Financial regulation: 2001 Q4

1. INTRODUCTION

In 2001 Q4, the period immediately preceding the withdrawal of the peseta and the introduction of euro banknotes and coins, a relatively significant number of provisions were enacted, some of which were of particular importance.

First, the law on the solvency of financial institutions was amended to extend the benefits applicable to State debt to the debt issued by local authorities, and to transpose Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 into Spanish law.

Four circulars were published by the Banco de España. The first amended the law on the transparency of transactions and customer protection, to regulate the performance of banking transactions without the physical presence of the customer, in particular, those carried out by internet. Also, it introduced the necessary provisions to ensure that, as from 1 January 2001, the monetary amounts in lists of rates appear solely in euro. The second laid down the information that institutions belonging to deposit guarantee funds must send annually to the Banco de España for calculation of their contributions to such funds. The third set up, within the National Electronic Clearing System (SNCE), the general subsystem for miscellaneous transactions, in order to rationalise clearing processes for means of payment. Also, the opportunity was taken to modify the period of adaptation of the SNCE to the euro. Finally, the fourth regulated the procedure for obtaining authorisation to be the proprietor of a currency-exchange bureau, the information such proprietors must submit to the Banco de España, and the scope and content of their own and their agents' obligations.

In relation to securities markets, the law on investor compensation schemes was implemented, with specific mention of the establishment of an exceptional regime for the distribution of compensation arising from the retroactive nature of the Investor Guarantee Scheme.

At the EU level, the various Community directives on the co-ordination of the listing conditions for negotiable securities have been coded and consolidated into a single text, for the purposes of greater clarity and rationality.

Procedures have been established for the total and immediate withdrawal of peseta coins from the present monetary system, notwithstanding that they shall all maintain their exchange value for an unlimited period of time.

As usual at this time of year, the measures included in the State budget for 2002 are discussed. These are primarily monetary, financial and fiscal and they are the first to have been drawn up in euro. The structure of the new financing arrangements for the regional (autonomous) governments is given a special mention. As in previous years, a number of fiscal, administrative and social measures have been adopted along with the Budget Law in order to facilitate the achievement of economic policy objectives. Administrative measures in the financial field include, determination of the method for marking and cancelling peseta banknotes, and a number of new measures to protect the euro against counterfeiting. As for the law on pension schemes and funds, the overall limit on contributions to individual and employment pension schemes is abolished, and the limit on contributions made by persons close to retirement is raised, while the position of ombudsman for participants in individual pension schemes is created.

Finally, there is a discussion of the new legal regime that will enable the services necessary to guarantee the safety and efficiency of communications with general government by electronic, computer and teleprocessing means to be introduced, and of ratification by Spain of the Treaty of Nice, signed by the Member States on 26 February 2001, which will enable the process initiated by the Treaty of Amsterdam to be concluded.

2. MODIFICATION OF THE SOLVENCY RULES FOR FINANCIAL INSTITUTIONS

The foundations for the law on solvency applicable to financial institutions (which include credit institutions), securities-dealer companies and securities agencies and insurance companies and their respective groups, with uniform treatment for all such entities, were laid by Royal Decree 1343/1992 of 6 November 1992 (1). This Royal Decree implements Law 13/1992 of 1 June 1992 (2) on own funds and the supervision of financial institutions on a consolidated basis.

The provisions for the minimum harmonisation necessary for investment services firms (ISFs) to be able to establish branches and freely provide services in other EU Member States with the sole authorisation of their home country were laid down by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field. Subsequently, Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions further harmonised the elements considered essential to ensure mutual recognition of ISFs, developed a common framework for the supervision of market risks incurred and the control of large exposures and completed the regulation of supervision on a consolidated basis of groups of credit institutions that contain sub-groups of investment firms. Finally, Directive 93/6/EEC was amended by Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 to adapt its provisions to current market risks.

Royal Decree 1419/2001 of 17 December 2001 (BOE of 5 January 2002), which partially amends Royal Decree 1343/1992, has recently been published. First, it adapts the law on solvency to article 50.3 of Law 39/1988 of 28 December 1998, which regulates local tax authorities. The wording of this article was amended by article 59 of Law 50/1998 of 30 December 1998 on fiscal, administrative and social measures to extend the benefits applicable to State debt to the public debt issued by local authorities. As a result, the latter is assigned a zero weighting for the purposes of calculating the solvency ratio and for the purposes of the law on large exposures.

Second, the Royal Decree transposes Directive 98/31/EC into Spanish law. On one hand, it widens the definition of the trading book to include *positions in gold*, which shall have a capital requirement of not less than 8% of the net position and be treated in a similar way to currency positions. On the other hand, it allows institutions that have first obtained the authorisation of the Banco de España to use internal risk management models to calculate the capital they require to cover market and foreign exchange risks. The aim is to ensure that the risk associated with portfolios whose management, based on the existence of daily market prices, makes special treatment advisable, is adequately covered. Also, the aim of allowing internal risk management models to be used is to adapt the instruments of supervision to market techniques and to promote an improvement in risk management by institutions.

Finally, the Royal Decree adapts the terminology of Royal Decree 1343/1992 to that established by other provisions with the status of law: Law 6/1997 of 14 April on the organisation and operation of the general State administration and Law 37/1998 of 16 November 1998, which amends Law 24/1988 of 28 July 1988 on the Securities Market.

(1) See "Regulación financiera: cuarto trimestre de 1992", in *Boletín económico,* Banco de España, January 1993, pp. 65-71.

(2) See "Regulación financiera: segundo trimestre de 1992", in *Boletín económico,* Banco de España, July-August 1992, pp. 82-86.

3. CREDIT INSTITUTIONS: CHANGES TO THE RULES ON TRANSPARENCY OF TRANSACTIONS AND CUSTOMER PROTECTION

Banco de España Circular (CBE) 8/1990 of 7 September 1990 (3) on the transparency of transactions and protection of customers implemented the Ministerial Order of 12 December 1989 (4), which extended to all credit institutions the rules that were initially only applicable to deposit money institutions. This Circular has since been updated to reflect the subsequent changes in the Spanish financial system that have had a particular impact on the operations of credit institutions with their customers. Specifically, CBE 3/1999 of 24 March 1999 (5) made some amendments to CBE 8/1990, in order to clarify, for the purposes of the changeover from the peseta to the euro, various aspects of the regulations on the transparency of transactions and the protection of customers, incorporating some of the rules contained in Law 46/1998 of 17 December 1998 on the introduction of the euro (6), and certain matters addressed in the Commission Recommendations of 23 April 1998 (7) concerning banking practices in relation to "charges for conversion to the euro" and "dual display of prices and other monetary amounts" during the transitional period (running from 1 January 1999 to 31 December 2001).

Meanwhile, Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers laid down the basic rules for individuals and businesses (in particular, small and medium-sized businesses) to be able to make credit transfers through credit institutions rapidly, reliably and cheaply from one part of the Community to another. This Directive was transposed into Spanish law by Law 9/1999 of 12 April 1999 (8), which regulates the legal system for transfers between EU Member States, and by a Ministerial Order of 16 November 2000 (9), which implemented this Law. These legal instruments contain, inter alia, certain requirements regarding the information that credit institutions must provide to their customers, and they authorise the Banco de España to determine and implement such requirements.

