Financial regulation: 2003 Q2

1. INTRODUCTION

In 2003 Q2, relatively few new financial provisions were enacted.

In relation to national payment systems, the Target (1) reimbursement scheme has been replaced by a new compensation scheme, for use in the event of TARGET malfunctioning, in order to establish a mechanism that better reflects market practices. Also, the National Electronic Clearing System *(Sistema Nacional de Compensación Electrónica*, SNCE) has been authorised to transmit requests for fund and cash transfers and information between institutions involved in the transfer procedure between portfolio investment institutions.

The Banco de España has been given responsibility for managing two new files that have been created, which contain personal data.

A number of obligations have been imposed on financial institutions, to improve the transparency and information of the costs of the banking services they provide through automated teller machines.

In the securities market field, takeover law has been reformed to improve the protection of minority shareholders in the event of changes in the control of listed companies, and the standard forms for prospectuses for issuing warrants, whose underlying assets may be the issuer's own shares, have been approved so as to facilitate such operations.

At the EU level, certain aspects of the European Central Bank's statistical information requirements in relation to the balance of payments, the international investment position and international reserves have been amended, in order to establish new criteria for the collection of information on euro area cross-border positions and transactions. Also, a directive on insider dealing and market manipulation (market abuse) has been published, to complete the legal framework for the protection of market integrity against price manipulation and the dissemination of misleading information.

Finally, a number of extraordinary and urgent economic reform measures have been published, including most notably a reduction in the price of mortgage novation and subrogation transactions, certain tax incentives to small and medium-sized enterprises, a

(1) Transeuropean Automated Real-Time Gross Settlement Express Transfer (TARGET) is a general interbank payment system in the EU, which connects the various real time gross settlement systems and the ECB payments mechanism by means of the "interlinking" procedure.

number of stimuli to the rented housing market and fiscal measures to promote investment.

2. AMENDMENT OF THE TARGET REGULATIONS: REIMBURSEMENT SCHEME AND OTHER AMENDMENTS TO THE REGULATION OF THE BANCO DE ESPAÑA SETTLEMENT SERVICE

In order to transpose into Spanish law the ECB Guideline of 3 October 2000, subsequently amended by the ECB Guideline of 26 April 2001, CBE 8/2000 of 22 December 2000 (2) amended the TARGET regulations to introduce a so-called *reimbursement scheme*. This was intended for situations in which TARGET functions irregularly, preventing completion of the processing of payment orders entered into the system. In such situations, the European System of Central Banks (ESCB) and the other central banks participating in TARGET undertook to reimburse the institutions affected with certain amounts based on the difference between the interest rate applied for the use of standing facilities and the marginal rate in main refinancing operations.

Recently, *Guideline ECB/2003/6 of 4 April 2003* (OJ of 7 May 2003), replaced the reimbursement scheme regulated in Guideline ECB/2001/3 of 26 April 2001 with a new compensation scheme applicable in the event of TARGET malfunctioning. In order to transpose this Guideline into Spanish law, *CBE 2/2003 of 24 June 2003* (BOE of 28 June 2003) on a compensation scheme in the event of TARGET malfunctioning and other amendments to the Banco de España Settlement Service (SLBE) has been published, which repeals and replaces the provisions of CBE 8/2000.

The main changes entailed by the new scheme are as follows: First, the cases in which the compensation scheme applies have been widened to cover all situations of TARGET malfunctioning, except when the malfunctioning is caused by external events beyond the control of the ESCB, or by the failure of a third party other than the operator of the national RTGS system where the malfunctioning occurred. Second, the amount received by the institution concerned includes, in certain cases, in addition to the payment in respect of interest, compensation for administrative expenses. Finally, the method of calculating the compensation in respect of interest has been changed.

(2) See "Financial regulation: 2000 Q4", in Economic bulletin, Banco de España, January 2001, pp. 70-71.

2.1. Conditions for the compensation scheme to apply

A TARGET malfunctioning shall be deemed to have occurred when the existence of technical problems of diverse kinds prevents execution and completion, on the planned date, of the processing of payment orders through such system. These problems include defects or failures in the technical infrastructure or in the computer system of any of the national payment systems integrated into or connected to TARGET, of the ECB payments mechanism or of the electronic network connecting them (the Interlinking System), or the existence of any other circumstance affecting any of the aforementioned components of TARGET.

The new compensation scheme may be applied to any TARGET payment, whether domestic or cross-border, irrespective of the TARGET component in which the malfunctioning occurred. In this respect, it may be applied to payments ordered both by participants in TARGET through the national systems of countries not belonging to the euro area and by those of member countries that are not counterparties to the Eurosystem monetary policy operations.

