. In Iberclear (CADE and SCLV) these rules are known as circulars, releases and operational instructions. These rules are complemented by specific technical rules covering more detailed aspects of their activity. In many cases, the rules require the approval of the supervisor.

CADE and SCLV are run and managed by Iberclear and supervised and overseen by the CNMV. As for the regional SSSs, the respective local governments are responsible for their regulation and supervision, together with the CNMV. The systems themselves are also audited externally and internally.

Although all supervisors and regulators have their own area of competence and carry out their activities on an independent basis, coordination takes place at a general level through cross-membership of the boards of directors of the different regulatory bodies (see Section 4.1.1.3).

### *Participation in the systems*

Law 41/1999 provides that the general requirements for membership of Spanish settlement systems must be approved by the relevant supervisory authorities and published in the BOE (Official Spanish Gazette). In general, the participants are credit institutions and investment services companies.

- There are two main types of CADE member: entities entitled to register their own securities holdings (direct account holders) and entities which are allowed to register securities on behalf of customers as well as on their own account. The system clearly

separates the participants' own holdings from the customers' holdings, as there are two kinds of securities account: an account for the participants' holdings and another (omnibus) account for the customers' holdings. The admission criteria are clearly established in Law 37/1998. In order to be admitted, an institution must belong to one of the categories (largely credit institutions, investment firms, international financial institutions, CSDs and NCBs) listed in the aforementioned Law. Participants must meet both solvency and technical and management capacity requirements. Remote access is allowed. For the settlement of the cash leg, it is compulsory to have a cash account at the Banco de España or to designate a settlement bank for this purpose.

The authorisation and termination of membership is decided by the Ministry of Economy and Finance on the basis of a proposal from the system together with a report from the CNMV. Within each membership category, all members are subject to the same rules and conditions. The conditions under which membership can be revoked are as follows: insufficient trading volume, non-fulfilment of membership requirements, insolvency procedures, sanctions and a formal request from the participant.

- SCLV has the following participants: securities dealer companies, securities agencies, brokers, banks, savings banks, official credit institutions, the Banco de España and foreign entities with activities similar to those of Iberclear. Of these entities, those which are market members of a stock exchange must necessarily become participants in SCLV, while the remainder must apply for authorisation. In order to gain access, the participants are required to have adequate control systems and technical equipment to develop their settlement functions. They must also deposit a certain amount of collateral in the collateral pool established by Iberclear in order to ensure

the successful outcome of settlement. For the settlement of the cash leg, it is compulsory to have a cash account at the Banco de España or to designate a settlement bank. It is the CNMV which, on the basis of a report from Iberclear on the fulfilment of the requirements by the candidate, grants authorisation to participate in the system. The CNMV also decides on whether or not a participant's membership should be terminated.

The circumstances under which membership is rescinded are as follows: a formal request from the participant; non-fulfilment of the requirements; cessation of activities as a securities dealer company or securities broker agency; indebtedness on the part of an entity (as determined by the system); and an insufficient settlement volume.

Similar access and exit criteria are defined for the regional SCLs (Barcelona, Bilbao and Valencia).

- In order to become a participant in the settlement system for AIAF market operations, it is necessary to be a member of the AIAF market. The scheme for securities accounts is similar to that of the CADE system (with securities accounts being segregated). With regard to access criteria, adequate control systems and technical equipment must be in place; all technical and functional requirements must be fulfilled; and a cash account must be held at the Banco de España (or with a designated settlement agent). Iberclear grants authorisation and decides on the termination of the membership status. The three cases in which a participant will cease to be a member are as follows: where the participant (i) makes a formal request, (ii) fails to fulfil the access criteria, or (iii) enters insolvency proceedings.

#### 4.3.2 OPERATIONAL ASPECTS

Iberclear runs two technical platforms: the SCLV platform and the CADE platform.

The Spanish SSSs apply three general principles: multilateral netting of the cash leg of the transactions, DvP and neutrality. The CADE platform is the exception and employs a gross real-time settlement procedure. Payments from all of the systems are settled on the cash accounts held at the Banco de España (centralised accounts) by the participants.

