

# **LAW OF AUTONOMY OF THE BANCO DE ESPAÑA**

**Law 13/1994, of 1 June**

**(Official State Gazette of 2 June)**

## **PREAMBLE**

The Treaty on European Union, which introduces wide-ranging changes in the European Community Treaty in order to transform it into an Economic and Monetary Union, requires that the Banco de España (hereafter "the Bank") be granted the autonomy envisaged in the Treaty for the monetary institutions that will eventually be integrated into the European System of Central Banks. Although pursuant to article 108.2 of the Treaty the granting of this autonomy might have been postponed until the establishment of the European System of Central Banks, it appeared to be congruent with the spirit of the Treaty, with the necessary effort by Member States to converge for the Treaty to take full effect, with the positions defended by Spain throughout the Inter-Governmental Conference where the Treaty was forged, and finally with Spain's attitude toward implementation of European Community legislation, to grant the Bank this autonomy at the beginning of the second stage of Economic and Monetary Union.

Autonomy for our central bank requires, in the first place, that the Treasury shall not run overdrafts on its account with the Bank even on a temporary basis, because this would deprive the Bank of its initiative in the process of money creation. In keeping with an additional precautionary provision of the EU Treaty, the Bank may not acquire directly from the Treasury any securities issued by it, although it may conduct operations in the public debt market. Autonomy also means that in the area of monetary policy, the Bank shall not take instructions from the government or the Economy and Finance Minister, enabling it to direct its policy toward its primary objective of maintaining price stability. Finally, autonomy requires that the Governor's term of office be relatively long and non-renewable, and that the reasons for a possible dismissal be strictly specified.

As a result of the foregoing, and in response in general to the conditions set out in the protocol under which the Statutes of the European System of Central Banks and of the European Central Bank was approved, the new design of the Bank is altered definitively from that established in the Legislative Decree on the Nationalisation of the Bank in 1962, which made it in all respects a direct arm of the government and maintained its traditional function of financing the government. The current legal text, in contrast, continues a trend begun in 1980 with Law 30/1980, of July 21, on the Governing Bodies of the Bank, which granted it a significant degree of instrumental autonomy and limited the possible causes for the dismissal of the Governor.

In defining the institutional role of the Bank within the Spanish administration and the precise scope of its autonomy, the new law balances the provisions of the Treaty on European Union with the mandates of our Constitution, and co-ordinates this equilibrium through various provisions. Article 7, for example, which defines the objectives towards which monetary policy should be directed, sets price stability as a priority objective, which is an essential, though admittedly not the sole, element of the «economic stability» referred to in article 40 of the Constitution. As long as it does not detract from this primary objective, monetary policy shall support the general economic policy of the government. In the light of article 97 of the Constitution, which gives the government responsibility for directing domestic and foreign policy, article 24 of the law assigns to the government the exclusive responsibility for appointing all members of the Bank's governing bodies. Article 20 authorises the Economy and Finance Minister and the Secretary of State for the Economy to attend the meetings of the Bank Council as they deem

necessary, and to submit motions to the Council as needed, thereby providing the government with an appropriate channel to expound its arguments even in areas in which the Bank can make independent decisions. Article 10 specifies the Bank's responsibility to report on monetary policy to Parliament and the government, so that these institutions can monitor and debate the monetary policy being pursued on a regular basis. The Bank may report to Parliament and the government on any obstacles that hinder monetary policy from achieving price stability, which will help permit an appropriate balance in overall economic policy-making. Finally, in areas other than monetary policy, including the supervision of credit institutions, the Bank shall be subject not only to relevant laws, but also to the regulations drafted by the government to implement such laws, with administrative acts and resolutions being subject to ordinary appeal to the Economy and Finance Minister. In sum, the law makes the Bank a special institution within the administration; it is subordinate to the government in general terms but nonetheless enjoys full autonomy in the area of monetary policy, so as better to defend the objective of price stability set out in the law itself.

Organisationally although the law respects the basic institutional structure created for the Bank under Law 30/1980 of July 21, on the Governing Bodies of the Bank -as demonstrated by the parallel between the General Council and the Executive Council which formerly governed the Bank and the new Governing Council and Executive Commission set out in the new law- it introduces some changes which are aimed at generally reinforcing the institution's autonomy. In this respect, the term of office of the Governor and Deputy Governor are extended to a single term of six years, and the reasons for their possible dismissal are strictly specified.

Although this law introduces significant changes in the areas mentioned above (i.e. steering of monetary policy and the status of the governing bodies of the Bank), there are no significant changes in the status of the other functions that current legislation assigns to the Bank. In particular, the Bank's supervisory functions over credit institutions will still be regulated by Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, and other applicable legislation. It should be kept in mind that under the terms of article 14.4 on the Statutes of the European System of Central Banks and the European Central Bank, national central banks may perform functions separate from monetary policy-making which do not interfere with this task, and these shall be subject to national legislation and shall not be considered part of the functions of the European System of Central Banks.

In conclusion, this law transposes to our legislation the provisions of the Treaty on European Union regarding monetary policy and the relationship between the Treasury and the central bank, and contributes in this way to laying the foundations for Spain successfully to join the future Economic and Monetary Union.

## **CHAPTER I**

### **NATURE AND LEGAL STATUS**

#### **Article 1. Nature and specific provisions (1)**

1. The Bank is an institution under public law with its own legal personality and full public and private legal capacity. It shall pursue its activities and fulfil its objectives with autonomy from the administration, carrying out its functions as specified in this law and other legislation.

2. The Bank shall be subject to private law except when it is exercising the administrative authority conferred on it by this and other laws. In the exercise of its administrative authority, Law 30/1992, of November 26, on the Legal Status of Public Administration and Common Administrative Proceedings,

shall be applicable to the Bank.

In any case, acts adopted by the Bank in the exercise of the functions referred to in article 7.6 and article 15.4 shall be considered of an administrative nature.

The Bank shall not be subject to the terms of Law 6/1997, of April 14, on the Organisation and Functioning of the Administration.