On this occasion, the increasing importance of communications with customers through channels that enable transactions to be carried out without the physical presence of the customer at the credit institution, especially via the Internet, requires the amendment of some of the provisions of CBE 8/1990 to ensure that the use of these media does not involve any reduction in the consumer protection systems established in that Circular.

To accomplish these two aims, CBE 8/1990 has been amended by *CBE 3/2001 of 24 September 2001* (BOE of 9 October 2001). It should be noted that this Circular also introduces the possibility of making credit institutions' lists of rates available to the public for consultation on the Banco de España website, for which purpose the relevant procedure must be followed. Also, it introduces the necessary provisions to ensure that from 1 January 2002 the monetary amounts of the rates shall appear solely in euro.

The most important provisions of the Circular are as follows:

3.1. Fund transfers

In the case of receipts of transfers, regulated in Law 9/1999, in which it is not expressly specified that the commission fees and charges are to be borne wholly or partly by the beneficiary, no commission fee or cost can be charged to the latter for the service. Also, when a transfer is ordered, the originator's institution shall be obliged to execute it for the full amount thereof unless the originator has specified that the costs of the credit transfer are to be borne wholly or partly by the beneficiary.

Credit institutions that regularly provide cross-border-credit-transfer services shall include in a special section in their list of rates the general terms and conditions that shall necessarily apply to such transactions unless other terms more favourable to the customer are contractually agreed. Also, the notice board shall indicate the existence of a special section in the list setting out the general terms and conditions applicable to this kind of transfer.

(3) See "Regulación financiera: tercer trimestre de 1990", in *Boletín económico,* Banco de España, October 1990, pp. 76 and 77.

(4) See "Regulación financiera: cuarto trimestre de 1989", in *Boletín económico,* Banco de España, January 1990, p. 35.

(5) See "Financial regulation: first quarter 1999", in *Economic bulletin,* Banco de España, April 1999, pp. 58-60.

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

(7) See "Financial regulation: second quarter of 1998", in *Economic bulletin,* Banco de España, July 1998, pp. 92 and 93.

(8) See "Financial regulation: second quarter of 1999", in *Economic bulletin,* Banco de España, July 1999, pp. 63 and 64.

(9) See "Financial regulation: 2000 Q4", in *Economic bulletin,* Banco de España, January 2001, pp. 77 and 78.

3.2. Lists of commission rates

The previous Circular provided that, having been sent to the Banco de España by credit institutions, lists of rates were deemed approved when fifteen business days had elapsed without the Banco de España having made any specific statement, objection or recommendation with respect thereto. It is now provided that once the lists have been approved, credit institutions must give at least forty-eight hours' notice of their entry into force, when they shall be included on the Banco de España's website.

3.3. Banking transactions via Internet

Banks that offer the possibility of carrying out transactions via Internet shall include on their website their full company name and any trade name, the address of their registered office, their status as a credit institution subject to supervision by the Banco de España, as well as a mention of their inclusion in the relevant special administrative register kept by the Banco de España. They shall also include on their website, prominently and so as to catch the attention of potential customers, the information that they are required to post on their notice boards, such as their list of rates and valuation rules, so that it can be consulted simply and free of charge (apart from the cost of the Internet connection), without access being restricted to existing customers. At the same time, banks shall indicate on their traditional notice boards that their list of rates is also available on their website, giving the address thereof.

Also, the Circular extends the possibilities for credit institutions to be able to perform certain procedures and transactions provided for in CBE 8/1990 through electronic media, when the customer so decides. Specifically, when transactions are carried out electronically and delivery of the contractual document is required, such delivery may, at the customer's choice, be performed either by sending the document on a durable electronic device that can be read, printed or kept, or by sending written confirmation of the contract. In any event, the bank shall keep the customer's receipt. As for the individual messages that it is necessary to send pursuant to the provisions of CBE 8/1990, they can be sent electronically when the customer so requests, or when this was the procedure used when the contract was concluded and the contractual document so provides. Banks also have the possibility, in the case of mortgage loans, of sending their binding offers to the customer using electronic means.

3.4. Advertising on the Internet

CBE 8/1990 provided that any advertising by credit institutions of their financial operations, services or products, which refers to their cost or return to the public, must be authorised first by the Banco de España, envisaging that it would be disseminated through the traditional media. The new wording of this Circular broadens the regime for the authorisation of advertising by credit institutions on their own websites and also on those of third parties offering the services of a credit institution.

However, where advertising is limited to simulated calculations on the website of the bank or comparisons between the offers of different banks, it shall not be considered to be advertising for these purposes, provided that they do not include specific products. Also, information on the specific characteristics of transactions appearing on websites where they are carried out shall not be considered advertising either.

3.5. Transitional period of coexistence of the peseta with the euro

The Circular introduces the necessary provisions to ensure that from 1 January 2002 the monetary amounts in lists of rates appear exclusively in euro. Specifically, banks were required to send to the Banco de España before 30 November 2001 lists of commission rates with their monetary amounts denominated solely in euro. In the event that during the period between the sending of such lists and 1 January 2002 any bank should need to revise its rates, it shall send two versions of the revisions, one of them with the amounts in pesetas/euro and the other, with the same number of pages, with amounts only in euro.

Finally, it should be noted that the Circular specifies for those services whose rates are determined by prices per unit, e.g. "per item" in the case of special statements, or "per coupon" or "per dividend" in securities operations. In this case, the unit amounts in euro that must appear in the lists of rates as a consequence of the conversion to that unit may be expressed with up to six decimal places.

4. DEPOSIT GUARANTEE FUND: THE BALANCES USED TO CALCULATE CONTRIBUTIONS

The protection of credit institutions' customers was addressed in Directive 94/19/EC of 30

May 1994 (10) on deposit-guarantee schemes, which established a harmonised minimum level of protection for the aggregate deposits of each customer, irrespective of the EU country in which they are located. This Directive was partially transposed into Spanish law by Royal Legislative Decree 12/1995 of 28 December 1995 (11) on urgent budgetary, tax and financial measures, and by Royal Decree 2606/1996 of 20 December 1996 (12) on credit institutions' deposit guarantee funds. Recently, Royal Decree 948/2001 of 3 August 2001 on investor compensation schemes partially amended RD 2606/1996, in order to regulate the cover that credit institutions must provide for investment services.

RD 2606/1996 authorised the Banco de España to develop the technical and accounting aspects of the concept of guaranteed deposits and securities, and, also, RD 948/2001 authorised it to determine the valuation criteria to be applied to the various types of unlisted securities and financial instruments on the basis of which the annual contributions to the funds are calculated.

Both aspects were implemented in *CBE 4/2001 of 24 September 2001* (BOE of 9 October 2001), which also establishes the information that the institutions belonging to the funds have to send annually to the Banco de España for the purposes of calculating contributions.

Domestic credit institutions shall send the Banco de España, before 31 January each year, a statement (included in the annex to the Circular) relating to the calculation of the contributions to the Deposit Guarantee Fund (DGF) on the basis of the balances as at 31 December of the previous year. This same obligation applies to the branches in Spain of credit institutions authorised in *non-EU countries,* when the guaranteed deposits or securities endowed or entrusted to the branch are not covered by a guarantee scheme in their home country. For their part, the branches of foreign credit institutions that belong to the Deposit Guarantee Fund for Banks, in order to cover the difference in the level or scope of cover when the guarantee of the home country is more limited, shall send to the DGF the information requested in relation to their particular circumstances.

