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Closing address. National Conference on Banking Law

ICAM

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Good morning,

This closing address happens to coincide with two events related to financial dispute resolution mechanisms in the financial sphere. I initially intended to refer to just one of them: the 35th anniversary of the launch of the Complaints Service of the Banco de España. However, I will also touch on the preliminary draft legislation for the creation of an Independent Administrative Authority for the Protection of Financial Customers, in light of the recently launched public consultation.

The importance of bank conduct

As you well know, the financial sector is subject to strict regulations, warranted by the important role that financial institutions play in monetary intermediation. Banks take deposits from the general public, keep them in their custody and, along with other financial actors, provide the necessary credit for the smooth functioning of the economic system. They also manage payment services and the circulation of cash.

Sector regulation – and the corresponding supervision by the public authorities – guarantees stability and is founded on two main pillars. First, prudential requirements, which seek to ensure the solvency of financial institutions by imposing minimum levels of own funds linked to the risks assumed.

Second, the proper protection of financial customers, by means of comprehensive regulation of the customer-bank relationship. The fluidity and transparency of this relationship, along with upholding the requisite public trust, are key for the functioning of the financial services market, and indeed for banks' very survival. As such, they deserve priority attention from supervisors and, naturally, the Banco de España. When we speak about bank conduct, it is this pillar to which we refer.

Indeed, the banking industry is built on the trust that customers place in banks and that these generate between themselves. The result is a system whose functioning relies heavily on an intangible asset: proper conduct. We should be mindful, here, that banks should not limit themselves to mere regulatory compliance, but should also establish a broad-based culture of good practice and appropriate customer treatment.

In short, banking malpractice can undermine the foundations of the banking business, eroding trust in banks and in the overall system. Therefore, the Banco de España, like other financial regulators and supervisors, has stepped up its supervisory and regulatory efforts to ensure that banks have internal procedures in place to guarantee proper conduct and customer protection.

The main role of the Complaints Service is to resolve individual conflicts,...

In addition to monitoring supervised institutions and their financial products, the Banco de España is also entrusted with certain functions regarding the users of such products, i.e. customers. Prominent among these functions is our dispute resolution mechanism, which provides customers with a system that examines and settles their disputes relating to banking products and services, answers their queries and fosters financial education.

This public service, the first of its kind in Europe, was created in the framework of the liberalisation of interest rates and of fees and commissions which began in 1981 and culminated in the Ministerial Order of 3 March 1987, the direct precursor of the current regulation.

The guiding principle behind this legislation was to allow banks the freedom to set prices for their products and services. To complement this, a set of customer protection rules was introduced with the ultimate aim of fostering competition and comparability through more comprehensive pre-contractual information.

Among other aspects, the Ministerial Order provided for the creation of a Complaints Service at the Banco de España, tasked with receiving and processing complaints lodged by bank customers. The order also vested the Banco de España with the authority to regulate the organisation and functioning of the service, which became operational on 1 September 1987.

The success of this Complaints Service was key to the subsequent regulation of its namesake services at the National Securities Market Commission and the Directorate General of Insurance and Pension Funds. Thus, the complaints services of all three financial supervisors became subject to common regulation, under the principles of independence, transparency, fair hearing, efficacy, legality, freedom and representation.

Any member of the public not provided with a satisfactory response by their bank's customer service department can lodge a complaint with the supervisory authorities, a service that is free of charge, faster and more versatile than legal proceedings and requires no legal assistance. Thousands of customers use these services every year.

Admittedly, the parties are not bound by the complaints services' decisions, but banks abide by them in a high percentage of cases and subsequent court decisions very often draw on the criteria that they establish.

Specifically, the Complaints Service of the Banco de España, over its near 35-year history, has dealt with more than 350,000 complaints and almost 600,000 enquiries, in writing and by telephone, reaching as many as 40,000 and 50,000, respectively, in peak years.