3. The Bank is an integral part of the European System of Central Banks ("ESCB") and shall be subject to the provisions of the Treaty of the European Community ("Treaty") and to the Statutes of the ESCB.

In the exercise of the functions arising from its status as an integral part of the ESCB, the Bank shall follow the guidelines and instructions emanating from the European Central Bank ("ECB") under the terms of the aforementioned provisions.

## **Article 2. Appeal System (2)**

1. The administrative acts adopted by the Bank in the exercise of the functions envisaged in section 1 and article 15 of chapter II of this law, as well as the sanctions, if any, that may be imposed as a result of the application of these provisions, shall end administrative proceedings.

2. The administrative acts adopted by the Bank in the exercise of other functions, as well as any sanctions it may impose, shall be subject to ordinary appeal to the Economy and Finance Ministry.

3. Without prejudice to the competence of the European Court of Justice, the «Sala de lo Contencioso-Administrativo» of the «Audiencia Nacional» shall have sole jurisdiction in the case of appeals filed against acts adopted by the Bank not subject to administrative appeal, as well as against decisions of the Minister of Economy and Finance on appeals filed against acts adopted by the Bank.

## **Article 3. Regulations adopted by the Bank (3)**

1. Without prejudice to the terms of article 1 .3, the Bank shall adopt the necessary regulations for the exercise of the functions envisaged in article 7.3 as described in section 1 and article 15 of chapter II of this law, which shall be called «Circulares monetarias».

In addition, to correctly fulfil its other responsibilities, it may adopt any regulations that it deems necessary to develop legislation for which it has been expressly empowered. These regulations shall be called «Circulares».

2. Both types of regulations shall be published in the «Boletín Oficial del Estado» and will enter into force as determined in the first point of article 2 of the Civil Code. Previously, the Bank should request any technical and legal reports needed from its internal services, and any other reports or advice that it deems necessary. The terms of article 24 of Law 50/1997, of November 27, will not be applicable, although in the case of the «Circulares» the affected parties should receive a hearing.

Any regulations adopted by the Bank may be appealed directly to the «Sala de lo Contencioso-administrativo» of the «Audiencia Nacional».

#### **Article 4. Economic and budgetary treatment (4)**

1. The rules governing the State budget, property and contracting shall not apply to the Bank unless otherwise specifically indicated.
2. The Bank's draft budget for operating expenses and investments, once approved by its Governing Council according to article 21 .1 .g), shall be forwarded to the government, which will submit it to Parliament for approval. The budget shall be prospective in nature, and shall not be consolidated with other State public sector budgets.
3. The government, upon proposal by the Economy and Finance Minister, shall have the authority to approve the annual balance sheet and accounts of the Bank, which will be sent to Parliament for informational purposes. Without prejudice to the terms of article 27 of the Statutes of the ESCB, the Bank shall be subject to external auditing by the «Tribunal de Cuentas», under the terms of Organic Law 2/1982, of May 12, on the Tribunal de Cuentas. The report accompanying the annual balance sheet and accounts shall give further detail on different operations or items on the balance sheet, according to their characteristics. In particular, the Bank's contributions to the Deposit Guarantee Funds shall be detailed, as will any loans or other operations transacted for the benefit of any other institution or person not on an arm's-length basis, or which in any other way involve loss of profit or losses for the Bank. In such cases the amount of such loss of profit or losses shall be specified.

#### **Article 5. Fiscal treatment**

The Bank shall receive the same fiscal treatment as the State.

#### **Article 6. Obligation of secrecy**

1. The members of its governing bodies and the personnel of the Bank shall keep secret, even after their duties have ceased any confidential information which they might receive in the exercise of their responsibilities. Any breach of this obligation shall be sanctioned according to internal Bank rules, in the case of Bank personnel, and under the terms of article 29, in the case of members of its governing bodies.
2. The secrecy obligation shall be without prejudice to the reporting requirements on monetary policy imposed on the Bank by article 10 of this law, and the terms of specific provisions which, in keeping with European Community directives on credit institutions, regulate the secrecy obligation of supervisory authorities.
3. Parliamentary access to information falling under the secrecy obligation must be channelled through the Governor of the Bank, under the conditions laid down in parliamentary regulations. To this end, the Governor may request that the appropriate parliamentary body hold a secret session or use the appropriate procedures for access to classified material.

#### **Article 6 bis. Banco de España Staff Regulations (5)**

Employment law shall govern the relations between the Banco de España and its members of staff.

Banco de España members of staff who may have access to confidential information shall report, in accordance with the applicable internal rule approved by the Executive Commission, securities market operations they carry out, whether directly or through an intermediary. This internal rule shall determine the restrictions applying to these members of staff concerning the purchase, sale or availability of these

securities, in addition to the reporting obligations and restrictions applying to financial operations carried out by these members of staff with entities subject to the Banco de España's supervision, whether by themselves or by an intermediary. Infringement of the provisions of this paragraph shall be subject to the sanctions laid down in the Banco de España's internal rules.

Data provided under these reporting obligations shall be kept for a maximum of five years.

## CHAPTER II

### OBJECTIVES AND FUNCTIONS

#### Article 7. General principles (6)

1. The Bank shall be responsible for exercising the functions assigned to it by this law and any other functions which it might be assigned by other laws.

2. Without prejudice to its main objective of maintaining price stability and fulfilling its duties as a member of the ESCB in accordance with the terms of article 105.1 of the Treaty, the Bank shall support the general economic policy of the government.

3. The Bank shall participate in the fulfilment of the following basic functions attributed to the ESCB:

a. To define and implement the monetary policy of the Community.

b. To conduct foreign exchange operations that are consistent with the provisions of article 109 of the Treaty (7).

c. To hold and manage the official foreign exchange reserves of the Member States. Nonetheless, the government may hold and manage foreign exchange working balances, in keeping with the terms of article 105.3 of the Treaty.

d. To promote the smooth functioning of the payment system.

e. To issue legal-tender banknotes.

f. All other functions deriving from its status as an integral part of the ESCB.

