1. Financial regulation: first quarter of 2000

1. Introduction

Relatively few financial provisions were enacted during the first quarter of the year 2000 owing largely to the dissolution of the legislative chambers and the subsequent holding of general elections.

With regard to the Banco de España (hereafter «BE»), its internal regulations have been adapted to the amendments made to Law 13/1994 of 1 June 1994 (1) on the Autonomy of the Banco de España. The aim here is to ensure the integration of the BE into the European System of Central Banks (ESCB) and to acknowledge, inter alia, the powers of the European Central Bank (ECB) in the definition of monetary policy in the euro area and the authority of the European Community in relation to exchange rate policy.

In respect of credit institutions, BE Circular 8/1990 of 7 September 1990 (2) on the transparency of operations and customer safeguards, has been adapted to the provisions of the Ministerial Order dated 1 December 1999, in which a new formula for calculating the one-year interbank interest rate (Mibor) was determined.

In the area of government debt, and as has habitually been the case in the opening months of each year, the terms of issuance of government debt in euro for the year 2000 and for the month of January in the year 2000 have been published, observing the limit of 1.7 billion pesetas of net issue set in the State budget law for 2000. Broadly, the same instruments, practices and other features shaping debt policy the previous year have been continued.

On the securities markets, the regulation of the special segment for trading by companies from the innovative sectors – called the *New Market* – has been implemented. This determines the type of companies to which the New Market is geared; listing conditions; issuer disclosure and transparency requirements, and the specific dealing conditions to be established for trading in securities on this market.

Turning to portfolio investment institutions, the securities traded on the recently created Latin American securities market have been considered as eligible for investment on the part of pooled investment institutions, since the

(1) See «Regulación financiera: segundo trimestre de 1994», in *Boletín económico,* Banco de España, July-August 1994, pp. 86-92.

(2) See «Regulación financiera: tercer trimestre de 1990», in *Boletín económico,* Banco de España, October 1990, pp.76-77.

aforementioned market meets the requirements laid down in the law regulating these institutions.

Finally, mention may be made of the publication of the regulation on the accreditation of certification service providers and the certification of specific electronic signature products.

2. Amendment of the internal regulation of the Banco de España

Law 13/1994 of 1 June 1994 on the Autonomy of the BE transposed to Spanish legislation the provisions of the Treaty on European Union relating both to monetary policy and to relations with the Treasury. Further to the law of autonomy, the BE is a state institution under public law enjoying full autonomy in the sphere of monetary policy with the primary objective of attaining price stability. In compliance with the terms of the aforementioned Law, the Internal Regulation of the BE was approved via the Government Council Resolution of 14 November 1996, establishing said Regulation as the basic and highest-ranking legal provision for the self-governing regime of the central bank.

Later, Law 66/1997 of 30 December 1997 (3) on fiscal, administrative and social measures, amended Law 13/1994 so as progressively to adapt it to the requirements arising from the recent constitution of the ECB and of the ESCB, with full exercise of the associated powers taking effect at the outset of the third stage of Economic and Monetary Union. Subsequently, Law 12/1998 of 28 April 1998 (4) amended Law 13/1994 once more, to ensure the full integration of the BE into the ESCB, acknowledging, among other aspects, the powers of the ECB in the definition of monetary policy in the euro area and its execution by the BE, and the authority of the European Commission regarding exchange rate policy. Finally, Royal Decree 1746/1999 of 19 November 1999 regulated the arrangements for the deposit of BE profits with the Treasury.

To adapt the Internal Regulation of the BE to the above-mentioned provisions, the BE Governing Council *Resolution dated 22 February 2000* was published (Official Government Bulletin of 25 February). This Resolution amends certain provisions of the aforementioned Regulation.

Given the significant number of amendments made by the foregoing Resolution, by means of the BE Governing Council *Resolution of 28 March 2000* (Official Government Bulletin of 6 April) a complete Internal Regulation has been approved, repealing the previous 1996 regulation with the above-mentioned amendment.

Grouped under the following headings, the new measures introduced can be clearly viewed.