To calculate the base for determining the contributions to the DGF, the following valuation criteria shall be followed:

1) Money deposits shall be valued using the same criteria as are used to record them in the balance sheet.

2) In the case of negotiable securities and financial instruments that are listed on a secondary market, they shall be valued at their listed price on the last day of trading of the year. The same criterion shall be followed for securities subject to repos.

3) In the case of negotiable securities and financial instruments that are not listed on any secondary market, the following criteria shall be applied:

   — Equities: shall be valued at their nominal value.

   — Debt securities: at redemption value.

   — Other financial instruments: at the estimated end-year market value, calculated in accordance with the generally accepted valuation procedures for the instrument concerned.

The Circular also amends some provisions of CBE 4/1991 of 14 June 1991. Inter alia, it underlines the need for credit institutions to identify in their internal accounting the deposits, funds, securities and financial instruments that are guaranteed and particularly emphasises the monitoring of the accounts representing custodial activity.

5. NATIONAL ELECTRONIC CLEARING SYSTEM: GENERAL SUBSYSTEM FOR MISCELLANEOUS TRANSACTIONS

The structure and operation of the National Electronic Clearing System (SNCE), made up of the National Exchange System (SNI) and the National Settlement System (SNL), were regulated by RD 1369/1987 of 18 September 1987, Ministerial Order of 29 February 1988 and CBE 8/1988 of 14 June 1988.

The setting up of the SNCE was an important step forward in the process of modernising the payments system in Spain, equipping it with an infrastructure capable of handling a larger flow of transactions and ensuring their immediate effectiveness in the domestic market. Subsequently, the Ministerial Order of 26 February 1996 simplified the administrative regime for the traditional Clearing Houses, retaining residually

(10) See "Regulación financiera: segundo trimestre de 1994", in *Boletín económico,* Banco de España, July-August 1994, pp. 97-98.

(11) See "Regulación financiera: cuarto trimestre de 1995", in *Boletín económico,* Banco de España, January 1996, pp. 78-80.

(12) See "Regulación financiera: cuarto trimestre de 1996", in *Boletín económico,* Banco de España, January 1997, pp. 106-109.

and temporarily the documentary procedures that were used in these clearing houses, setting up the Single Clearing House System (Sistema de Cámara Única) for this purpose.

In order to rationalise the processes for clearing means of payment, *CBE 5/2001 of 24 September 2001* (BOE of 9 October 2001) set up the general subsystem for miscellaneous transactions, to accommodate those transactions that are still cleared through the Single Clearing House System. It also changed the period for adapting the SNCE to the euro.

This new subsystem is the last to have been developed, on account of the small volume of transactions concerned (less than 1% of the total cleared) and the temporary nature of the Single Clearing House System when it was set up in 1996. It is intended for the exchange, clearing and settlement of interbank-account reimbursements and other diverse transactions that cannot be processed by any of the other SNCE subsystems. Transactions eligible for exchanging and clearing must fulfil, inter alia, the following requirements: the originating institution must be a participant in the subsystem and the relevant payment or receipt must be at the branch, anywhere in Spain, of a participating institution. Transactions that can be cleared through other SNCE subsystems, according to the requirements in force from time to time, shall not be cleared through this one.

CBE 5/2001 also amends CBE 9/1998 of 30 October 1998, which adapted the SNCE to the euro. In fact, CBE 9/1998 of 30 October 1998 established, exceptionally, that the introduction and exchange of data in the SNCE between 1 January 2002 and 31 March 2002 and the amount of interbank transactions in pesetas before 1 January 2002 could be notified in that currency, without prejudice to their legal equivalence in euro, and that, as from 1 April, the amount of such transactions shall be expressed in euro. CBE 5/2001 has shortened this exceptional period, which shall now expire on 28 February 2002.

6. IMPLEMENTATION OF THE LEGAL REGIME FOR CURRENCY-EXCHANGE BUREAUX

Law 13/1996, of 30 December 1996, on fiscal, administrative and social measures, which was passed with the 1997 Budget Law, pointed to the need to complete the regulation of establishments other than credit institutions open to the public for currency exchange (hereafter, currency-exchange bureaux) with more comprehensive legislation, similar to that in other European countries, regarding the persons who perform such operations, enabling the government to implement such legislation subsequently. This was done by Royal Decree 2660/1998 of 14 December 1998, which regulates the activity of these establishments while giving due regard to free competition and proper safeguards for customers. As regards its scope of application, the activity of these currency-exchange bureaux (or whatever else they may be called) was widened to include not only the exchange of currency (the purchase and sale of foreign banknotes) but also the management of credit transfers received from or sent abroad through credit institutions. Later, a *Ministerial Order of 16 November 2000* regulated specific aspects of the regime for currency-exchange bureaux and implemented certain obligations relating to the advertising and transparency of transactions for the sale and purchase of foreign currency and travellers' cheques executed by them, in order to ensure an adequate level of information and safeguards for customers.

The Banco de España has recently published *CBE 6/2001 of 29 October 2001* (BOE of 15 November 2001). This lays down the procedure for obtaining authorisation to be the proprietor of a currency-exchange bureau, the information such bureaux must present to the Banco de España, and the scope and content of their own and their agents' obligations.

According to the distinction made in RD 2660/1998 in relation to the business of currency-exchange bureaux, the Circular distinguishes between, on one hand, the legal regime for bureaux that only purchase and sell foreign banknotes and travellers' cheques and, on the other, those that also manage cross-border transfers. Its most salient features are described below.

6.1. Proprietors of bureaux that only purchase foreign banknotes and travellers' cheques with payment in euro.

Under RD 2660/1998, the proprietors of such bureaux must apply to the Banco de España for authorisation to pursue their activity, submitting the supporting documentation specified in the Royal Decree. Where the activity will be ancillary to other existing activities of the proprietor (e.g. credit institutions), it will only be necessary to evidence the applicant's main activity by presenting the latest receipt for the Economic Activities Tax.

As regards existing bureaux, the Circular provides that a new authorisation is required in the following cases:

1) When a new proprietor intends to continue the activity of an existing authorised proprietor, whether as a consequence of its inter vivos acquisition (under the transfer or partial assignment of a business), or through company operations (merger, demerger, transfer of assets and liabilities).

2) When the business is acquired *mortis causa* and the currency-exchange activity is the main one.

3) When a proprietor authorised to carry on such activity as an ancillary one intends that it should be its main activity.

The proprietor may commence the activity of purchasing foreign currency when authorisation has been notified and entered in the Register of Proprietors of Currency-Exchange Bureaux kept by the Banco de España.

The Circular also requires these bureaux to notify the Banco de España, within one month, of the following events: change of address of the proprietor or, in the case of legal persons, changes of name or registered office; a change in the nature of the business, i.e. from main to ancillary activity, and the opening of new premises for carrying on the authorised activity. They shall also send, within one calendar month of the quarter to which the data relate, a quarterly summary statement of the business carried out by the proprietor at all its premises, completing the forms annexed to the Circular.