By contrast, the compensation scheme shall not apply, unless the Governing Council of the ECB should otherwise decide, when the malfunctioning is caused by external events beyond the control of the ESCB (force majeure), or by incidents or errors of a third party other than the operator of the TARGET component in which the malfunctioning has occurred.

The participants may, however, avail themselves of all such legal means as may be available to them to claim compensation in the event of malfunctioning of the system. However, acceptance by the institution concerned of an offer of compensation made by the ESCB shall constitute its irrevocable agreement that it thereby waives all claims (including any claims for consequential damages) that it that may have against any central bank member of the ESCB, in accordance with national laws or otherwise. Likewise, receipt of the corresponding compensation payment shall be in full and final settlement of all such claims.

Where a TARGET participant has received a compensation payment, in accordance with this Circular, it shall indemnify the ESCB up to the amount received, in the event that any other TARGET participant makes a claim for compensation in relation to the same payment order in any other action for damages it may bring.

A claim for compensation by a sending institution that entered a payment order shall be

considered by the ESCB if, as a consequence of the TARGET malfunctioning it was not possible to complete same day processing of the order, or if the participant concerned can show that it had the intention to enter an order into TARGET but was unable to do so due to a stop-sending status of any of the systems integrated into TARGET.

A claim for compensation by an institution receiving a payment order shall be considered by the ESCB when, as a consequence of the malfunctioning of TARGET, any of the following three circumstances arises:

1) The participant did not receive a TARGET payment that it was expecting to receive on the day of malfunctioning.

2) The participant had recourse to the marginal lending facility, or if it does not have access to such facility, such participant was left with a debit balance or had a spill-over from intraday credit into overnight credit at the close of business or had to borrow amounts from the respective national central bank.

3) Either the national payment system where the malfunctioning occurred was that of the receiving institution, or the malfunctioning occurred so late in the TARGET operating day that it was technically impossible for the receiving institution to have recourse to the money market.

2.2. Calculation of compensation

2.2.1. Compensation of sending institutions

The compensation offer made by the ESCB to institutions entering payment orders under this Circular shall consist of an administration fee and, if applicable, an interest compensation as well.

The administration fee shall be €100 for the first payment order not completed on the processing date in respect of each receiving institution, €50 for the following four orders to the same receiving institution, and €25 for each additional payment order in the same circumstances.

The interest compensation shall be determined by applying a reference rate to the amount of the unprocessed payment order for each day of the period of malfunctioning. This reference rate of interest shall be the lower of the euro overnight index average (EONIA) and the marginal lending rate. From the amount of interest compensation so calculated shall be deducted any proceeds obtained by the sending institution from placing the funds concerned by recourse to the deposit facility or the remuneration received on excess funds in the settlement account in the case of participants that are not counterparties to the Eurosystem monetary policy operations.

Sending participants shall not receive any interest compensation if the funds have been placed on the market or used for the fulfilment of minimum reserve requirements.

2.2.2. Compensation of receiving institutions

The ESCB offer to receiving institutions under this Circular shall consist of an interest compensation only, and shall be determined by applying a rate of interest to the amount of the institution's recourse to the marginal lending facility. This rate of interest shall be calculated as the difference between the marginal lending rate and the reference rate used in the case of the sending institutions.

2.3. Claims procedure

SLBE participants shall, where applicable, submit their claim forms to the Banco de España, irrespective of the component of TARGET in which the malfunctioning occurred. The procedure is set out in the Circular.

The Governing Council of the ECB shall carry out the assessment of all claims received and shall decide in which cases compensation offers shall be made. The malfunctioning national central bank (NCB) shall communicate the result of the assessment to the institutions concerned. Acceptance or rejection shall expressly refer to each payment order in a signed standard letter of acceptance, the form of which the ECB shall make public.

3. NATIONAL ELECTRONIC CLEARING SYSTEM: TRANSMISSION OF TRANSFER APPLICATIONS BETWEEN PORTFOLIO INVESTMENT INSTITUTIONS

Law 46/2002 of 18 December 2002 (3) on partial reform of personal income tax and amendment of the laws on corporate income tax and the tax on the income of non-residents, amended Law 46/1984 of 26 December 1984 (4)

(3) See "Financial regulation: 2002 Q4", in Economic bulletin, Banco de España, January 2003, pp.116-118.