2.1. Legal regime and regulatory powers

With regard to its nature and legal regime, the Internal Regulation incorporates the legal provisions relating to the fact that the BE -which continues to be considered as an institution under public law with its own legal personality and full public and private legal capacity- is an integral part of the ESCB and is subject to the Guidelines and Instructions of the ECB and to all other legally binding instruments.

In relation to the legal instruments of the ECB and the BE, three levels can be distinguished:

1) With regard to the ECB's legal instruments, i.e. *Guidelines, Instructions, Decisions, Recommendations and Opinions* (principally Articles 12.1 and 34 of the Statute of the ESCB and of the ECB), the Internal Regulation reflects what could be called the procedure for the reception and application thereof.

2) As to the provisions laid down by the BE, its *Monetary Circulars* shall dictate the exact rules for the development of its functions as an integral part of the ESCB. For the proper exercise of the rest of its powers, it shall dictate the provisions required for the implementation or execution of those rules expressly empowering it to this end, which shall continue to be called *Circulars.* The technical aspects required for the applicability of the circulars may be made public, through the related Directorate General, under the name of *Technical Applications.*

3) The BE shall further lay down the internal rules it deems appropriate for the organisation and functioning of its services (the all-purpose name of «Instructions» shall be dropped to avoid confusion with the regulations of the ESCB). The hierarchical order of these rules shall be as follows: 1) *In-house Circulars,* covering rules of a basic, general nature with which all departments must comply; 2) *Ordinances,*

(3) See «Financial regulation: fourth quarter of 1997», in *Economic Bulletin,* Banco de España, January 1998, pp. 90-91.

(4) See «Financial regulation: second quarter of 1998», in *Economic Bulletin,* Banco de España, July 1998, pp.82-83.

which implement what is laid down in In-house Circulars, or provide for the exercise of the regulatory powers of the governing bodies upon which the internal regulations have conferred authority.

2.2. Aims and functions of the Banco de España

The primary aim of the BE continues to be that of maintaining price stability. Without prejudice to this objective, it shall continue to support the general economic policy of the government and the general economic policies of the Community, in conformity with the provisions of Article 105 of the Treaty on European Union (TEU). In the exercise of its functions, neither the government nor any other national or Community body shall give instructions to the BE, and nor may the BE obtain or accept them, but shall act independently of the State administration in the fulfilment of its aims. In this respect, the functions previously specified in Law 12/1998 are included in the regulation. Thus, the BE shall *participate* in the performance of the following basic functions assigned to the ESCB:

a) Defining and implementing monetary policy.

b) Conducting currency exchange operations consistent with the provisions of Article 111 (formerly Article 109) of the TEU.

c) Holding and managing the Member States' official currency reserves. Nonetheless, the government may hold and manage foreign exchange working balances, in keeping with the provisions of Article 105.3 of the TEU.

d) Promoting the sound working of the payment system.

e) Issuing legal tender banknotes.

f) Other functions arising from its status as a fully-fledged member of the ESCB.

In addition to the foregoing functions, it shall continue to perform the following: 1) the supervision of credit institutions and of whatsoever other financial institutions and markets whose supervision should have been assigned to it; 2) the holding and management of currency and precious metal reserves not transferred to the European Central Bank; 3) the promotion of the sound working and stability of the Spanish financial system, without prejudice to the terms of d) above; 4) the provision of treasury services, also acting as financial agent for government debt; 5) the placement in circulation of coins and the performance, on behalf of the State, of all such other functions entrusted to it in this connection; 6) adviser to the government, preparing the appropriate reports and studies; and 7) the preparation and publication of statistics relating to its functions, and assisting the ECB in the compilation of the necessary statistical information for ESCB functions.

2.3. External relations

In this area there have scarcely been any amendments to the terms established in the previous regulation. Thus, the BE shall continue providing assistance to, co-operating with and advising the judicial authorities in the exercise of their jurisdictional functions, on matters within the central bank's sphere of influence. The BE shall likewise maintain relations with other central banks, financial supervisory authorities, European Union agencies and other international financial organisations. In this connection, it may issue reports on matters under its remit when so requested or when it deems it appropriate to do so, within the limits of its organisational capability and observing the obligation of secrecy imposed by the current regulations.