4. Without prejudice to the terms of article 1 .3, in carrying out the functions envisaged in point three of this article, specified in sections 1, 2 and 4 of chapter II, but in these latter cases only when it addresses matters resulting from the functions of the ESCB, neither the government nor any other national or Community body shall give instructions to the Bank, and nor may the latter request or accept them.

5. Observing the provisions of point 2 of this article, the Bank shall, moreover, perform the following functions:

a. Hold and manage foreign-currency and precious metal reserves not transferred to the ECB.

b. Promote the smooth operation and the stability of the financial system and, without prejudice to the

terms of 3.d) above, of national payment systems.

c. Place coins in circulation and carry out, on behalf of the State, any other functions related to metallic currency which might be assigned to it.

d. Act as treasurer and financial agent for Public Debt, as stipulated in section 3.

e. . Advise the government, and prepare any reports and studies deemed necessary.

f. Compile and publish statistics related to its functions and assist the ECB in the compilation of the statistical information needed for the fulfilment of the ESCB's functions.

g. Carry out any other responsibilities which it is assigned by law.

6. The Bank shall supervise, in accordance with existing regulations, the solvency activities and compliance with specific regulations of credit institutions, and any other financial institution or market it has been called on to oversee, without prejudice to the prudential supervision of Comunidades Autónomas<sup>\*\*\*\*\*</sup> in their areas of responsibility, and the co-operation between these Comunidades Autónomas and the Bank in performing such regional supervisory tasks.

7. The Bank may engage in the necessary operations to correctly perform its functions, and those needed for administrative purposes and its staff.

8. The Bank may establish relationships with other central banks, with financial supervisory authorities and financial institutions in other countries, and with international monetary and financial organisations.

It may also establish relationships with public financial institutions and regional financial supervisory authorities.

## **SECTION 1.**

### **MONETARY POLICY**

#### **Article 8. Opening of accounts for institutions (8)**

In order to conduct its operations, the Bank may open accounts for credit institutions, public entities and other market participants, and accept assets as collateral.

#### **Article 9. Implementation of monetary policy (9)**

1. To achieve the objectives of the ESCB and carry out its functions, the Bank may conduct all types of financial operations, complying with the general principles and instruments established by the ESCB, and in particular the following:

a. Operate in financial markets, buying and selling outright (spot and forward) or under repurchase agreements; lend or borrow securities and other financial instruments denominated in any currency or unit of account, as well as precious metals.

b. Conduct credit operations with credit institutions and other market participants, ensuring such operations are based on adequate collateral.

2. The immobilised funds arising from the establishment of minimum reserves imposed pursuant to the provisions laid down in accordance with the ESCB Statutes may be held at the Bank.

#### **Article 10. Information and accountability in the area of monetary policy (10)**

1. The Bank shall regularly inform Parliament and the government of the objectives and the implementation of monetary policy, without prejudice to the terms of article 107 of the Treaty **(11)** and the ECB rules on professional secrecy.

To this end, the Governor of the Bank may be asked to appear, in accordance with Parliamentary regulations, before any Congress or Senate committee or joint committee of both chambers, or be asked to attend for this purpose cabinet meetings or meetings of its Commission for Economic Affairs.

2. In addition, the Governor of the Bank may be asked to attend the meetings of the «Consejo de Política Fiscal y Financiera de las Comunidades Autónomas» referred to in article 3 of Organic Law 8/1980, of September 22, on Financing of Comunidades Autónomas and to report on issues within the scope of the Bank's authority, with a view to facilitating the tasks of financial coordination of the above-mentioned Consejo.

### **SECTION 2.**

#### **EXTERNAL OPERATIONS (12)**

##### **Article 11. Exchange-rate policy (13)**

Without prejudice to the competence of the European Community, the government shall consult with the Bank on matters relating to exchange-rate policy.

##### **Article 12. Conduct of external operations (14)**

Without prejudice to the terms of article 1 .3, the Bank may carry out any operations that it deems suitable, and in particular the following:

- a. Hold, manage, acquire and sell spot and forward all types of assets denominated in foreign currencies or units of account, as well as precious metals.
- b. Carry out any type of banking transaction with domestic or foreign institutions or with international organisations, including operations of granting and obtaining loans.

### **SECTION 3.**

#### **CASH MANAGEMENT AND PUBLIC DEBT SERVICES**

##### **Article 13. Cash management services**

1. Under the terms agreed with the Treasury and with the Comunidades Autónomas that so request it, the Bank may provide cash management services, holding and maintaining necessary accounts in pesetas or in foreign currencies, receiving income and making payments on their behalf and, in

general, engaging in any other banking activity, both domestically and abroad, with the exceptions mentioned in the following number of this article.

2. Overdraft facilities or the granting of any other type of credit by the Bank to the central government, Comunidades Autónomas, local authorities or any other of the authorities or entities referred to in article 104 of the Treaty creating the European Community **(15)** -as amended by the Treaty on European Union of February 7, 1992- are prohibited. The exceptions to the above are as follows:

a. Public credit institutions, which may receive liquidity from the Bank on the same terms as other credit institutions, and Deposit Guarantee Funds in credit institutions, when relevant.

b. Financing by the Bank of obligations incurred by the government with the International Monetary Fund, or arising from the implementation of the medium-term financial assistance facility of the European Community.

In any case, Spain's contribution to the International Monetary Fund, and the liabilities of the Bank to the Fund, shall be included on the balance sheet of the Bank as assets or liabilities, as the case might be, vis-à-vis the International Monetary Fund. The government shall be responsible for exercising Spain's voting rights with the Fund.

3. Under the terms agreed with the Treasury and, as relevant, with the Comunidades Autónomas, the Bank shall remunerate the liquid balances deposited with it.