With regard to consumer protection, the Circular sets out the minimum content and scope of the information that must be provided to the public on exchange rates, commissions and charges referred to by the Ministerial Order of 16 November 2000. Bureaux must post, in a perfectly visible place inside the premises, the following information:

a) The minimum buying rates that shall apply to the foreign banknotes and travellers' cheques of non-euro area countries when the amount of the transaction does not exceed EUR 3,000.

b) Until 28 February 2002, the conversion rates for the euro area legacy currencies, which shall be those resulting from their euro equivalent and which shall apply to the purchase of foreign banknotes and travellers' cheques denominated in such currencies.

In both cases, this information shall be accompanied by the commissions and charges, including the minimum ones, that apply to currency purchases, with indication of what they relate to when this is not clear from the name of the commission itself.

c) A legible copy of the notification from the Banco de España of the authorisation and its entry number in the relevant registry.

Finally, bureaux shall deliver to customers a receipt for purchases of foreign banknotes and travellers' cheques, with a clear breakdown of the transaction.

6.2. Proprietors of bureaux that only purchase foreign banknotes or travellers' cheques and/or manage cross-border credit transfers

As in the previous case, the proprietors of such bureaux must apply to the Banco de España for authorisation to pursue their activity, submitting the supporting documentation specified in RD 2660/1998 and, in the case of the activity of managing cross-border transfers, the insurance policy provided for in the same Royal Decree (13). The proprietor may commence its activities when authorisation has been notified and entered in the Register of Proprietors of Currency-Exchange and/or Transfer-Management Bureaux kept by the Banco de España.

The proprietors of such bureaux may manage cross-border transfers relating to foreign travel expenses and the remittances of workers domiciled in Spain. Likewise, they may execute payment of transfers received from abroad for similar purposes to those included in their corporate objects. As regards the opening of branches abroad to manage transfers for purposes other than those mentioned above, the Banco de España shall be given one month's notice thereof.

As for the information they must submit to the Banco de España, the Circular requires them to notify certain events and information, including the following: information relating to the requirements to preserve authorisation; alterations to the articles of association; termination of any or all of the businesses they are authorised to pursue; and, the opening of new premises.

(13) This policy, taken out with an insurance company legally authorised to provide civil liability insurance, shall cover any liability to third parties that may arise from the activity of managing cross-border transfers. In the case transfers relating to foreign travel expenses and the remittances of workers domiciled in Spain, the insured amount shall be not less than EUR 300,506.05. In the case of other types of cross-border transfer the insured amount shall be not less than EUR 601,012.10.

As regards financial and accounting information, they shall notify the Banco de España of the following:

1) During the first quarter of each year, the balance sheet and profit and loss account of the previous year, which shall follow the principles and criteria of the General Plan of Accounting, using the forms annexed to the Circular.

2) Half yearly, within two months of the end of the calendar half in question, the accounting information relating to the balance sheet situation and the other information detailed in the annexes to the Circular.

3) Quarterly, within two months of the end of the calendar quarter in question, a summary statement of the business performed by the proprietor at all its premises.

4) When shares are acquired that entail a holding in the share capital of a person or group of companies amounting to or exceeding any of the following percentages: 10%, 25% or 50%. Likewise, share transfers shall be notified when they involve a holding being reduced to below one of these percentages.

In addition, these bureaux must send other information relating to agents authorised to manage cross-border transfers, as well as to the general terms and conditions applicable to transfers.

As regards consumer protection, as in the previous case, bureaux shall post in a perfectly visible place on their premises, the following information:

a) The minimum buying and maximum selling rates or, if applicable, the single rates that they shall apply to the purchase and sale of travellers' cheques or foreign banknotes of non-euro area countries when the amount of the transaction does not exceed EUR 3,000.

b) Until 28 February 2002, the conversion rates for the euro area legacy currencies, which shall be those resulting from their euro equivalent and which shall apply, exclusively, to the purchase and sale of foreign banknotes and travellers' cheques denominated in such currencies and to any transaction between them.

c) The existence and functions of the Banco de España Complaints Service, which shall receive and process any complaints that may be made by customers in relation to the actions of proprietors that infringe the good banking practices or customs applicable to their activity.

d) Also, information on the law governing the transparency of transactions with customers and, in particular, the rules of this Circular.

The exchange and conversion rates shall be accompanied by details of the commissions and charges, including minimum ones, that apply to transactions, with indication of what they relate to.

The proprietors of bureaux shall provide and make available to their customers a document stating the general terms and conditions applicable to cross-border transfers. This document shall include the amount of and methods for calculating commissions and charges applicable to such transactions. These terms and conditions shall necessarily apply to all transfers, unless terms more favourable to the customer are contractually agreed. Customers shall also be provided, upon request, with a written offer (which may be sent by electronic means) containing the specific terms applicable to a transfer order. Finally, they shall deliver to the customer a receipt for the transaction containing at least the details specified in the Circular.

Also, the law governing the *agents* of proprietors of currency-exchange bureaux (14) contained in the Ministerial Order of 16 November 2000 has been implemented. The relationship with bureaux proprietors shall be stated in an agency agreement, the scope of which shall be limited to the type of transactions the proprietor is authorised to carry out. The powers of attorney shall be executed before a Notary Public and registered at the Mercantile Registry. It should be noted that agents may not act through sub-agents, or represent more than one proprietor. Moreover, vis-à-vis the customer, they shall fulfil the obligations arising from the rules of organisation and discipline, the rules relating to money laundering and any other rules regulating the activity of their principal. Bureaux proprietors shall be responsible for compliance by their agents with such rules and must implement adequate control procedures for this purpose. Likewise they shall have at each of their branches, available to the public, a duly updated list of their agents, indicating the scope of the powers granted. For their part, agents shall make available to their customers

(14) Agents are natural or legal persons to whom the proprietor of a currency-exchange bureau has granted power of attorney to act for and on its behalf in the execution of transactions with customers that form part of the ordinary business of the proprietor.

the general terms and conditions applied by their principals to cross-border transfers. They may not use their bank accounts to accept receipts of funds arising from the transfers ordered. However, they may use such accounts to obtain the amounts they must pay to the beneficiaries of transfers received and to channel to their principals the amounts received from their customers. Finally, agents shall post the minimum buying and maximum selling rates or, where applicable, the single rates that shall be applied by their principal.

Furthermore, the Circular describes the obligation of the proprietors of currency-exchange bureaux, when the amount of a transaction for the purchase or sale of foreign banknotes or travellers' cheques exceeds EUR 60,010.12 (or a lower amount, if it results from artificial division of a transaction that exceeds the amount indicated), to establish in advance, for statistical and tax purposes, the identity of the customer concerned. This shall be done by completion of the relevant form, a copy of which is annexed to the Circular.

7. INVESTOR COMPENSATION SCHEMES

Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997, on investor compensation schemes, aimed to provide a minimum, harmonised level of protection for small investors in the event of ISFs (15) being unable to meet their obligations to their clients. This directive was incorporated into Spanish law by Law 37/1998 of 16 November 1998, reforming Law 24/1998 of 28 July 1998 on the securities market, which set up the Investment Guarantee Fund (IGF). Subsequently, Royal Decree 948/2001 of 3 August 2001 regulatorily implemented investor compensation schemes, both for ISFs and for credit institutions. The aim of these schemes is to offer investors a coverage mechanism (16) when, owing to insolvency, an ISF or credit institutions is unable to repay amounts of money or return securities or financial instruments held on their behalf. In no case will this scheme cover credit risk or losses arising from the fall in value of an investment on the market.

