

BANCO DE ESPAÑA EVALUATION PROGRAMME

TERMS OF REFERENCE FOR THE EXTERNAL EVALUATION OF THE BANCO DE ESPAÑA'S SUPERVISION OF BANKING CLIENT PROTECTION

Banco de España



TERMS OF REFERENCE FOR THE EXTERNAL EVALUATION OF
THE BANCO DE ESPAÑA'S SUPERVISION OF BANKING CLIENT
PROTECTION

Banco de España

Contents

- 1 Introduction** 4
 - 2 Terms of reference** 4
 - 3 Goal** 5
-

1 Introduction

The functions of the Banco de España include the supervision of transparency and banking client protection.¹ This supervisory function is performed outside the framework of the Single Supervisory Mechanism (SSM) and extends to all entities registered with the Banco de España (including foreign branches and some aspects of the activities of institutions operating in Spain without an establishment).

In recent years, the Banco de España has witnessed a torrent of regulation in the area of financial customer protection – with regulatory developments at both domestic and European level –, prompted by a wave of litigation in the wake of the 2008 financial crisis. In addition, numerous inspections have been conducted to verify compliance with the transparency regulations applicable to mortgages, consumer credit and payment services, while there have also been initiatives to monitor advertising and customer services.

Moreover, misconduct risk has only heightened with the growing digitalisation of financial services and the emergence of new entities, products and channels. Accordingly, one of the action plans set out in the Banco de España's Strategic Plan 2024 aims to strengthen the supervision of transparency and banking client protection.

To this end, the new Directorate General Financial Conduct and Banknotes, which incorporated the Institutions' Conduct Department, was set up in May 2022. Its main objectives include fostering the transition from a corrective and legalistic supervisory approach to a more preventive and risk-centric one, with a view to strengthening the monitoring of institutions, sharing supervisory expectations with the industry and identifying risks at an early juncture.

Against this background, an evaluation of the function conducted by leading independent experts would be especially useful to help smooth this period of transition at the Institutions' Conduct Department.

The aim of this document is to define the terms of reference for the external evaluation of the Banco de España's supervision of transparency and banking client protection (hereafter, the External Evaluation).

2 Terms of reference

The External Evaluation will be conducted by an Evaluation Committee comprising three independent experts of recognised standing in this field: Stefan Ingves, Hanzo Beusekom and Pedro Duarte Neves.

The conclusions of the External Evaluation will be set out in an evaluation report to be submitted to the decision-making bodies of the Banco de España. The Evaluation Committee may be asked to appear before the decision-making body to which the conclusions of the External Evaluation are to be submitted, in order to present its main conclusions and clarify any doubts.

¹ Spain's current financial supervision framework is split between three supervisors – the Banco de España, the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds –, each discharging dual prudential and client protection supervisory functions in their respective sector of competence (banking, securities and insurance, respectively).

The following terms of reference shall apply to the Evaluation Committee's work:

- 1 **Independence and impartiality.** The Committee members shall work independently and objectively.
- 2 **Timetable and deliverables.** The Evaluation Committee shall begin its work in the last quarter of 2023 and shall deliver its report within six months of acceptance of these terms of reference.
- 3 **Cooperation.** The Directorate General Financial Conduct and Banknotes of the Banco de España shall provide the Evaluation Committee with all the necessary support and information. The Committee members may conduct online or face-to-face interviews with any Banco de España senior management and staff members they deem relevant in the performance of their tasks. If they see fit, information may also be requested from other external sources.
- 4 **Confidentiality.** The Evaluation Committee members shall treat as confidential any material and information not in the public domain that is obtained in the fulfilment of their duties, and shall refrain from making any public statements on the outcome of the External Evaluation without the prior authorisation of the Banco de España. They shall remain bound by this obligation even after the evaluation has concluded.
- 5 **Publication.** The evaluation shall be subject to the publication criteria established in the evaluation programme guidelines. The appropriate prior and/or subsequent dissemination shall be carried out, subject solely to the limitations of the confidentiality considerations applicable in each case.

3 Goal

Based on the current sectoral model, and taking into account the particular nature of the supervision of banking client protection and how it differs from prudential supervision, the scope of the External Evaluation shall comprise a critical examination to assess and document the efficiency and effectiveness of such supervision and the potential for improvement. In order to do that, supervisory models of other international peers might be taken into consideration, in particular regarding strategies, methodologies, data and resources.

More specifically, the main goals of the External Evaluation consist in assessing and documenting:

- a The Banco de España' banking client protection supervision strategy.
- b The responsiveness, efficiency and effectiveness of the banking client protection supervision function at the Banco de España.
- c The methodologies and processes used to plan, develop and monitor the supervision of banking client protection, including:
 - i) To identify and measure the relevant market risks, and define alert systems and early warning indicators.
 - ii) To create risk profiles for banks, including indicators and their input parameters.
 - iii) Those required for the satisfactory implementation of on-site inspections, and measures to improve their efficiency.

- iv) Early response mechanisms, to allow any improper conduct or non-compliance to be redressed in a timely manner.
- d Information sources and tools – in particular innovative regulatory and technological tools (e.g. Suptech and Big Data) –.
- e Provision of the resources and incentives required to perform the function. Specifically, the proper allocation of resources, the suitability of the profiles, expertise and skills, and recruitment and training strategies.
- f Both strands of the communication strategy. First, ex ante communication to the institutions to convey the principles, supervisory expectations and best practices that have been identified. Second, communication to the general public to draw attention to banking client protection-related proceedings and foster accountability.
- g Effectiveness of the supervisory measures, proposing KPIs as required to evaluate their impact.