#### **Article 14. Public debt service functions**

1. Under the terms agreed with the Treasury and with the Comunidades Autónomas that so request it, the Bank shall provide public debt service functions, offering its technical expertise to facilitate issuance procedures, repayment and, in general, management of this debt. In any case, the prohibition contained in article 13.2 shall be observed.

2. The Bank may not directly acquire from issuers any type of public debt. It may only acquire it in markets, in the exercise of the functions assigned to it.

3. The Bank may:

a. Serve as accounts holder and managing entity for the public debt market.

b. Open, under the terms agreed with the issuer, securities accounts where public debt may be registered for direct subscribers.

### **SECTION 4.**

#### **MEANS OF PAYMENT AND PAYMENT SYSTEMS**

##### **Article 15. Issue of banknotes (16)**

1. The Bank shall, with the prior authorisation of the ECB, have the exclusive right to issue peseta banknotes which, without prejudice to the legal system applicable to coins, shall be the only valid means of payment within Spanish territory and must be accepted fully and without restriction, as long as euro banknotes have not been issued by the ESCB.

2. The Bank shall decide upon the denominations and characteristics of peseta banknotes, which will be published in the «Boletín Oficial del Estado».

3. .... (17)

4. Any advertising which uses in full or in part banknotes or coins which are or have been legal tender, or their facsimile reproductions, must be previously authorised in each case by the Bank under the conditions and the requirements set out in current regulations.

No authorisation shall be required for the government and the institutions under public law that depend on the government.

The Bank may, in accordance with established sanctioning procedures applicable to persons acting in the financial markets, impose fines of up to 100 million pesetas on physical or legal persons or their administrators who advertise without the proper authorisation or who violate the conditions specified in such authorisation.

#### **Article 16. Payment systems (18)**

1. To promote the sound functioning of payment systems, and in the exercise of its functions as a member of the European System of Central Banks, the Banco de España shall, by means of a Circular, regulate payment clearing and settlement systems. In particular, it may implement or complement the legal acts prescribed by the European Central Bank and include the recommendations of international bodies that constitute principles applicable to the security and efficiency of payment systems and instruments. Where appropriate, it may also manage the related payment clearing and settlement systems.

2. The Banco de España shall oversee the functioning of clearing and payment systems. To that end, it may seek to obtain whatsoever information and documents it deems necessary to assess the efficiency and security of payment systems and instruments both from the payment-system managing entity and from the suppliers of payment services, including those entities providing technological services for such systems and services.

3. Failure to comply with the rules laid down by the Banco de España in point 1 of this article and with the reporting obligation in point 2 of this article, by the entities referred to in said point 2, once the period determined by the Banco de España to amend this situation has elapsed, will constitute an infringement for the purposes of the provisions of article 5.f), of article 4.i), if the failure to report information hampers assessment of the risks inherent in payment systems and instruments, and of article 5.i), respectively, of Law 26/1988 of 28 July 1988 on the Discipline and Intervention of Credit Institutions.

The references in the aforementioned Law to credit institutions shall be understood to be to the institutions referred to in point 2 of this article.

4. For reasons of prudence, the Banco de España may suspend application of the decisions adopted by a payment-system managing entity and take the steps it deems appropriate if it considers that

such decisions violate the rules in force or are detrimental to the proper development of clearing and settlement processes.

### **CHAPTER III**

#### **GOVERNING BODIES**

##### **Article 17. Governing bodies**

The governing bodies of the Bank shall be:

- a. The Governor.
- b. The Deputy Governor.
- c. The Governing Council.
- d. The Executive Commission.

##### **Article 18. Powers of the Governor (19)**

The Governor of the Bank shall be empowered to:

- a. Manage the Bank and preside over the Governing Council and the Executive Commission.
- b. Act as legal representative of the Bank whenever necessary and especially in Courts of Justice, as well as authorising contracts and documents and carrying out all other activities necessary in the pursuit of the functions assigned to the Bank.
- c. Represent the Bank in the international institutions and organisations in which its participation may be envisaged.
- d. Sit on the Governing Council and the General Council of the European Central Bank.

##### **Article 19. Powers of the Deputy Governor**

The Deputy Governor shall substitute for the Governor when the post becomes vacant or in the event of absence or illness, in performing managing or representative functions for the Bank. In addition, the Deputy Governor shall have the powers assigned to him by internal Bank rules and delegated to him by the Governor.

##### **Article 20. Composition of the Governing Council**

1. The Governing Council shall be composed of:
  - a. The Governor.

- b. The Deputy Governor.
  - c. Six elected Council members.
  - d. The Director-General of the Treasury and Financial Policy.
  - e. The Vice-president of the National Securities Market Commission.
2. The Directors-General of the Bank shall attend Council meetings in a participatory but nonvoting capacity.
- A representative of the Bank's personnel, chosen as specified in internal rules, shall also attend the meetings in a participatory but non-voting capacity.
3. The Director-General of the Treasury and Financial Policy and the Vice-president of the National Securities Market Commission shall not be permitted to vote when the Council makes decisions on issues related to the matters regulated under section 1 and under sections 2 and 4 of chapter II of this Law, but in the case of the latter two sections only when decisions are made on issues arising from the functions of the ESCB **(20)**.
4. The Economy and Finance Minister or the Secretary of State for Economy may attend the meetings of the Council, as participating but non-voting members, when they consider it necessary in the light of the importance of the matters under consideration. They may also submit a motion for consideration by the Governing Council.
5. The Governing Council's Secretary shall be the Secretary of the Bank, who will attend in a participatory but non-voting capacity.

#### **Article 21. Powers of the Governing Council (21)**

1. The Governing Council shall:
- a. Approve general guidelines for Bank action to fulfil its assigned functions.
  - b. Observing the guidelines and instructions of the ECB, and the Governor's independence and obligation of secrecy as a member of the governing bodies of the ECB, it shall debate the issues relating to monetary policy and shall supervise the Bank's contribution to the implementation of the ESCB's monetary policy carried out by the Executive Commission.
  - c. Approve, at the proposal of the Executive Commission, the annual report of the Bank and, as relevant, any other reports which the Bank must submit to Parliament, to the government or to the Economy and Finance Minister.
  - d. Approve the Bank's «Circulares monetarias» and «Circulares».
  - e. Submit to the government the separation proposals referred to in letter d) of number 4 of article 25.

