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Briefing note on the actions taken by Banco de España in relation to Banco de Madrid

On 10 March the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced its decision to name Banca Privada d'Andorra (BPA) as a foreign financial institution of primary money laundering concern. The immediate consequence, among others, of this decision was the impossibility for BPA and all the institutions in its group (including Banco de Madrid, which was wholly owned by BPA) to operate in dollars in the United States and to keep their correspondent accounts with US banks open. The FinCEN decision was based on information indicating that, for several years, senior managers at BPA had intentionally facilitated transactions on behalf of money launderers linked to international criminal organisations.

On that same day (10 March) the Banco de España received from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC) a report dated 25 February and drafted on the basis of the inspection by SEPBLAC at Banco de Madrid in 2014. This report included alleged infringements of Spanish money laundering regulations attributable to Banco de Madrid.

Likewise on 10 March, and following the serious accusations levelled by FinCEN, the Andorran banking supervisor, INAF, approved the precautionary intervention of BPA, the sole shareholder of Banco de Madrid, which had the same Chief Executive Officer. The Banco de España also took the decision that same day to intervene Banco de Madrid, bearing in mind the information included in the FinCEN decision, the action by INAF and, in addition, the information from the SEPBLAC report, which could significantly affect the bank's operations and jeopardise its stability. The decision by the Banco de España, which was published in the BOE (Official State Gazette) of 11 March, was adopted under the provisions of Article 70.1.b) of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions. This legislation establishes that the intervention of a credit institution or replacement of its directors may take place if there are well-founded signs that its situation – one other than those envisaged under the Law regulating the restructuring and resolution of such institutions – is exceptionally serious, and may jeopardise its stability, liquidity or solvency.

The following day, late on 11 March, the INAF agreed to suspend temporarily the Board of Directors of BPA, appointing three provisional administrators. On the morning of 12 March, the Board of Directors of its subsidiary, Banco de Madrid, approached the Banco

de España to request that they be replaced. In light of this request, and bearing in mind the institution's serious operational difficulties, the Executive Commission of the Banco de España approved the replacement of the Board of Directors of Banco de Madrid and the appointment of three provisional administrators in order to preserve, as far as possible, the institution's stability. The appointment of administrators, made public in the BOE of 13 March, entailed the cancellation of the intervention agreed on 10 March and the cessation of the controllers appointed.

On 15 March, the Executive Commission of the Banco de España met again to analyse liquidity and operations-related developments at Banco de Madrid. The situation had deteriorated sharply on 11, 12 and 13 March, with fund withdrawals for more than 20% of deposits. And it was certain to worsen further at the opening of business on the following Monday given the fresh information reported extensively in the media on the arrest and imprisonment in Andorra of the chief executive officer of BPA and Banco de Madrid, and on the alleged infringements of Spanish money laundering regulations by Banco de Madrid. This was further to the opening of sanctioning proceedings by the Standing Committee of SEPBLAC and subsequent submission to the Public Prosecution Service of the facts detected by SEPBLAC to determine whether there were signs of any criminal offences having been committed.

In view of the foregoing circumstances, and in application of the ECB regulations governing Eurosystem monetary policy operations and the prevailing contractual obligations and conditions applicable to them, the Banco de España decided on that same day to suspend access by Banco de Madrid to such operations. That decision entailed the immediate acceleration of the repayment of the operations outstanding at that time. In keeping with the provisions of the above regulations, this decision was subsequently ratified by the ECB.

In such circumstances and given the foreseeable and imminent inability of Banco de Madrid to cover further withdrawals of funds following the news over the weekend, the provisional administrators announced on 16 March their decision to apply for insolvency proceedings under the attendant legislation to suspend the bank's operations until a pronouncement were made by the competent legal authority, in this case the Madrid Mercantile Court No. 1. In parallel, the provisional administrators fully cooperated with the Public Prosecution Service and with the State Security Forces and Agencies in the investigation of the above-mentioned findings.

That same day, on 16 March, the Government of Andorra approved a Decree authorising the provisional administrators of BPA to specify limits on payment transactions and fund withdrawals, which were set at €2,500 per account per week.

On 18 March, in light of the situation of Banco de Madrid and of the nature of the problem posed, the Executive Commission of the Banco de España decided to notify the FROB that the initiation of a resolution process was not applicable as there were no discernible reasons of public interest as required under Article 19.1 of Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions. This empowered the FROB to reply to the related instruction that the Mercantile Court No. 1 had sent to it in compliance with the provisions of the aforesaid Law, whereby insolvency proceedings had

to be suspended until the FROB made a pronouncement on whether or not resolution were applicable.

The FROB, in accordance with the decision notified to it by the Executive Commission of the Banco de España, resolved on that same date to reply to the above-mentioned instruction of Madrid Mercantile Court No. 1, informing the latter that it would not initiate a resolution process at Banco de Madrid.

Also on 18 March, the Banco de España informed the FGDEC (Deposit Guarantee Fund for Credit Institutions) that, under the terms of Article 8.1.b) of Royal Decree-Law 16/2011, for reasons arising from the financial position of Banco de Madrid, the latter's operations had been suspended as of 16 March and there had been defaults on customer deposits due and payable, without any prospect of it being able to make good the related amounts in the immediate future.

Having been apprised of this communication and of the FROB's decision not to proceed with the resolution of Banco de Madrid, the FGDEC published a press release on 18 March stating that it was initiating proceedings to pay to Banco de Madrid depositors the amounts guaranteed (up to €100,000 per account holder) under the regulatory terms set.

On 25 March, the Judge of the Madrid Mercantile Court No. 1 issued the insolvency order for Banco de Madrid, as was duly informed that same day on the Judiciary website.

Finally, as included in the BOE of 9 April, the Executive Commission of the Banco de España, at its sitting on 7 April, resolved to cancel the measure adopted on 12 March to replace the administrators of Banco de Madrid, once the powers of management and disposal of the institution have been assumed by the insolvency administrator. The provisional administrators will retain their status until BPA, the sole shareholder of Banco de Madrid, appoints new administrators.

The Banco de España, under its responsibilities as the prudential supervisor and central bank, has acted and responded to the serious impact of the above events on the bank's operations and viability. It first appointed controllers on the very same day – 10 March – that FinCEN's serious accusations and the implications for the BPA group's operations came to light and that the report from SEPBLAC on the alleged money laundering irregularities at Banco de Madrid was received. Two days later, on 12 March, it agreed to the request by the Board of Directors of Banco de Madrid that they be replaced by provisional administrators designated by the Banco de España. On 15 March, given the serious deterioration in Banco de Madrid's operations and liquidity position, the Executive Commission of the Banco de España, in keeping with current regulations, suspended the counterparty status of Banco de Madrid in Eurosystem monetary policy operations. And on 18 March, in connection with the measures by both the FROB and the FGDEC, it adopted the necessary decisions for the initiation of insolvency proceedings and for the start of the process of making good the amounts guaranteed to Banco de Madrid depositors.

The Banco de España will continue to act, within the scope of its competences, with the utmost speed possible. It will continue collaborating with the legal authorities, the

Government, the National Securities Market Commission (CNMV), the ECB and the competent authorities of the Principality of Andorra, wherever needed and required, to ensure the orderly management of the problems posed by the situation of Banco de Madrid.