Recently, the implementation of the powers conferred on the Ministry of Economy by Royal Decree 948/2001 was regulated, as was the establishment of exceptional arrangements for the distribution of compensation arising from the backdating of the Investor Guarantee Scheme.

7.1. Implementation of regulations for investor compensation schemes

To add flexibility to and speed the institution of investment guarantee funds, and in conformity with the powers conferred by the aforementioned Royal Decree on the Ministry of Economy, the *Ministerial Order of 14 November 2001* was promulgated (BOE of 23 November). This authorises the Spanish National Securities Market Commission (CNMV) to establish the registers, accounting rules, capital and the formats for the financial statements and statistics of the IGF management companies, and the frequency with which they should be reported to the CNMV. The CNMV is likewise authorised to lay down the provisions needed to implement the investment and financing regime for IGFs, along with the information to be furnished to investors regarding both the cover they are to enjoy and the specific assumptions giving rise to the realisation of the guarantee provided by these funds (e.g. insolvency of a securities-dealer company).

Pursuant to this authorisation, and in order to provide for the preparation of the Fund's annual budget, *CNMV Circular 2/2201 of 23 November 2001* (BOE of 24 November) was issued. It indicates the information that member entities (17) should report to the IGF management company for the purposes of determining the basis for calculating the joint annual contribution of these entities.

The Circular establishes that the IGF management company shall obtain the necessary data from the member entities so as to have the information required for drawing up the annual budget and for the calculation of the provisional contributions of the member entities, along with other information contained in this budget. In particular, the member entities shall report annually to the management company, before 31

(15) Investment services firms include securities-dealer companies, securities agencies and portfolio management companies. Credit institutions, though they are not ISFs, may habitually perform all complementary services and activities provided their legal status and their articles of association specifically authorise and qualify them to do so.

(16) The IGF shall ensure that every investor receives the money value of their overall credit position with the firm, subject to an upper limit of EUR 20,000, which is equal to the minimum harmonised guarantee level advocated by Directive 97/9/EC, notwithstanding certain exceptions envisaged in Royal Decree 948/2001. The investor's position shall be determined by considering all the accounts open in the investor's name with the investment services firm, taking into account the sign of their balances, whatever the currency of denomination.

(17) The IGF member entities are securities-dealer companies and securities agencies, and the branches in Spain of foreign investment service firms that are member entities of an IGF and of its management company.

January each year, on the number of depositors and cash balances, and the securities and financial instruments deposited or those registered on behalf of third parties. A breakdown shall be made for both sets of information of what is covered and not covered by the Fund guarantee and of the amounts higher and lower than the maximum guaranteed amount, distinguishing between outstanding amounts of securities and financial instruments in Spanish and foreign central securities depositories, in accordance with the statement included in the annex to this Circular.

With regard to valuation criteria, for the purposes of calculating the base for determining the annual contributions to an IGF, the accounts or positions that member entities have deposited or booked in securities and financial instruments not traded on a secondary market will be valued applying the following criteria:

a) Equities: face value.

b) Fixed-income securities: redemption value.

c) Financial instruments: estimated market value at year-end, calculated using generally accepted valuation procedures in respect of the instrument in question.

Finally, the member entities of an IGF shall exert permanent control of accounts representing transitory cash balances received from third parties and their securities and financial-instrument deposit and safekeeping activity. To do this, these entities shall keep the appropriate breakdown to monitor such accounts and identify them with their holders in their internal accounting base. These accounts shall be reconciled on an ongoing basis with the statements or certificates of third-party accounts issued by the central securities depositories of which the entity is a member; with the positions communicated by other entities to which the cash received and the securities and financial instruments held in safekeeping for third parties have been entrusted; and with the balances outstanding of cash and of financial securities and instruments directly recorded or held by the entity itself.

7.2. Compensation arising from the backdating of the investor guarantee scheme

The declaration of non-compliance, included in Article 5.1 of Royal Decree 948/2001, established that investors unable to obtain directly from a member entity of the fund the repayment of the money or the return of the assets belonging to them could apply to the IGF management company to realise the guarantee given by the fund, provided that the ISF were declared insolvent, either through the courts (under the assumptions of suspension of payments and of bankruptcy) or through the administrative channel (by the CNMV).

In this respect, *Law 24/2001 of 27 December 2001* (BOE of 31 December), on Fiscal, Administrative and Social Measures, exceptionally established a specific regime to address compensation arising from declarations of non-compliance by investment service firms with their duty to repay and return the money and securities received prior to the date of the entry into force of this Law, namely 1 January 2002. The legislation establishes distribution arrangements between the Deposit and Investment Guarantee Funds. In this connection, compensation which, in accordance with the provisions of the second paragraph of the first final provision of Law 37/1998 of 16 November 1998, reforming Law 24/1998 of 28 July on the Securities Market, arises from declarations of non-compliance by ISFs (18), dictated prior to 1 January 2002, shall exceptionally be met jointly by the Guarantee Fund for Deposits in Banks, Savings Banks and Credit Co-operatives and the Investment Guarantee Fund.

The procedure to determine the amount each of the Funds must satisfy is as follows. First, it will be determined which portion is to be met by the Guarantee Funds for Deposits in Banks, Savings Banks and Credit Co-operatives, on one hand, and by the Investment Guarantee Fund, on the other. This amount will be distributed between the former and the latter in proportion to their cumulative net worth as at 31 December 2001. Once the portion to be paid by the Guarantee Funds for Deposits in Credit Institutions has been determined, the amount that each of the component funds must pay shall be distributed. This amount will be proportionate to the amounts of money and of securities and instruments deposited and registered in banks, savings banks and credit co-operatives as at 31 December 2001.

It will be for the CNMV to determine the net worth of the Investment Guarantee Fund. The

(18) Article 5.1 of Royal Decree 948/2001 of 3 August 2001 on investor compensation schemes envisages that investors unable to obtain directly from a member entity of the fund the repayment of the money or the return of the assets belonging to them could apply to the IGF management company to realise the guarantee given by the fund, provided that the ISF were declared insolvent, either through the courts (under the assumptions of suspension of payments and of bankruptcy) or through the administrative channel (by the CNMV).

Banco de España, for its part, will quantify the net worth of the Guarantee Funds for Deposits in Banks, Savings Banks and Credit Co-operatives, and determine the amount of money and of securities and instruments deposited and registered at banks, savings banks and credit co-operatives. Once the aforementioned percentages have been set, the Management Company of the Investment Guarantee Fund will demand from the other Funds the amounts the latter have to pay to meet the compensation.

The CNMV is further authorised to extend loans, with a charge to its resources, to the Management Company of the Investment Guarantee Fund so that, in the name and on behalf of the latter, it may undertake payment of the compensation which investors are due, in accordance with the provisions of Royal Decree 984/2001 of 3 August 2001 on investor compensation schemes. When an ISF has been declared bankrupt or has legally filed for the suspension of payments to creditors, prior to the date of the entry into force of the present provision, the period in which investors' rights, where appropriate, are to be satisfied shall be as from 1 January 2002.

8. CO-ORDINATION OF THE CONDITIONS OF ADMISSION OF TRADEABLE SECURITIES TO OFFICIAL LISTING IN THE EUROPEAN UNION

In step with the growth of European corporate activity, financing requirements on capital markets –among other things- have become bigger. In this respect, co-ordination of the conditions of admission of tradeable securities to official listing on the stock markets operating in EU Member States will provide for the readier listing, in each member country, of the securities from other Member States, as well as for the listing of the same security on several European bourses. Such co-ordination is also ideal for achieving equivalent investor safeguards across the Community, since more uniform guarantees will be offered to investors in the various Member States.