In these decisions, the member of the Council to which the proposal of separation refers will have no vote.

- f. Approve the internal rules of the Bank at the proposal of the Executive Commission.
- g. Approve proposed Bank budgets and formulate its annual accounts and the proposal for distribution of profits.
- h. Approve guidelines on personnel policy and ratify the appointment of Directors-General.
- i. Impose sanctions whose adoption is the responsibility of the Bank.
- j. Approve proposals for sanctions which the Bank must submit to the Minister of Economy and Finance.
- k. Settle appeals to or claims filed against Bank resolutions when the authority to do so corresponds to the latter.
- l. Adopt any other necessary agreements to carry out the functions entrusted to the Bank under this law which are not the exclusive responsibility of the Executive Commission, with the power of delegating to the Governor, the Deputy Governor, or the Executive Commission the responsibilities or tasks that it deems appropriate. It shall determine explicitly in which cases subdelegation is possible.

2. The presidency of the Governing Council shall be held in this order:

1° By the Governor.

2° By the Deputy Governor.

3° By the oldest elected Council member.

3. The Governing Council shall meet at least ten times a year, and whenever convened by the Governor.

The Governor of the Bank, as President of the Council, shall call meetings and set the agenda.

The members of the Governing Council may request a meeting, which should be held whenever the request is made by at least two members. The request shall specify the agenda for the special meeting.

4. The Governing Council shall have a valid quorum when at least five of its members, not counting ex-officio members, and the Secretary are present. Decisions shall be made by majority voting and in case of a tie, the President shall have the casting vote.

## **Article 22. Composition of the Executive Commission**

1. The Executive Commission shall be made up of:

a. The Governor, who shall act as President.

b. The Deputy Governor.

c. Two elected Council members.

2. The Directors-General of the Bank shall attend the meetings in a participatory but non-voting capacity.

3. The Secretary of the Bank will be Secretary, attending in a participatory but non-voting capacity.

### **Article 23. Powers of the Executive Commission (22)**

1. The Executive Commission shall be responsible for the following, subject to the guidelines of the Governing Council:

a. To contribute to the implementation of the monetary policy formulated by the ESCB in accordance with the terms of article 21.1 b).

b. To decide upon the administrative authorisations to be granted by the Bank.

c. To organise the Bank and appoint Directors-General and personnel, fixing their salaries in line with internal rules and the general guidelines approved by the Governing Council. The Council will in all cases ratify appointments of Directors-General.

d. Submit to the Governing Council the proposals which the Council is responsible for resolving or approving.

e. Carry out the tasks expressly delegated to it by the Governing Council.

f. Formulate necessary recommendations and requirements for credit institutions and, with regard to the latter, their Board of Directors and management, agree to initiate sanctioning procedures and intervention measures, replace Directors, or take any other precautionary measures set out in legal regulations and entrusted to the Bank.

Any precautionary measures taken by the Executive Commission in the fulfilment of its responsibilities will be immediately reported to the Governing Council.

g. Administer the Bank in the area of private law and manage its assets.

h. Agree on any other operations or transactions which the Bank must perform to carry out its responsibilities, delegating these to the commissions or individuals that it deems appropriate.

2. Meetings of the Executive Commission shall be called by the Governor on his own initiative or upon the request of two of its members.

Agreements shall be taken by majority vote. In the event of a tie, the President shall have the casting vote.

### **Article 24. Appointment of governing bodies**

1. The Governor of the Bank shall be appointed by the King following a proposal by the President of

the government. Nominees shall be Spanish and will have recognised competence in monetary or banking matters.

Prior to the appointment of the Governor, the Economy and Finance Minister shall appear before the relevant parliamentary committee under the terms envisaged in article 203 of the Spanish Parliamentary Internal Regulations, to report on the proposed candidate.

2. The Deputy Governor shall be appointed by the government following a proposal by the Governor and must meet the same conditions as the Governor.

3. The six elected Council members shall be appointed by the government following a proposal by the Economy and Finance Minister, after consultation with the Governor of the Bank. They must be Spanish and have recognised competence in the area of economy or law.

4. The two elected members of the Executive Commission shall be appointed by the Governing Council, following a proposal by the Governor, from the Council's elected members.

#### **Article 25. Renewal and dismissal of governing bodies**

1. The terms of office of the Governor and the Deputy Governor will be simultaneous, for a period of six years, and non-renewable for the same position.

2. Elected Council members will serve a six-year term and may be reappointed once **(23)**.

3. Elected Council members appointed to the Executive Commission will serve the period that remains in their ordinary term of office as elected Council members.

4. The Governor, the Deputy Governor and elected Council members shall leave office for the following reasons:

a. Expiration of their terms of office.

b. Resignation, which will take effect once the government is notified or, in the case of a member of the Executive Commission, when the Governing Council is notified.

c. Reaching seventy years of age.

d. Dismissal decided by the government, due to permanent incapacity to perform their functions, serious lack of compliance with their obligations, incompatibility that may have arisen during the term of office, or prosecution for deliberate crimes. In these cases, the order opening the oral hearing in the proceeding referred to in Title III of book IV of the Law of Criminal Justice shall be deemed to be equivalent to the bill of indictment. With the exception of cases of prosecution for deliberate crimes, the separation decision shall be adopted following a proposal by the Bank's Governing Council, after a hearing with the individual in question.

5. In cases where any of the officials mentioned in this article are dismissed, the replacement shall serve the ordinary term of office corresponding to the position concerned **(24)**.

## **Article 26. Incompatibilities**

1. The Governor and the Deputy Governor shall be subject to the system of incompatibilities applicable to senior officials. Their posts shall also be incompatible with the exercise of any public or private profession or activity, unless these are inherent to their status or are imposed as part of their role as representatives of the Bank.