As mentioned in Section 4.3.1.4, there are two types of account in the CADE platform: an account for recording the securities holdings of the direct account holders, and a customer account for securities held on behalf of customers. The SCLV platform has a scheme similar to that of the CADE platform, whereby participants' accounts may be split into own accounts and customer accounts.

##### 4.3.2.1 Operational aspects of settlement

###### *Transfer system and transaction processing environment*

In the government debt book-entry market and the AIAF market, participants report their transactions to Iberclear (CADE platform) on the trade date, regardless of the settlement date. The messages reported for each operation are matched and recorded as a traded transaction, provided that there are no discrepancies.

Transactions are always settled on the settlement date, irrespective of the trade date. On the settlement date the CADE credits and debits the corresponding securities account, provided that the seller's balance is sufficient.

In order to update the balance of the customers' accounts, the dealers report the net overall change in the balance on each of their customers' accounts on a daily basis. Iberclear checks that these data are consistent with the omnibus account balances resulting from the securities transactions settled during the day.

With regard to stock exchange transactions, the settlement cycle is T+3. On the trade date, all transactions carried out by the market members are reported by the stock exchange to Iberclear

(SCLV platform) on an aggregated basis (either electronically or via file transfer). Stock exchange members have one day (up to the afternoon of T+1) to break the aggregated trading down into itemised transactions specifying the settling agent. A list of the transactions resulting from the breakdown is reported online by the SCLV platform to the settling participant. The settlement institutions have an extra day, namely until T+2, to accept or reject any transaction. No rejection implies that the trade is accepted by the settling participant and will therefore be irrevocably settled on T+3. If rejected, the trade will be allocated to the market member. Once the net cash positions are settled in the cash account at the Banco de España, the settlement of the trades becomes final (T+3).

Settlement in the SCLV platform may also occur through the “traspaso”, which is a securities transfer – either free of payment or against payment – between two SCLV platform participants in which ownership cannot change (i.e. when a portfolio is transferred to a different local custodian without change of beneficial ownership).

For both the CADE and SCLV platforms, participants can be connected to Iberclear through file transfers and through an online computer link. They can communicate the transaction orders and obtain online information about the securities transfer instructions as well as balances of the securities accounts. Participants are thus able to monitor the status of their orders (unmatched, matched, provisionally settled, final, etc.) during the entire matching and settlement process. Iberclear is currently implementing a new matching procedure for both technical platforms.

#### *Settlement procedures and DvP arrangements*

Iberclear settles all securities transactions in central bank money on the RTGS of the Banco de España.

The CADE platform allows settlement of transactions on a real-time basis. It follows BIS DvP Model 1. There is both an overnight and an end-of-day batch. In the interim period, the CADE platform settles FOP and DvP transactions on a real-time basis. The overnight batch is available for all transaction orders communicated to CADE before 6 p.m. CET on T-1 and becomes final at 7 a.m. CET on the settlement day (T), provided that there are sufficient funds and an adequate securities balance in the corresponding accounts. The real-time settlement process runs from 7 a.m. to 4 p.m. CET during the settlement day. In this real-time process, the application first of all checks whether there is an adequate securities balance. If this is the case, but the securities buyer has an inadequate funds balance, the transaction order is rejected and returned to the CADE platform, where it remains in a queue. The process is periodically activated until there is sufficient balance on the corresponding accounts to settle the pending orders with finality. If the balance in the securities account of the seller is insufficient, the operation remains queued. Whenever this securities account is credited, the system checks that the instructions queued can be carried out. At the end of the day, the system attempts for the last time to settle all transactions which were not settled in the first cycle or during the real-time process. The end-of-day settlement batch cycle takes place at 5 p.m. CET. If the securities account of the seller has a sufficient balance, it is blocked until the application checks (through the interface with the payment side) that there is also a sufficient balance in the buyer's cash account. Once the transfers of cash and securities are completed, finality is achieved for each transaction.

The SCLV platform carries out gross settlement of securities and net settlement of cash (BIS DvP Model 2). The settlement of the cash leg of the securities transactions takes place via two multilateral batch cycles on the cash accounts of the Banco de España at 9 a.m. CET and 3.30 p.m. CET. The cash settlement of corporate events takes place at 11.15 a.m. CET, while the

cash settlement of other operations, such as fees and cash collateral, is also carried out via a bilateral batch at 12 noon CET.