(4) See "Regulación financiera: cuarto trimestre de 1984", in Boletín económico, Banco de España, January 1985, pp. 41-43.

on portfolio investment institutions, establishing the rules applicable to transfers between portfolio investment institutions. As a result, the shareholders of portfolio investment institutions may transfer their investments to other portfolio investment institutions. For such transfers to be fully effective, the transfer applications, the cash and the information must be transmitted between the institutions involved. Law 46/2002 granted powers to the Ministry of Economy to authorise standardised systems, with proper security guarantees, for the transmission of the transfer applications, the cash and the information between the institutions involved in the procedure.

On 5 November 2002, the Banco de España, as administrator and manager of the SNCE, approved Instruction SNCE/A/03/597. This enables transfers of cash and the transmission of information relating to pension scheme and mutual fund transfers to be processed electronically. It was also envisaged that applications for transfers between portfolio investment institutions could be processed through the SNCE too.

As a result, *Order Eco/1047/2003 of 23 April 2003* (BOE of 1 May 2003) has been issued under the powers granted by Law 46/2002. This order authorises the SNCE to transmit transfer applications, to transfer cash and to transmit information between the institutions involved in the transfer procedure between portfolio investment institutions, since the SNCE is considered to fulfil all the conditions necessary to ensure security in the execution of such operations.

4. FILES CONTAINING DATA OF A PERSONAL NATURE MANAGED BY THE BANCO DE ESPAÑA

Organic Law 15/1999 of 13 December 1999 on the Protection of Personal Data establishes that the creation, modification or destruction of general government files may only take place under a general provision published in the BOE or the equivalent official journal. It also determines what data shall necessarily be indicated in provisions for the creation or modification of files.

CBE 1/2003 of 28 May 2003 (BOE of 10 June 2003), which amends Circular 4/1994 of 22 July 1994 on files containing personal data managed by the Banco de España, has been published to include two new files.

First, the file "Sanctioning proceedings" has been created. This includes personal data, not included in other files managed by the Banco de España, relating to natural persons affected by sanctioning proceedings conducted pursuant to the powers conferred on this institution.

Second, the file "Banco de España Code of Conduct Statements" has been created. This includes the declarations made by employees who may have access to inside information specifying their holdings of certain securities and financial instruments, transactions carried out for the purchase, sale or redemption of the same, and transactions with assets or rights that may be related to monetary policy operations. When there are well-founded reasons so justifying, these declarations may be used to oversee compliance with the obligations arising under the Code of Conduct.

5. PRICE TRANSPARENCY: BANK SERVICES PROVIDED THROUGH AUTOMATED TELLER MACHINES

The ATM network at the service of Spanish users has been functioning satisfactorily, both from the viewpoint of the range of services provided and of its coverage and availability in such a large country. However, greater transparency of the transactions performed and an improvement in the information that must be given to ATM users have been considered necessary.

Law 26/1988 of 29 July 1988 (5) on the discipline and intervention of credit institutions, with the aim of protecting the legitimate interests of credit institutions' depositors and borrowers, empowered the Minister of Economy, inter alia, to determine the precise rules to ensure that contracts reflect explicitly and with sufficient clarity the parties' commitments and rights given the specific contingencies of each type of transaction. Pursuant to this power, the Order of the Ministry of Economy and Finance of 12 December 1989 on credit institutions' interest rates and commissions, rules of conduct, customer information and advertising was issued. This order was implemented by CBE 8/1990 of 7 September 1990 (6) on transaction transparency and customer protection.

Recently, following the same procedure, *Order PRE/1019/2003 of 24 April 2003* (BOE of 30 April 2003) on price transparency in bank services provided through ATMs has been published. Its purpose is to protect the right to information of ATM users, by establishing a number

(5) See "Regulación financiera: tercer trimestre de 1988", in Boletín económico, Banco de España, October 1988, pp. 56-58.

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

of obligations relating to indication of the prices of the services provided through such machines.

5.1. Scope of application and setting of commissions

The order applies to bank services provided through ATMs situated in Spain, belonging to Spanish or foreign credit institutions and to the branches in Spain of foreign credit institutions, as well as to the services provided by financial institutions that issue means of payment (7) marketed in Spain.

However, the obligations established by the Order shall only be enforceable in relation to cash withdrawal transactions, whether debit or credit, and to balance and account movement enquiries. The Order authorises the Banco de España, by circular, to extend the rules in this order to other bank transactions that may be carried out at ATMs, when their volume becomes significant.

Following the same criteria as the Order of 12 December 1989, the commissions for transactions or services provided through ATMs shall be those freely set by the financial institutions issuing means of payment marketed in Spain and, where applicable, the institutions owning the ATM which provides the service. These financial institutions shall also publish, after they have been registered with the Banco de España, the relevant rates of commission and expenses for the use of ATMs. In no event may rates or amounts be charged in excess of those published or for services not mentioned, and they shall relate exclusively to services actually provided or expenses incurred.