2.4. Economic regime

Broadly speaking, the same guidelines set out in the current regulations have been maintained. In this respect, the associated economic regime will not be subject to the legislation governing the budgetary, property and contracting regime applicable to public-sector entities, unless otherwise stated. The accounting system, which shall be adapted to the obligatory rules emanating from the ECB, shall observe generally applicable accounting principles and, in particular, those relating to prudence and uniformity. The annual accounts shall comprise the balance sheet, profit and loss account and explanatory notes to the financial statements. Once profits have been formulated and determined within a maximum period comprising the six months following the close of the related financial year, the Governing Council shall submit them to the Ministry of Economy and Finance for approval by the government which, thereafter, shall disclose them to Parliament. The BE budget for operating expenses and investment shall be prospective in nature and shall be approved by Parliament. Finally, auditing shall be performed by external auditors, by an Accounts Review Commission (whose regime has been laid down in the new Regulation) and by the Tribunal de Cuentas (National Court of Auditors).

2.5. Governing bodies

The governing bodies of the BE shall continue to be the Governor, the Deputy Governor, the Governing Council and the Executive Commission. The Internal Regulation refers to the powers and to the rights and obligations of these bodies in the same terms as the Law of Autonomy.

Few of the amendments made are worthy of mention. The powers attributable to the Governor are retained, with one new aspect, as envisaged in the Law of Autonomy, being added: namely, the Governor's status as a member of the Governing Council and General Council of the ECB. If the Governor or, should it so occur, the Deputy Governor leaves office, the substitute's term of office shall be the regular one corresponding to the post, namely six years (previously, the post would be held during the time remaining for the previous incumbent to complete the term of office).

Regarding the Governing Council, the Internal Regulation envisages lengthening the term of office of elected Council members from four to six years, as introduced by Law 66/1997. Said members may be re-appointed only once. As in the case of the Governor and Deputy Governor, in the event of a Council member's post becoming vacant before the related term of office has been completed, the substitute's term of office will be that ordinarily corresponding to the post. The Council's functions are likewise adapted to the new situation of the BE as a fully-fledged member of the ESCB. Specifically, it is now entrusted with supervising the contribution of the BE to the implementation of the ESCB's monetary policy by the Executive Commission, observing the Guidelines and Instructions of the ECB and the independence and obligation to secrecy of the Governor as a member of the governing bodies of the ECB. Further, the issue of peseta-denominated banknotes -inasmuch as there should be no issue of euro-banknotes by the ESCB- shall be subject to authorisation by the ECB.

The Executive Commission, for its part, retains its present composition and most of its powers and functions, although some of these are adapted -as was the case with the Governing Council- to fit the new status of the BE. Thus, having played a leading role in the implementation of monetary policy in the previous stage, it must now -as an integral part of the ESCB- contribute to implementing the monetary policy pursued by the System. Regarding the minimum reserves of credit institutions, it is the Executive Commission's responsibility to be aware of and act accordingly in the event of their non-compliance with such reserve requirements and with statistical reporting obligations, in accordance with ECB Regulation 2818/1998 of 1 December 1998 on the consolidated balance sheet of monetary financial institutions.

2.6. Management bodies of the Banco de España

The management bodies of the BE, namely the Directorates General and the Steering Committee, have been marginally altered. The directorates general retain their powers and functions, and shall also now report to the Executive Commission, when appropriate, on the measures adopted to implement ECB Instructions. As regards the co-ordinating bodies (internal commissions), minor changes affecting their constitution and functioning have been introduced.

2.7. Organisational structure of the Banco de España

The organisation of the BE continues to be structured around five directorates general: International Department; Operations, Markets and Payment Systems; Regulation; Research Department; and Banking Supervision. They retain their respective areas of responsibility, albeit adapted to the current functions of the BE.

Lastly, it is stipulated that the arrangements for the deposit of BE profits with the Treasury for the years 1999, 2000 and 2001 shall be as established in Royal Decree 1746/1999 of 19 November 1999.