In recent years the co-ordination of the conditions of admission of tradeable securities to official listing across the EU has been amended and indeed overhauled (19) on several occasions. For the sake of greater clarity and rationality, therefore, these directives were coded and re-grouped in a single text, namely *Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001* (OJEC of 6 July) on the admission of securities to official stock exchange listing and on information to be published on those securities.

The Directive is structured in several parts, chapters and sections. First, the definitions and scope are laid down. Second, the general provisions relating to the official listing of tradeable securities are detailed. Third, the special conditions for the official listing of tradeable securities and, in particular, the contents of the public offering prospectus drawn up for the admission of tradeable securities to official listing are established. And finally, the special conditions for the admission of bonds issued by a State, by its public territorial entities or by a public international agency.

One of the basic pillars of the Directive is the *mutual recognition* of the prospectus to be published for the admission of tradeable securities to official listing, since that is an important step towards the completion of the Community internal market. In this respect, the prospectus drawn up and approved under this regulation shall be recognised as a public offering prospectus in the other Member States in which admission to official listing is applied for, without these Member States being able to demand the inclusion of supplementary information in the prospectus.

Nonetheless, Member States' authorities may demand that the prospectus include specific information on the market of the admitting country, the tax regime for the securities, the agencies that ensure the financial service of the issuer in that country and the means of publishing announcements aimed at investors.

Finally, the European Union may recognise listing prospectuses drawn up and controlled by third countries, under conditions of reciprocity, provided that the regulations in such countries guarantee investors equivalent protection to that offered by Community regulations.

9. WITHDRAWAL OF LEGAL TENDER COINS DENOMINATED IN PESETAS

Law 10/1975 of 12 March 1975 on the Regulation of Coins, amended by Law 21/1986 of

(19) See Council Directive 79/279/EEC of 5 March 1979 on the admission of securities to official stock exchange listing; Council Directive 80/390/EEC of 17 March 1980 on the co-ordination of the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing; Council Directive 82/121/EEC of 15 February 1982 on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing; and Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of.

23 December 1986 of the 1987 State Budget, conferred powers on the Ministry of Economy and Finance to determine the coins which, in each case, should make up the national coin system and the related face values. These powers corresponded to the Ministry of Economy pursuant to Royal Decree 689/2000 of 12 May 2000, under which the basic organic structure of the Ministries of Economy and Finance was established.

Law 46/1998 of 17 December 1998 on the introduction of the euro, amended by Law 14/2000 of 29 December 2000 on fiscal, administrative and social measures, provided –as from 1 January 2002- for the physical introduction of euro-denominated coins and their replacement of peseta coins, as well as for the coexistence of both currencies until 28 February 2002. Thereafter, coins denominated in pesetas will cease to be legal tender and will retain only a conversion value at the conversion rate and according to the rounding rules in Law 46/1998.

Recently, the *Ministerial Order of 18 October 2001* (BOE of 7 November) was published. It establishes the procedures for the total and immediate withdrawal of peseta coins, without prejudice to their retaining a conversion value for an unlimited period of time.

In this respect, the Banco de España shall proceed, as from 1 January 2002, to withdraw all peseta-denominated coins that are deposited in or enter their vaults for their subsequent demonetisation. Credit institutions, for their part, shall withdraw peseta coins presented to them for exchange, delivering them in turn to the Banco de España.

As from 1 March, peseta coins will no longer be legal tender and their circulation will be prohibited. They will, however, maintain their face value, for conversion purposes, being exchangeable for the equivalent value in euro at the conversion rate. Coins may be so exchanged until 30 June 2002 at credit institutions and at the Banco de España. Thereafter, there will be an unlimited conversion period where exchange will be confined exclusively to the Banco de España.

Monthly, the Banco de España will submit the information requested by the Treasury to ensure proper knowledge is at hand of how demonetisation operations are unfolding and of the position of the Treasury's deposit in the different types of coin. Finally, a *Monitoring Committee* has been established, made up of representatives of the Treasury, the Banco de España and the FNMT (National Mint). The committee will act as a consultative body, offering the correct interpretation of the precepts of this regulation.

10. STATE BUDGET FOR THE YEAR 2002

As usual in December, the State Budget for the year 2001 has been approved by *Law 23/2001 of 27 December 2001* (BOE of 31 December 2001).

Since the euro came into circulation on 1 January this year, the Budget for 2002 is the first to have been drawn up in this monetary unit. There are no significant novelties in the Budget in relation to the previous year. The general tone of austerity, the control of the deficit and the budgetary discipline initiated in prior years are maintained. The Budget is based on a macroeconomic scenario of mild growth in the Spanish economy and a forecast increase in the CPI of 2%.

The following aspects may be highlighted owing to their significance or novelty.

As regards financial regulation, the prevailing legal interest rate and the late-payment interest rate for tax debts fall from 5.5% to 4.25% and from 6.5% to 5.5%, respectively. Further, the ceiling for the increase in the outstanding stock of State debt during the year is set at EUR 8,473 million. This limit, which may be revised if certain circumstances envisaged in the Law arise, will be effective at the end of the year, and may be exceeded on authorisation of the Ministry of Economy in a limited number of cases.

In the fiscal realm, and with specific regard to personal income tax, the coefficients to correct property acquisition values are regulated, and the temporary compensation arrangements for lessors and buyers of an habitual residence are retained under those assumptions where the tax rules are less advantageous than was the case prior to Law 40/1998 of 9 December 1998 on personal income tax.

As regards corporate income tax, the monetary adjustment coefficients applicable to property transfers are updated and the amount of the partial payments that entities subject to this tax must make is determined.

Turning to indirect taxes, only the rate on transfer tax and stamp duty relating to the restoring and transfer of nobility titles has been updated.

For the regional (autonomous) governments, new financing arrangements have been set in

place. There are substantial changes to the previous arrangements. The financing of the ordinary-regime regional governments is, under the new arrangements, through the following mechanisms: the raising of assigned taxes and charges; the regional personal income tax schedule, which corresponds to 33% of the total schedule for this tax; the assignment of 35% of the net amount of VAT receipts arising in relation to the consumption of each regional government; and the assignment of 40% or, where appropriate, 100% of net receipts for specific excise duties. The most significant change in the new arrangements is the creation of a *Guarantee Fund,* the main mechanism for levelling and balancing the system. Its aim is to cover the difference between each regional government's spending requirements and its tax capacity in the system's base year (1999). The Basque Country and Navarra regional governments are funded under the specific-status regional government arrangement. Specifically, financial relations with the Basque government are regulated by an Economic Accord, whose term concluded on 31 December 2001, without any provision for its extension having been made (20). Financial relations with the Navarra regional government are regulated by an Economic Agreement, for which no term is set. Another significant novelty is the creation of a *Supplementary Fund.* This fund was intended initially to fund investment spending by the regional governments, but provides for the possibility of regional governments earmarking amounts from the fund to finance current expenditure associated with investment funded by the Compensation Fund (the former Interterritorial Compensation Fund), or with the provisions of the Supplementary Fund itself.