Once their term of office ends, over the next two years they may not engage in any professional activity linked to credit institutions or securities markets. During this period, they shall be entitled to a monthly economic compensation equivalent to 80% of the total salary assigned to that post during the indicated period. This compensation may not be received if the individual holds a paying job, post or activity in the public or private sector, except for teaching, or when the dismissal has occurred due to a separation decided by the government.

2. Elected Council members may not be involved in professional activities linked to credit institutions of any type, to securities markets or to private financial institutions during their terms in office. Serving on the Bank Council is compatible with teaching and research activities **(25)**.

## **Article 27. System of remuneration**

Remuneration and other employment conditions for the Governor, the Deputy Governor and the elected Council members shall be set by the Economy and Finance Minister, following a proposal by the Bank's Governing Council.

The Parliament shall be informed of these remuneration and employment conditions.

## **Article 28. Limitations applicable to members of the Governing Council**

1. Members of the Governing Council shall refrain from acquiring or owning goods or rights and from engaging in any activities that might compromise their independence and impartiality in the exercise of their responsibilities, cause conflicts of interest, or permit them to use privileged information.

In particular, they must contractually entrust to a financial institution registered with the National Securities Market Commission the administration of any tradable securities or financial assets of which they, their non-separated spouses or dependent children are owners. The said institution shall administer these assets subject only to the general indications of profitability and risk established in the contract, and may not request nor receive investment instructions from the interested parties. It may not inform the parties of the composition of their investments, except in the case of mutual funds or when, for a justified cause, authorisation by the National Securities Market Commission may have been granted. Without prejudice to the responsibility of the interested parties, failure of the said institution to comply with these requirements shall be considered a very serious offence under the system of sanctions applicable to it as a financial institution.

2. In the three months following their taking of office and the end of their terms, and on an annual basis, the members of the Governing Council must file a statement on their activities and their net worth situation, and those of their non-separated spouses and their dependent children. The statement shall be submitted to the Ministry of Public Administration, which may verify the information included and determine whether the interests revealed in the statement infringe the conditions set out in the previous paragraph.

The statement shall be inscribed in the «Registro de Intereses de Altos Cargos».

## **Article 29. Sanctioning proceedings**

Without prejudice to the terms of criminal law and article 25.4 d) of this law, violation by members of the governing bodies of the Bank of the obligation of secrecy set out in article 6, the rules on incompatibilities set out in article 26, and the limitations set out in article 28, shall be punished with fines of up to fifty million pesetas. The sanction shall be commensurate with the nature and the scale of the offence, the gravity of the risks caused or damage done, the spontaneous conduct of the offender to remedy it, and the earnings obtained as a result of the offence.

The government shall be responsible for imposing the above-mentioned sanction following an administrative enquiry conducted by the Ministry for Public Administration, which shall be subject to the rules on the sanctioning procedure applicable to civil servants. In all cases the proceedings shall be initiated following a proposal or a favourable report from the Bank's Governing Council.

## **Article 30. System applicable to the Secretary and Directors-General**

The terms of article 6, 26.2, 28 and 29 shall also apply to the Secretary and Directors-General of the Bank, and to the personnel representative referred to in article 20.2. In the absence of other specific provisions, the penalty system set out for Bank personnel in internal rules will apply for all of them.

### **FIRST ADDITIONAL PROVISION**

1. Letter g) of article 5 of Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, is amended to read as follows **(26)**:

«g) Failure to comply with existing provisions on legal reserve requirements and other requirements arising from monetary control procedures.»

2. A new section n) is added to article 4 of Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, which reads as follows **(27)**:

«n) The infractions described in article 5.g) on required provisions relating to the legal reserve requirement and requirements arising from monetary control procedures, when in the five years prior to the offence unconditional sanction has been applied to the credit institution for the same type of infraction .»

3. Letter c) of article 18 of Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, shall read as follows **(28)**:

«c) The imposition of penalties for very serious offences shall be the responsibility of the Economy and Finance minister on the proposal of the Bank, except in situations such as those described in letter n) of article 4, in which they shall be imposed by the Bank, and in cases where authorisation is withdrawn, in which case it shall be imposed by the Council of Ministers.»

### **SECOND ADDITIONAL PROVISION**

Any mention made by existing legislation to the General Council and the Executive Council of the Bank shall be understood to refer, respectively, to the Governing Council and the Executive Commission.

### **THIRD ADDITIONAL PROVISION (29)**

The first paragraph of article 4 of Law 10/1975, of March 12, on Regulation of Coinage, shall read as follows:

«Within the annual limit which may be indicated by the Bank, the Ministry of Economy and Finance shall decide on the coinage of metallic currency and, in particular:...»

### **FOURTH ADDITIONAL PROVISION (30)**

The following changes shall be introduced to the adapted text of the General Budget Law, approved by Royal Legislative Decree 1.091/1988, of September 23:

Letter e) of article 8 shall read as follows:

«e) Determine the guidelines of the State's economic and financial policy.»

Letter g) of article 9 shall read as follows:

«g) Direct the implementation of the financial policy approved by the government and lay down the necessary provisions to that end.»

### **FIFTH ADDITIONAL PROVISION (31)**

Article 1 of Law 24/1984, of June 29, on Legal Interest Rate for Money, shall read as follows:

«The legal interest rate for money shall be determined in the State Budget Law.»

### **SIXTH ADDITIONAL PROVISION (32)**

Legal rules applicable to collateral security provided to the Banco de España, the European Central Bank and other National Central Banks of the European Union, in the performance of their tasks.

1. For the purposes of this provision, collateral security shall be deemed to be any realisable asset, including cash, provided under a deposit, pledge, sell and buy-back transaction, repurchase agreement, charge, lien or other legal transaction, for the purpose of securing rights and obligations arising under any current or future transaction entered into with the Banco de España, the European Central Bank or any other National Central Bank of the European Union.