All of the regional systems use central bank money for the settlement of the cash leg. The SCL Barcelona system provides intraday finality for DvP transactions with Catalan government debt securities and asset-backed securities. Intraday finality is also provided for FOP transactions with any security. In addition, the system provides a multilateral batch cycle at 10.30 a.m. CET for all securities traded on the Barcelona Stock Exchange. The cash settlement for other financial operations is carried out via a bilateral batch at 1 p.m. CET. In SCL Bilbao and SCL Valencia the settlement of the cash leg of the securities transactions takes place via a single multilateral batch cycle during the morning. Intraday finality is only provided with predeposited securities. In SCL Barcelona and SCL Valencia the time-lag between the trading date and the settlement date is T+3, in SCL Bilbao T+1. In all systems, the participants must have a cash account at the Banco de España or they must designate a settlement bank. In compliance with the DvP principle, coordination is required between these systems and the Banco de España managers.

#### *Operating hours*

Transfer instructions can be submitted to the CADE platform from 7 a.m. to 6 p.m. CET. In the SCLV platform, online communications can be reported between 7 a.m. and 7 p.m. CET, and file transfer orders can be submitted between 5 p.m. and 7 p.m. CET. These deadlines can be extended under exceptional circumstances. Similar deadlines to those applied by the SCLV platform are also applied in the regional SSSs (with the exception both of SCL Bilbao transactions, for which there is an earlier cut-off time owing to its T+1 settlement cycle, and of the real-time transactions in SCL Barcelona, which must be submitted before 4 p.m. CET).

#### *Custody services*

Iberclear and the Spanish regional systems also provide custodial services (depository and

register functions) as well as corporate action services. These functions are not outsourced and are offered by the systems directly without the intervention of any third party.

In Spanish systems, the registration and depositing of all securities takes place in book-entry (dematerialised) form. In the case of certain securities (private fixed income securities) this has been the case only since the end of 1998. The existing physical securities are deposited and immobilised in a depository in the name of Iberclear, which holds the securities on behalf of its participants and customers. They are registered in Iberclear by means of computer records. There is a contractual arrangement between the depository and the CSD.

#### *Credit and liquidity risks and their management*

All Spanish SSSs apply the DvP principle as a basic measure for preventing principal risk, since DvP mechanisms ensure that counterparties are not exposed to principal risk in the course of the settlement process. The settlement risk of the cash leg of the securities transactions is zero, since it takes place in central bank money. Debit balances in securities are not permitted in any system, and neither is the partial execution of securities transfer orders. The systems do not take any risk vis-à-vis the participants in the settlement process.

In addition to solvency and other financial and technical capacity requirements established as membership criteria, the following measures are laid down in respect of the Spanish SSSs in order to reduce risk:

- There is an automatic securities lending procedure managed by Iberclear (CADE platform), whereby any participant which does not have an adequate securities balance at the close of business receives the required securities. In order to become a member of the pool of lenders, the account holders must sign a contract with Iberclear specifying the rules governing this securities

loan. The loan instrument consists of an overnight repo transaction between the lender and the borrower in accordance with the rules defined in the contract. Use is made of haircuts in order to remove the market risk for the lender, and the interest rate of such instrument is nil (penalty for the borrower). Within this lending facility, the system never acts as counterparty.

- On the stock market, Iberclear (SCLV platform) has established a collateral pool to ensure the successful outcome of the trades pending for settlement, which is regulated by Royal Decree 116/92. The collateral may consist of cash deposits, bankers' guarantees, insurance or pledged securities. The total amount of the collateral deposited is determined, on a monthly basis, by a combined number of participants in accordance with a criterion based on the actual course of trading activity over the past three months. The quota assigned to each participant is also reviewed every month and is based on the average of pending settlements which the participant has maintained during the past three months. This collateral deposited by each participant is used without any limit in order to ensure the settlement of the obligations entered into by the participant. Should this be inadequate, Iberclear proceeds to use the other participants' collateral in proportion to the amount which each has provided. At any moment, Iberclear may require the participant to deposit additional collateral, taking into account the daily positions.
- In order to avoid incidents both in centralised cash accounts and in securities accounts, Iberclear imposes a penalty of €2,000 in instances where the participant has insufficient securities or cash to settle the pending transactions at the end of the session. The CNMV monitors the incidents in the system.
- In order to ensure final payment on the settlement date, a guarantee of up to €30 million is provided to Iberclear by three of the major credit institutions.