3. Credit institutions: calculation of the one-year interbank market interest rate (MIBOR).

The Minister of Economy and Finance was authorised by Law 46/1998 of 17 December 1998 (5) on the introduction of the euro to determine a new formula for calculating the one-year interbank interest rate (Mibor) for use as an official index for mortgage loans, in the event that, owing to technical or market difficulties, it could not be calculated using the existing method.

Since the introduction of the euro, there have been more and more days on which no transactions based on the Mibor rate have been concluded in the interbank market, making it difficult to obtain the official index. A Ministerial

(5) See "Financial regulation: fourth quarter 1998", in *Economic Bulletin,* Banco de España, January 1999, pp. 83-90.

Order of 1 December 1999 has now determined a new formula for its calculation, which entered into force on 1 January 2000.

Under the new formula, on those days on which one-year transactions are concluded on the Spanish interbank deposit market, Mibor will be the average of the rates agreed weighted by the value of the transactions. On those days on which *no transactions are concluded* Mibor will be considered to be the same as the Euribor rate. The latter is an interest rate offered by a sample of banks for one-year euro deposit transactions and is published by the European Banking Federation. The Order also provided that Mibor would no longer be considered the official benchmark rate for mortgage loans executed after 1 January 2000, although it would be maintained for loans prior to that date. In consequence, as from 1 January 2000, Euribor is the only official money market rate used as a benchmark for mortgage loans.

Recently, *Banco de España Circular 1/2000* of 28 January 2000 has adjusted the content of Banco de España Circular 8/1990 of 7 September 1990 on transparency of transactions and client protection, to the provisions of the Order. Mibor is maintained as the official benchmark for mortgage loans executed before 1 January 2000, with the changes set out in the Ministerial Order of 1 December 1999 introduced into the formula for its calculation.

4. State debt: issuance conditions during 2000 and January 2001.

Law 54/1999 of 30 December 1999 (6) on the State Budget for 2000 authorises the government so that, on the proposal of the Minister of Economy and Finance, it may increase the outstanding balance of State debt during the year 2000 to ESP 1,708 trillion. This limit will apply as at the end of the 2000, and may be exceeded during the course of the year. The Law also stipulated the circumstances that would give rise to its automatic revision. The Ministry of Economy and Finance is empowered to issue, place and manage State debt, subject to the government's criteria and within the quantitative limits set by the State Budget Law, by Royal Decree-Law 1091/1988 of 23 September 1988, which approved the consolidated text of the General Budget Law.

Law 46/1998 of 17 December 1998 on the introduction of the euro, established that State debt issued by the Treasury (hitherto denominated in pesetas) shall necessarily, as from 1 January 1999, be denominated in euro. In turn, the government, using the powers granted by Law 46/1998, issued Royal Decree 2813/1998 of 23 December 1998 (7), which established the procedure for the redenomination in euro of government debt registered with the Book-Entry System, stipulating that all peseta-denominated government debt in circulation registered with the System as at 31 December 1998 would be redenominated in euro as from 1 January 1999.

As has been becoming customary around these dates, Royal Decree 68/2000 of 21 January 2000 (BOE of 22 January 2000) and a Ministerial Order of 25 January 2000 (BOE of 27 January 2000) have been published, providing for the creation and issuance conditions of State debt for 2000 and January 2001, with the limit for the latter month being 15% of the volume authorised for 2000. In addition, two Treasury Resolutions of 27 January 2000 (BOE of 28 January 2000) provide for particular debt issues and specify the timetable for the regular tenders of Treasury bills and State bonds that will be offered during this period.