2. The following rules shall apply to such collateral security:

a) The full validity and effectiveness of collateral security against third parties shall not require the intervention of a notary public in its constitution nor any other formal requirement, except that there shall be a written record thereof and it shall be entered in the relevant register by the entity responsible for the same. In the case of securities represented by physical certificates, these shall also be delivered to the beneficiary of the collateral or to a mutually agreed third party.

The execution of the related principal obligation shall not require for its full validity and effectiveness against third parties the intervention of a notary public or any other formality. The execution of sell and buy-back agreements and repurchase agreements shall be governed by the specific law applicable

thereto.

b) For enforcement, the certification provided by the Banco de España, the European Central Bank or the relevant European Union national central bank crediting the net enforceable amounts due transferred, together with the order to dispose or transfer free of charge of the underlying assets, in accordance with this paragraph.

This certification shall declare that the settlement took place in accordance with the agreement, pact or rule giving rise to the debt in question.

When the underlying assets are negotiable in an organised market, the relevant governing organisation shall transfer them. In the other cases, they shall take place by way of a tender procedure organised by the Banco de España.

Notwithstanding the preceding paragraph, the transfer may take place by way of an appropriation by the Banco de España, the European Central Bank or the European Union national central bank relevant to the underlying asset and set off or applying it in discharge of the guaranteed obligations if (i) the entity providing the underlying assets and the Banco de España, the European Central Bank or the relevant European Union national central bank have so agreed and (ii) the parties have agreed a valuation method for the underlying assets.

In any event, the surplus resulting once the debt in question has been paid shall be returned to the entity that has provided the abovementioned underlying assets.

For repos and sell-buy-back transactions, in the event of non compliance by any part of the transaction, Royal Decree-Law 5/2005 of 11 March on urgent reforms to stimulate productivity and to improve public procurement shall apply **.(33)**

c) When the collateral security consists of pledged cash deposits, the depositary of the cash shall record in the relevant account the pledged balance, when it has evidence of the consent of the holder of such account and of the entity to whom the security is provided.

Pledges created in accordance with the provisions of this paragraph shall be fully valid and effective against third parties from the date of the recording referred to in the first paragraph of this sub-paragraph c), without the need for any other formality. Such pledges shall be enforced by means of netting, the surplus funds, if any, remaining at the disposal of the account holder, when the debt has been paid.

From the recording referred to in the first paragraph of this sub-paragraph c), any amounts paid into the account whose balance is pledged shall, by the mere fact of being paid in, be irrevocably pledged, without any limitation whatsoever, as collateral security for the full performance of the secured obligations. Likewise, from the time the pledge is recorded, the account holder shall not be able to withdraw the funds deposited therein, without the prior consent of the beneficiary of the collateral security.

d) Cash and securities that are collateral security may be applied to settle secured obligations, even when insolvency or administrative winding-up proceedings have been commenced. Such collateral security may be enforced separately, immediately, in the manner agreed by the parties, or in accordance with this additional provision.

The collateral security shall not be limited, restricted or affected in any way by the insolvency or administrative winding-up of the other party.

In particular, the provision, acceptance or enforcement of the collateral security to which this additional provision refers, the balance of the accounts or registers in which it is recorded and the formalisation of the secured obligations may not be challenged in the event of actions for restitution linked to insolvency or administrative winding-up proceedings. **(34)**

e) The date of provision of the collateral security according to the relevant register, and the balance and date that appear in the certificate issued by the Banco de España, the European Central Bank or the other national central banks of the European Union, referred to in paragraph b), shall constitute proof of such facts against the entity itself and third parties.

Collateral security provided in accordance with the rules of this provision shall not be subject to any attachment, distraint, encumbrance, or to any other restriction or lien of any kind whether legal or contractual, from the time of its provision. **(35)**

3. The parties may agree that in the event of changes in the price of the assets that make up the collateral, new assets shall have to be provided, including cash, to restore the balance between the value of the secured obligation and the value of the collateral provided as security therefore. Any such new assets shall be considered an integral part of the collateral security and all the terms of this provision shall be applicable thereto.

4. Non-mortgage loans or credit provided as collateral security to the Banco de España, the European Central Bank, or other National Central Banks of the European Union, to secure the performance of present or future obligations incurred under transactions entered into in the performance of their tasks, shall be governed by, in addition to the provisions of paragraph one, of sub-paragraphs a), b) and d) of paragraph two and of paragraph three of this provision, the following rules:

a) Loans and credits may be pledged whatever the formal or material requirements that may have been agreed by the parties with regard to their assignment or encumbrance. The pledges shall relate solely, unless otherwise agreed, to the creditor's rights under the relevant contract. In no event shall the beneficiary of the collateral security assume the obligation to make funds available to the borrowers.

b) Such pledges may be executed using an official form approved for the purpose by the Banco de España, and shall be fully effective vis-à-vis third parties from their entry in the register established for such purpose by the Banco de España. The documents so registered shall be sufficient title for their enforcement. Where the original document of the pledged loan or credit is not delivered to the beneficiary of the collateral, reference to such registration shall be inserted therein. **(36)**

c) The income accruing on pledged loans or credits shall, unless otherwise agreed, correspond to the credit institution providing the collateral security.

d) In the event of breach of the secured obligations, the beneficiary of the collateral security shall acquire full title to the creditor's right over the pledged portion of the loan or credit. However, the collateral may also be realised by means of an auction organised by the Banco de España, in accordance with such procedure as the latter may establish."

5. Any agreements the Banco de España may execute in the exercise of its functions may provide for their termination or cancellation in the event of insolvency or administrative winding-up. Also, in such cases of insolvency or administrative winding-up, the transactions secured in accordance with the terms of this provision shall be deemed to be public law claims for the purposes of the application of

article 91 .4 of Insolvency Law 22/2003 of 9 July 2003, insofar as they cannot be paid out of the collateral security provided. **(37)**

#### **SEVENTH ADDITIONAL PROVISION (38)**

1. No court or administrative authority may issue an attachment order or process an execution order against goods and property rights belonging, possessed or managed by the Banco de España, when they are physically subject to the exercise of public functions or the exercise of administrative powers.