11. FISCAL, ADMINISTRATIVE AND SOCIAL MEASURES

As usual in recent years, to facilitate compliance with the economic policy objectives set out in the State budget for the year 2002, a series of fiscal, administrative and social measures have been adopted. These are contained in *Law 24/2001 of 27 December 2001* (BOE of 31 December).

The Law addresses a series of measures geared to promoting growth and employment in accordance with the economic policy criteria set by the Government to tackle the slowdown in growth derived from the business cycle turnaround. In this respect, the regulation introduces specific reforms affecting taxation and the rules regulating general government personnel, and it responds to specific needs in relation to government management, organisation and action in various spheres.

Given the nature of this article, the key measures introduced are highlighted below. They comprise, firstly, those of a monetary and financial nature; secondly, those of a fiscal nature; and thirdly, those affecting other areas.

11.1. Government action in the monetary and financial sphere

In respect of monetary policy and the financial system, Law 24/2001 amended a series of provisions, including most notably the following.

11.1.1. Introduction of the euro

Law 46/1998 of 17 December 1998 on the introduction of the euro is amended to determine the method of banknote marking and cancellation by banks, and an additional provision is laid down for the purpose of regulating the safeguards against counterfeiting of the euro. In this respect, from 1 January 2002 to 30 June 2002, banks, savings banks and credit co-operatives may mark peseta-denominated banknotes. The marking method will involve cutting a right-angled isosceles triangle (the length of whose two sides on the banknote edge shall be 20mm) off any of the four corners of the banknote. The peseta banknotes thus marked may only be exchanged at the Banco de España.

With regard to the measures to regulate safeguards for the euro against counterfeiting, it is established that, without prejudice to the powers assigned to other State or Regional Government bodies, the Banco de España shall be the national authority responsible for detecting counterfeit euro-denominated banknotes and coins. It shall also be entrusted with collecting and analysing the technical and statistical data on counterfeit euro-denominated banknotes and coins and whatsoever other relevant data for discharging its responsibilities. To this end, the Banco de España is designated as the National Centre for Analysis and the National Centre for Currency Analysis on behalf of the Spanish Treasury.

The failure, on the part of credit institutions, currency exchange bureaux and other entities involved in the handling and delivery to the public of notes and coins in a professional capacity, to comply with their obligation to withdraw from

(20) Law 25/2001 of 27 December 2001 extends the term of the Economic Accord with the Basque Country approved by Law 12/1981 of 13 May 1981 during the year 2002 until a new agreement is approved.

circulation all notes and coins they have received and which they know or assume on firm grounds to be false, is a serious offence. They will likewise be committing a serious offence if they fail to deliver the aforementioned notes and coins to the Banco de España without delay. The offence referred to here will give rise to a fine ranging from EUR 30,000 to EUR 1 million.

11.1.2. Pension schemes and funds

As from 1 January 2002 the following amendments have been made to Law 8/1987 of 8 June 1987 on the Regulation of Pension Schemes and Funds.

Firstly, *maximum annual contributions* to pension schemes will be in accordance with the following: total maximum annual contributions to pension schemes, without including employers' contributions imputed by pension scheme promoters to participants, remain set at EUR 7,212.15. Nonetheless, in the case of participants aged over 52, the previous ceiling is raised by an extra EUR 1,202.02 per year after the age of 52, up to a level of EUR 22,838.46 for participants of 65 years of age or over (21). The previously established maximum annual ceilings for employers' contributions by the promoters of employee pension schemes in favour of their employees and imputed to employees will remain in place.

Furthermore, mention should be made of the newly created *ombudsman* for individual pension scheme participants. Beneficiaries will also be protected by this figure. The promoters of these pension schemes, either individually or grouped, on the basis of belonging to the same group, territory or whatsoever other criterion, shall designate entities or independent experts of recognised standing as an ombudsman. Claims formulated by participants and beneficiaries or their successors against pension fund management or depository entities in which the schemes are integrated or against the promoters of individual schemes shall be subject to the ombudsman's decision. Such decisions favourable to claims will be binding upon the aforementioned entities. The binding nature of decisions will not be an obstacle to full protection of the law, to resort to other conflict-settling or mediatorate General of Insurance and Pension Funds the designation of the ombudsman and his/her acceptance, along with the rules of procedure and the term established for the resolution of claims, which in no circumstances may exceed three months as from the presentation of such claims. Designation, operating and remuneration expenses for the ombudsman will in no case be defrayed by claimants or by the related pension schemes and funds.

The designation of the ombudsman for individual pension scheme participants shall be made and communicated to the Directorate General of Insurance and Pension Funds within twelve months as from the entry into force of this Law on 1 January 2002.

Finally, the Government is authorised, within a term of twelve months as from 1 January 2002, to draw up and approve a consolidated text of the Law regulating pension schemes and funds, to include, in a duly regulated, clarified and systematic fashion: a) Law 8/1987 of 8 June 1987 on the Regulation of Pension Schemes and Funds; b) the special financial arrangements for pension scheme contributions and benefits for the handicapped, as envisaged in the seventeenth additional provision of Law 40/1998 of 9 December 1998 on personal income tax and other tax regulations, and legal provisions in force that have amended these arrangements; and c) the provisions on pension schemes and funds in the present Law and in other laws, whatever the date of their entry into force.

11.1.3. Securities registration, clearing and settlement systems

Law 24/2001 adds a further provision to Law 24/1988 of 28 July on the securities market. It the envisaged shareholder interest regime will not be applicable to these entities or their subsidiaries. In such a case, it will be for the CNMV to authorise the articles of association governing these entities and amendments thereto, as well as the appointment of its Board of Directors and its Directors General. The Government shall determine the regime applicable to the offers to buy the shares representing the capital of the entities in question, the disclosure regime to which shareholder interests shall be subject and the limitations which, where appropriate, may be set on the rights arising therefrom, along with whatsoever other aspect that proves necessary for the application of this provision. Supervision of the above-mentioned entities will be by the CNMV.

11.2. Fiscal sphere

The scope of certain exemptions has been widened in personal income tax and a provision has been laid down to make it easier for married taxpayers to comply with tax obligations.

(21) In the previous regulation the ceiling of EUR 7,212.15 was raised by EUR 601.01 for each year after the age of 52, up to a level of EUR 15,025.30 for participants of 65 and over.

The overall ceiling on contributions to individual and employee pension schemes has been eliminated, and the ceiling for contributions by individuals close to retirement and for the handicapped has been raised (as discussed in the previous section).

In connection with corporate income tax, several measures are adopted to promote economic growth. In relation to tax payable, a new allowance is created for the re-investment of extraordinary profits, the allowance for R+D activities and technological innovation is broadened, the scope of tax incentives for small and medium-size enterprises is extended and a new tax regime is set in place for shipbuilding companies, which can opt to pay tax on the basis of tonnage. The period over which goodwill can be amortised is also extended, as is the term within which negative tax bases may be offset. There are further incentives for social welfare with a 10% allowance in corporate income tax for employers' contributions to employee pension schemes for workers with income below a certain threshold.

In respect of income tax on non-residents, a new tax rate is established for income received by seasonal workers, so as to ease the overtaxing of such income.

As to indirect tax, several changes are made to value-added tax owing in the main to Community and other, technical regulations. In this respect, mention may made of the changes affecting the accrual of the tax for works execution contracts and certain ongoing-performance operations, changes affecting the application of the taxpayer investment mechanism and refund procedures for non-established proprietors, inter alia. Moreover, references to ecus and pesetas have been replaced by references to euro.