... but it is also key to the development of other functions related to bank conduct

Beyond the mere resolution of individual disputes, the complaints system also makes a huge contribution to the **supervision** of conduct and transparency. This is because close monitoring of complaints, and their recurrence in particular, frequently reveal regulatory non-compliance or malpractice at supervised institutions.

In this respect, the Banco de España capitalises on the information drawn from complaint proceedings to inform its supervisory activity, ensuring more effective control over banks' conduct.

This closes a circle: first, processing of complaints provides the supervisor with valuable information about how customer service and marketing can be improved at each bank, and second, supervisory action helps reduce disputes by tackling the shortcomings at source.

In addition to their supervisory usefulness, the best practice criteria established in the resolution of individual disputes have, over the years, developed into a key benchmark for banking transparency. This activity has created a powerful para-regulatory tool which, in many cases, has inspired the **drafting of statute law provisions**, crystallising in specific precepts enshrined in banking transparency and payment regulations.

The best practice criteria are set out in the annual *Complaints Report*. These reports are used by the banks themselves, the Banco de España, courts, consumer associations, law firms, consultancy firms and customer care services. They are also frequently consulted by bank customers themselves, thus serving as a learning tool insofar as they contribute to **financial education**. In this regard, the complaints system contributes undeniable value as a repository of the banking transactions regularly performed by the general public and for detecting gaps in their knowledge and potential difficulties in understanding the products and services offered by banking and payment intermediaries.

All of which makes the complaints mechanism central to the design and implementation of the Banco de España's financial education initiatives.

The Banco de España is currently preparing the *Complaints Report* for 2021. I can tell you in advance that more than 34,000 complaints were lodged by users of banking and payment services last year, 55% more than in 2020. This clearly shows that the public still frequently resorts to complaints as a means of resolving disputes, either in preparation for or as an alternative to legal action.

The future of financial complaint resolution

As I have said, we continue to do our utmost in the conflict resolution sphere, without forgetting that we are in a period of transition towards a new Independent Administrative Authority for the Protection of Financial Customers that will strengthen out-of-court procedures for financial dispute resolution.

The need for effective institutional systems for individual conflict resolution became patent following the enactment of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions. This need was subsequently reiterated in several pieces of legislation, culminating in the mandate laid down in Law 7/2017 on alternative consumer dispute resolution proceedings, requiring that a single body be established under law "for the resolution, binding or otherwise, of consumer disputes in the financial sector".

The creation of this authority was envisaged in the Recovery, Transformation and Resilience Plan presented by the Spanish Government on 30 April 2021. On 5 April 2022 the Government passed the preliminary draft legislation for the creation of an Independent Administrative Authority for the Protection of Financial Customers, which is currently open for public consultation.

While underscoring the importance and usefulness of the current dispute resolution system, the Banco de España has also expressed the need to review the regulation of the complaints resolution system to bolster its efficacy. We have traditionally argued for **separation between prudential supervision and conduct supervision**, with these two functions being uniformly discharged by separate authorities for the entire financial system. However, it was ultimately decided that an independent authority would be set up, which may also be a valid option.

Under the preliminary draft legislation, the independent administrative authority would not only handle complaints relating to non-compliance with standards of conduct or good financial practice, but it would also have the power to pronounce on other matters, such as the fairness of contractual clauses in banking. The decisions issued would be free of charge for the public and binding for the financial institution when the amount claimed is under €20,000, with all banks required to participate in the proceedings.

The Banco de España is currently assessing the preliminary draft legislation, with a view to contributing comments and suggestions as part of the public consultation phase, based on its long experience in complaint resolution in the banking industry.

In any event, for the Banco de España, cooperation between the new authority and the financial supervisors, sharing information on individual conflicts, is essential to enable them to discharge their supervisory and regulatory functions. That cooperation is all the more necessary given that the institutional customer protection system is based on the proper functioning of each bank's customer service department, which is subject to supervision by the financial authorities.

To conclude, I am sure that this new authority will continue the work conducted by the Banco de España for nearly 35 years, introducing a new toolkit to achieve the efficiency and public service objectives that have guided the activity of the Banco de España's Complaints Service since its creation.