Broadly, the same instruments, techniques, practices and other aspects that made up debt policy for 1999 are retained. Specifically, the Minister of Economy and Finance remains authorised to conduct, among other operations, the following:

a) To continue to conduct borrowing operations using the vehicles provided for, changing the commercial name or grouping more than one vehicle under a single denomination.

b) To create, within the framework of current fiscal legislation, new government debt vehicles, whether marketable or non-marketable, establishing their commercial name, issuance techniques and other features.

c) To regulate the practices for issuance and determining coupon interest, allowing issues to be grouped or successive tranches of a single issue to be placed, and thereby securing the volumes of homogenous securities necessary for liquidity in the secondary markets.

d) For the purposes of debt dealing, to authorise State debt strips (the stripping of the principal and interest of certain issues and their subsequent reconstitution).

(6) See "Financial regulation: fourth quarter 1999", in *Economic Bulletin,* Banco de España, January 2000, pp. 111-112.

(7) See "Financial regulation: fourth quarter 1998", in *Economic Bulletin,* Banco de España, January 1999, pp. 83-90.

In the case of State debt issues which are initially offered or placed abroad, the usual clauses and conditions envisaged under the General Budget Law for these operations may be agreed in respect of the returns paid to non-residents.

As to the formalisation of public debt, this will, as in previous years, be in the form exclusively of book-entry Treasury bills (at six, twelve and eighteen months) and State bonds (at three, five, ten, fifteen and thirty years).

The traditional issuance procedures are retained, namely:

— Tenders (with competitive and non-competitive bidding), that will be conducted in accordance with rules published earlier. They may be for the general public, authorised placers or a restricted group of placers, who acquire special commitments with respect to the placement or trading of the debt.

— Any other technique that does not involve inequality of opportunity for potential purchasers.

The periodicity with which regular tenders are held on pre-established dates is also maintained:

— For Treasury bills: twelve- and eighteen-month Treasury bill tenders coincide and take place every two weeks, while six-month bill tenders are held every four weeks in a week without tenders of twelve- and eighteen-month bills.

— For State bonds: monthly, except for thirty-year bonds, with tenders once every two months, and fifteen-year bonds, for which tenders will now be conducted twice a month. The redistribution of allotment dates for bond tenders will be as follows: in the case of three- and ten-year bonds, on the first Wednesday of each month; and on the following Thursday, five-, fifteen- and thirty-year bonds (the latter in the corresponding month). In both cases this is provided that the days in question are business days for Madrid financial markets.

As for competitive bids, the minimum nominal amount will be EUR 1,000 for twelve- and eighteen-month Treasury bill tenders, EUR 500,000 for six-month bills and EUR 5,000 for bond tenders. In all cases, applications for higher amounts must be integer multiples of EUR 1,000, except for six-month Treasury bills, where they must be multiples of EUR 100,000.

In the case of non-competitive bids, the minimum nominal amount shall be EUR 1,000 for both twelve- and eighteen-month bills and for bonds, with a maximum nominal amount per bidder of EUR 200,000. Non-competitive bids will not be accepted for six-month bills.

5. Stock exchanges: listing requirements for the New Market.

A special new trading segment called the *New Market* has been created on the stock exchanges by the Ministerial Order of 22 December 1999 (8). The securities of high-technology firms will be traded in this segment, which is intended to ensure that the financing requirements of firms in innovative sectors are efficiently served. This Order also provided that the National Securities Market Commission (CNMV) would establish the general criteria to determine which firms' securities would be traded on this market, as well as the listing requirements.

The CNMV has published *Circular 1/2000 of 9 February 2000* (BOE of 17 February 2000) in order to fulfil its mandate under the said Order. This circular determines the type of firms the New Market is aimed at (following the criteria of similar special trading segments in other European stock exchanges), the listing requirements, the information and transparency requirements for issuers, the procedure to apply for listing, and the specific trading conditions that must be established for the trading of securities on this market.

Following the same order as above, the New Market is intended for the trading of the securities issued by firms whose main activity is in an innovative high-technology sector, in so far as the product or the productive process is concerned, or sectors offering great growth opportunities. For securities to be listed on the New Market, issuers must comply with the general requirements laid down in the Securities Market Law, in its implementing provisions and in the stock exchange regulation (9).