Turning to excise duties, only the tax on tobacco products has been changed, so as to comply with Community regulations.

Under the general tax regime, certain technical changes have been made in the General Tax Law. On one hand, tax management bodies will be made more effective in their control tasks, and on the other, further to application by addressees, notification to post-office boxes and e-mail addresses will be possible.

11.3. Government action in other sectoral spheres

As regards other social measures, a Social Security reserve fund has been set up to meet the future needs of the Social Security System. It will be funded by the surplus revenue arising each year on contributions and resulting from the Social Security Budget outturn, provided that the economic possibilities and financial position of the System so allow it. Every year the Government will set the amount of surplus revenue earmarked for endowing the reserve fund. Likewise, the Government, on the joint proposal of the Ministries of Labour and Social Affairs, Economy, and Finance, will determine how the reserve is to be invested by the Social Security Treasury Department. Returns on the government debt instruments in which the provisions to the reserve fund have been invested will, along with the returns arising on the fund's outstanding financial balances, be re-invested in the fund.

Partial retirement has also been regulated, with drawing a pension being made compatible with holding down a part-time job. The regulation on extensions in the duration of unemployment subsidies has been built on with a view to standardising a uniform and comprehensive system of control over subsidy-recipients over the life of the subsidy. And, lastly, coverage for unemployment, maternity and temporary disability has been broadened.

With regard to aid for the victims of terrorism, measures have been adopted aimed at harmonising the two regimes currently in place under Spanish law: the general regime, covered by Law 13/1996 of 30 December 1996 on fiscal, administrative and social measures; and the special regime, addressed in Law 32/1999 of 8 October 1999 on solidarity with the victims of terrorism. Furthermore, the term of application of the Law on solidarity with the victims of terrorism is extended to 31 December 2002.

Concerning the organisation of government, regulations have been included on the creation of entities or the amendment of existing legal regimes for public bodies and State mercantile companies. The Restrictive Practices Court Authority has thus been created and amendments made to the respective legal regimes governing the State Tax Revenue Service and the Spanish International Co-operation Agency. In respect of administrative procedures, the presentation of applications and communications to the Administration via teleprocessing services has been regulated, and the regulations governing specific special administrative procedures have been amended, as regards both the period in which applications submitted are resolved and the "tacit authorisation" or "silence is consent" rule.

12. Security services for electronic communications with general government

Article 81 of Law 66/1997 of 30 December 1997 on fiscal, administrative and social measures authorised the FNMT (National Mint) to provide the technical and administrative services required to ensure the security, validity and effectiveness of general government and public-sector agencies' communications via electronic, computerised and teleprocessing techniques and means. This article was subsequently implemented by Royal Decree 1290/1999 of 23 July 1999.

Recently, *Royal Decree 1317/2001 of 30 November 2001* (BOE of 4 December) repealed Royal Decree 1290/1999 while regulatorily implementing the provision by the FNMT, on a competitive footing with other operators in the sector, of the technical and administrative services required to ensure the security, validity and effectiveness of the General State Administration's and public-sector agencies' communications via electronic, computerised and teleprocessing techniques and means. Such communications will be conducted in accordance with the provisions of the current electronic signature regulations.

The aforementioned technical services will provide for: evidence of the identity of the sender and recipient of the communication, and the validity of their intention; assurance as to the integrity of the document both in transmission and receipt, so that any change therein can be detected, and preservation of content; evidence of the presentation or, where appropriate, receipt by the addressee of notifications, communications or documentation, and assurance as to confidentiality in the issuance, transmission and reception of communications.

To provide these services, the FNMT will furnish each user who applies for these services with an *electronic certificate.* This should be such as to be attested as a qualified certificate, in accordance with the provisions of the electronic signature regulations. Regulations will subsequently be implemented on the conditions this certificate is to fulfil.

Authorised individuals may apply to general government for the electronic certificate, though no more than one certificate per person may be applied for and obtained. The application may be submitted to any of the validation offices under any government department or public agency with the potential status of a certification system user. With the requirements and circumstances that should be determined in the subsequent regulatory implementation having been met, the FNMT will issue the related electronic certificate, which will be valid for a period of three years and renewable thereafter. Issuance of the certificate gives holders private-user status.

General government and public bodies and agencies will acquire the status of public users of the services provided by the FNMT through signing an agreement. This is without prejudice to the fact they may enter into agreements which, owing to their singularity, mark a departure from the content of the standard agreement, but which are approved by the Ministry of Economy.

The FNMT will cancel electronic certificates granted to private users when any -inter alia- of the following circumstances are the case: application by the user for cancellation; judicial or administrative resolution ordering such cancellation; death or supervening incapacity of the user; finalisation of the term of validity of the certificate or improper use by a third party. The discontinuation of public-user status will be governed by the provisions of the related agreement, or whatsoever should be determined by judicial or administrative resolution. Likewise, the FNMT may propose to the Ministry of Economy that it set public prices as a consideration for certification and for additional electronic, computerised and teleprocessing services.

Finally, the FNMT may provide the abovementioned technical services for compliance with tax obligations or the payment of whatsoever other economic rights in favour of general government when public or private users use electronic, computerised and teleprocessing techniques and means.

13. RATIFICATION BY SPAIN OF THE TREATY OF NICE, AMENDING -INTER ALIA- THE TREATY ON EUROPEAN UNION

Organic Law 3/2001 of 6 November 2001 (BOE of 7 November) authorising the ratification by Spain of the Treaty of Nice, signed by the Member States on 26 February last year, has been published. This Treaty will allow the process initiated by the Treaty of Amsterdam to be seen through, i.e. preparing the institutions of the European Union for working in an enlarged Union.

The new Treaty makes significant amendments affecting the composition and functioning of the institutions and bodies of the Union, jurisdictional arrangements, qualified majorities, reinforced co-operation, fundamental rights, security and defence, judicial and penal co-operation and the European Coal and Steel Community (ECSC) Treaty.

In this respect, from 1 January 2005 a reweighting of the votes to which each Member State is entitled in the Council will take effect, taking the population factor more into account, as will new rules for determining the qualified majority. The Protocol on the enlargement of the European Union and its annexed declarations establish the rules and principles for setting in successive accession treaties the votes to which the new Member States will be entitled and the qualified majority threshold.

The Treaty provides for a new composition of the Commission which will come into force from 2005, it amends how its President and members are designated, and it considerably bolsters the powers of the President.

The Union's jurisdictional arrangements are subject to far-reaching reform, whereby the Court of Justice will be responsible for hearing preliminary appeals and the guarantor of the singleness of interpretation and application of Community law, while the Court of First Instance will be the common law judge in respect of direct appeals. Jurisdictional courts are likewise created to hear highly specialised legal cases.

The new Treaty also introduces changes relating to the composition and organisation of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, with a view to enlargement. The Declaration on the enlargement of the EU determines the number of seats on these two committees corresponding to the new Member States in future accession treaties. Decision-making arrangements are also modified, so that a large portion of provisions pass fully or partially from unanimity to qualified-majority voting, and several provisions will be subject to a co-decision procedure.

Finally, a Protocol establishes the measures needed to anticipate the financial consequences derived from the expiry of the ECSC on 23 July 2002.

09.01.02