The same rules shall apply to the goods and property rights belonging, possessed or managed by foreign states or central banks in which foreign reserves are invested, and to those belonging, possessed or managed by the Bank for International Settlements.

2. Express waiver of the prerogative contained in the previous paragraph, whether made before or after the commencement of the judicial or administrative procedure in question, shall be valid.

3. The above rules shall apply in the absence of international treaties or agreements to which Spain is a party referring to the same persons and matters to which this additional provision refers.

#### **FIRST TRANSITORY PROVISION**

The Governing Council and the Executive Commission shall be created under the terms of this law within a period of two months from the time it enters into force. At that moment, any governing bodies in operation up to that time shall be replaced, and the terms of office of current council members shall end.

#### **SECOND TRANSITORY PROVISION**

Until the agreements mentioned in article 13.1 and 14.1 are approved, the Bank, without prejudice of the terms of article 13.2, shall continue providing to the Treasury and, as relevant, to Comunidades Autónomas, cash management and public debt services as described in current provisions.

#### **THIRD TRANSITORY PROVISION**

Until such time as they are replaced, the provisions drafted to implement Law 26/1983, of December 26, on Legal Reserve Requirements for Financial Intermediaries shall remain in effect.

#### **REPEALING PROVISION**

1. Law 30/1 980, of June 21, on Governing Bodies of the Bank, Law 26/1 983, of December 26, on Legal Reserve Requirements for Financial Intermediaries, the first paragraph of the eighth additional provision of Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, and any other provision that contradicts the content of this law, are repealed.

2. Once this law enters into force, the General Regulation of the Bank of March 23, 1948 and its Statutes of July 24, 1947, will be repealed whenever they might be still in force.

#### **FIRST FINAL PROVISION**

This law shall enter into force on the day following its publication in the «Boletín Oficial del Estado».

**SECOND FINAL PROVISION (39)**

Repealed.

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- (1) Article 1 amended by Law 12/1998, of April 28 (article 1 .1).
  - (2) Article 2 amended by Law 12/1998, of April 28 (article 1 .2).
  - (3) Article 3 amended by Law 12/1998, of April 28 (article 1.3).
  - (4) Article 4 amended by Law 12/1998, of April 28 (article 1.4).
  - (5) Incorporated by Law 62/2003, of 30 December (article 63).
  - (6) Article 7 amended by Law 12/1998, of April 28 (article 2.1).
  - (7) Current Article 219 of the Treaty on the Functioning of the European Union.
  - (8) Article 8 amended by Law 12/1998, of April 28 (article 2.2).
  - (9) Article 9 amended by Law 12/1998, of April 28 (article 2.3).
  - (10) Article 10 amended by Law 12/1998, of April 28 (article 2.4).
  - (11) Current Article 130 of the Treaty on the Functioning of the European Union.
  - (12) Section 2 amended by Law 12/1998, of April 28 (article 2.5).
  - (13) Article 11 amended by Law 12/1998, of April 28 (article 2.6).
  - (14) Article 12 amended by Law 12/1998, of April 28 (article 2.7).
  - (15) Current Article 123 of the Treaty on the Functioning of the European Union.
  - (16) Article 15 amended by Law 12/1998, of April 28 (article 2.8).
  - (17) Article 15.3 repealed by Law 24/2001, of December 27 (repealing provision).
  - (18) Article 16 amended by Law 2/2004, Of December 27 (fortieth additional provision).
  - (19) Article 18 amended by Law 12/1998, of April 28 (article 3.1).
  - (20) Article 20.3 amended by Law 66/1 997, of December 30 (twenty-fourth additional provision.1).
  - (21) Article 21 amended by Law 12/1998, of April 28 (article 3.2).
  - (22) Article 23 amended by Law 12/1998, of April 28 (article 3.3).
  - (23) Article 25.2 amended by Law 66/1 997, of December 30 (twenty-fourth additional provision.1).

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**(24)** Article 25.5 amended by Law 66/1 997, of December 30 (twenty-fourth additional provision.1 .c).

**(25)** Article 26.2 amended by Law 12/1998, of April 28 (article 3.4).

**(26)** This first additional provision.1, whose text is included, has been repealed by Law 12/1 998, of April 28 (repealing provision 1.).

**(27)** This first additional provision. 2, whose text is included, has been enacted again by Law 36/2007, of November 16.

**(28)** This first additional provision.3, whose text is included, may be understood as repealed by Law 12/1998, of April 28 (first final provision).

**(29)** This third additional provision, whose text is included, may be understood as tacitly repealed by Law 12/1998, of April 28 (single additional provision), since this has entailed new wording for the first paragraph of article 4 of Law 10/1975, of March 12.

**(30)** Please note that Royal Decree-Law 1091/1988, of September 23, was repealed by Law 47/2003, of November 26, single repealing provision.

**(31)** Please note that Law 65/1 997, of December 30, has added a second paragraph to the article 1 of the Law 24/1984, of June 29.

**(32)** Incorporated by Law 44/2002, of 22 November.

**(33)** Sixth additional provision, paragraph 2, letter b) amended by Law 26/2009, of December 23.

**(34)** Sixth additional provision, paragraph 2, letter d) amended by Royal Decree-Law 5/2005, of March 11.

**(35)** Sixth additional provision, paragraph 2, letter e) incorporated by Royal Decree-Law 5/2005, of March 11.

**(36)** Sixth additional provision, paragraph 4, letter b) amended by Royal Decree-Law 5/2005, of March 11.

**(37)** Sixth additional provision, paragraph 5 incorporated by Royal Decree-Law 5/2005, of March 11.

**(38)** Seventh additional provision incorporated by Law 22/2005, of November 18.

**(39)** The second final provision has been repealed by Law 66/1997, of December 30 (twenty-fourth additional provision 1 .d).