#### *Operational reliability*

All Spanish systems ensure the operational reliability of the technical systems and computers which they use. Analyses have been made of the potential operational risks and threats, and adequate measures taken. All of these systems have the necessary processing capacity and the corresponding backup facilities. In the event of a breakdown, the systems can keep the registering and communication functions running. Contingency plans have also been put in place.

The systems carry out regular analyses of the capacity of the equipment and its efficiency and have put in place procedures for coping with the development of, and modifications to, the systems. Any potential modification to the system is adequately tested beforehand.

All of the systems have adopted security measures for preventing unauthorised access to the systems and unauthorised use of the securities accounts. Access is monitored continuously. In addition, all the systems have strict security measures which safeguard the authenticity, integrity and confidentiality of the information during the whole process, including during the exchange of messages.

#### *Pricing*

Iberclear's regulation, approved by Ministerial Order ECO/689/2003 of 27 March, establishes, in Article 8, the fee schedule applicable to participants and issuers. There are different

fees according to the different services provided, i.e. a monthly membership fee, a custody fee, a settlement fee and fees for other services.

#### 4.3.3 LINKS WITH OTHER SSSs

Current Spanish legislation entitles Iberclear to enter into agreements with resident and non-resident institutions that perform similar functions, and with central counterparties or other entities, on the opening and keeping of accounts or any other activities that it performs.

The contracts governing the links to foreign SSSs follow the ECSDA model. All Spanish direct links have been established exclusively for the transfer of securities on an FOP basis. The direct links within the EU have been assessed and approved as eligible for use in the Eurosystem's credit operations.

Iberclear has made an arrangement with the regional SSSs (SCL Barcelona, SCL Bilbao and SCL Valencia) under which it has opened an account in these systems with a view to facilitating the transfer of the securities managed by these systems to those foreign depositories to which Iberclear is linked. The scope of this arrangement is limited to allowing Iberclear to include in the links with foreign CSDs the securities recorded in the SCL Barcelona, SCL Bilbao and SCL Valencia systems. Thus, Iberclear becomes a member of the different systems and can only hold securities on behalf of the foreign CSDs to which Iberclear is linked, acting as a "single entry point" for these securities. Securities cannot be moved from Iberclear to these systems, nor can securities issued in Iberclear be transferred between SCL Barcelona, SCL Bilbao and SCL Valencia.

At present, Iberclear has links with: Euroclear France, Euroclear Netherlands, Clearstream Banking AG Frankfurt and Monte Titoli. The securities included in these links are debt securities and shares, except for the link with Clearstream AG, which involves debt securities only. Outside of the EU, Iberclear also has

direct links with the register and settlement systems of Brazil and Argentina and links – through a participant – with Mexico, Chile, Peru and Puerto Rico.

#### 4.4 THE USE OF THE SECURITIES INFRASTRUCTURE BY THE BANCO DE ESPAÑA

The Banco de España has a significant relationship with the Spanish systems as user. The Banco de España has securities accounts in Iberclear and the regional SCL systems. These securities accounts register the securities which are delivered to the Banco de España as collateral in monetary policy and intraday credit operations.

The Banco de España uses two main procedures and legal techniques to collateralise the monetary and intraday credit operations, in accordance with the legal instrument allowed in each system: the pool of assets pledged and the repo with transaction margining. Hence, the securities accounts in Iberclear (CADE platform) and SCL Barcelona can be used for repo transactions and pledging, whereas the securities accounts in Iberclear (SCLV platform), SCL Bilbao and SCL Valencia are used only for pledging. In Spain, the formalities required for pledging marketable securities have been simplified. Thus, the securities registered in book-entry form benefit from a more straightforward procedure, which does not require a signature in an official deed. In Spain, the pledger of the securities is, from a legal point of view, the owner of the securities, and the coupon payments are thus paid to the pledger.

Apart from the aforementioned use, the Banco de España has a securities account in Iberclear for the purpose of reserve management. However, the balance maintained for this purpose is not significant.