As for the information and transparency requirements for issuers, they must comply with the obligations for the periodic release of public information and for publishing relevant facts provided for in the Securities Market Law and in its implementing provisions. At least once a year issuers shall make available to the public, as relevant facts, information explaining the de-

(8) See "Financial regulation: fourth quarter 1999" in Economic bulletin, Banco de España, January 2000, p. 106-107.

(9) These requirements are: a minimum capital of ESP 200 million; a minimum dispersal of their capital (at least 100 shareholders, each holding less than 25% of the share capital); and the submission of a report to the CNMV on their financial and business prospects, and on the results projected for the coming years.

velopments and prospects of the business, and investment and financing plans for its future development.

With regard to the procedure for applying for securities to be listed on the New Market, issuing firms shall obtain from the stock exchanges a non-binding report on their suitability for trading thereon prior to verification of the prospectus supporting the application. In addition, both the procedure for issuance and public offerings and that for applying for listing shall be governed by the Securities Market Law and its implementing provisions, with the incorporation of certain specific information for this type of firm set out in the Circular.

Finally, the specific conditions for trading securities on the New Market are specified. The rules for trading securities established by the stock exchanges must: a) set limits to daily price movements; b) regulate the circumstances and automatic or discretionary mechanisms for widening such limits; c) create systems for dealing with situations which prevent price formation and the trading of securities and d) fix both the limits and the general transparency rules for members, obliging them to promote the liquidity of the securities, without interfering in the correct formation of prices on the market.

6. Portfolio investment institutions: investment in securities traded on the market for Latin American securities.

Portfolio investment institutions are required by Law 46/1984 of 26 December 1984, implemented by Royal Decree 1393/1990 of 2 November 1984, to have 90% of their assets invested in stock-exchange listed securities and other financial instruments traded on officially recognised organised markets, open to the public, which operate regularly. It is also established that a market has these characteristics when the Minister of Economy and Finance, after a report by the CNMV, determines this to be the case.

The creation of the market for Latin American securities as an organised system for trading securities and other financial instruments, pursuant to the provisions of law 24/1988 of 28 July 1988, was authorised by a resolution of the Council of Ministers of 29 October 1999. This resolution assigned to the Securities Clearing and Settlement Service (Servicio de Compensación y Liquidación de Valores) the functions of registration, clearing and settlement of the transactions executed in this market, and to the CNMV the oversight and supervision of the market for Latin American securities.

Recently, the *Ministerial Order of 10 March 2000* (BOE del 17 March 2000) on the investment of Portfolio Investment Institutions in securities traded on the market for Latin American securities has considered the securities traded on this market as suitable investments for investment companies and mutual funds, since the market meets the requirements laid down in Law 46/1984.

7. Electronic signatures: regulations or the accreditation of certification service providers and for the certification of specific products.

Royal Decree Law 14/1999 of 17 September 1999 regulated the use of electronic signatures, in harmony with the Community framework for the same. It stipulated the rules for the establishment of voluntary systems for the accreditation of certification service providers and for the evaluation of compliance by electronic signature products with its requirements. Subsequently, Royal Decree Law 16/1999 of 15 October 1999, which adopted measures to fight inflation and promote competition in telecommunications, authorised the Minister of Public Works to implement Royal Decree Law 14/1999.

Pursuant to this authorisation, a *Ministerial Order of 21 February 2000* (BOE of 22 February 2000) has been published, which approves the Regulation of accreditation of certification service providers and of certification of specific electronic-signature products.

The Regulation regulates the operation of accreditation and certification systems, which are based on three kinds of bodies, entities and agencies: 1) bodies competent to accredit providers and issue compliance certificates for electronic-signature products; 2) entities responsible for evaluating and issuing reports or certificates; and 3) the independent agency entrusted with accrediting such evaluation entities, which is designated in this same Regulation.

The Order also determines the legal system for accreditations and compliance certificates, the requirements for obtaining them and the conditions for the recognition of those issued in other States. Certificates of secure creation devices and of electronic signature verification issued by the agencies designated for the purpose by the EU Member States shall be recognised as effective. Likewise, those issued by agencies designated by non-EU Member States shall be recognised when an international agreement for mutual recognition binding on Spain so provides.

12.4.2000.