5.2. Credit institutions' information obligations

The information obligations of credit institutions that own ATMs are as follows:

1) They shall ensure that the ATMs clearly indicate the exact value of the commission and any additional charges to which the transaction requested by the user is subject.

2) When the financial institution issuing means of payment is not the owner of the ATM in which the user intends to carry out the transaction, the maximum value of the commission and any other additional expenses to which the transaction requested may be subject can be given instead of the aforementioned information. In this case, it should be stated that the amount finally charged may be lower, depending, as the case may be, on the terms and conditions stipulated in the contract between the user and the financial institution issuing the means of payment. However, the Order establishes transitional rules whereby, for six months from its entry into force, a notice clearly indicating to the user that the financial institution issuing its means of payment may charge a commission or certain expenses for carrying out the transaction requested is sufficient.

3) Before the transaction is requested, the ATM shall indicate to the user, by means of a screen message, the marketing network it belongs to (8). When the transaction has been requested, the ATM shall, free of charge and before the transaction is carried out, provide the user with the information mentioned in the previous two paragraphs. When this information has been provided, the ATM shall offer the user, likewise free of charge, the possibility of not carrying out the requested transaction.

4) In the case of transactions carried out with means of payment issued by the owner of the ATM itself, the obligation to indicate the exact value of the transaction shall be deemed fulfilled when there is a clearly visible notice indicating to the user the exact value of the commissions and other expenses to which the requested transaction is subject.

5) A telephone number for incidents shall be clearly visible on ATMs, which users may ring in the event that problems arise in the provision of its services.

5.3. Information obligations of financial institutions issuing means of payment marketed in Spain

Financial institutions issuing means of payment marketed in Spain shall:

1) Supply to the credit institutions that own the ATMs the information necessary for them to

(7) For the purposes of this Order, means of payment shall be considered to include cards and electronic savings accounts, as well as any other instrument that enables ATMs to be used.

(8) For the purposes of this provision, marketing networks shall be deemed to be those companies that have as their objects providing the necessary electronic interlinking for financial institutions to be able to provide services through ATMs.

be able to comply with the obligations set out in the previous section.

2) Notify its customers, at least once a month, in such manner and detail as the Banco de España may indicate, the commissions and other expenses charged for each of the transactions carried out at ATMs, so that the customer can identify the transaction and see the full price of the service.

6. REFORM OF TAKEOVER LAW

Law 24/1988 of 28 July 1988 (9) on the Securities Market contains the legal rules applicable to takeovers. These were implemented by RD 1197/1991 of 26 July 1991 (10) on takeovers.

These regulations, which have been strengthened and developed since, have profound implications for the possibilities of changing controlling interests in companies, for the mechanisms for reorganising corporate structures and for the guarantee of equal treatment for all shareholders.

Royal Decree 432/2003 of 11 April 2003 (BOE of 12 April 2003), amending Royal Decree 1197/1991 of 26 July 1991, has now been published to improve the protection of minority shareholders when changes occur in the control of listed companies,

The most important changes are described below (see Table 1 for a comparison of the two systems).

6.1. Extension of the situations requiring an offer for 100% of the capital

Previously, if it was sought to obtain a holding of 50% or more in the target company, an offer had to be made for at least 75% of the capital. This led to problems for minority shareholders, because, when the price was attractive and they wished to benefit from the offer, in many cases they could only sell a proportion of their holding. The reform proposes that, if it is sought to acquire 50% or more of the capital of the target company, a bid shall be made for 100% of the capital.

This same rule shall apply when it is sought to acquire a holding of less than 50%, with the intention of appointing more than half of the directors of the target company (or such appointments are actually made within a two-year period), since this would involve actual control over the company.

6.2. Extension of the situations requiring a partial offer

Previously, it was only necessary to launch a takeover bid when it was sought to acquire 25% or more of the capital (or, in certain circumstances, to increase a holding by 6%). In that case, if the percentage to be acquired was less than 50%, an offer had to be made for 10% of the target company. The reform adds another case requiring a bid to be made for 10% of the company, which is when it is sought to obtain less than 25% and it is intended to appoint more than one third and less than half plus one of the directors of the target company (or such appointments are actually made within a two-year period).

6.3. Situations excluded from the obligation to make an offer

The previous rules excluded acquisitions within the context of restructuring of the economic sector from the obligation to make an offer, when there was a resolution of the government commission for economic affairs. The new legislation removes this exception. Instead, acquisitions of less than 6% are excluded from the obligation to make a mandatory offer (provided that the current controlling shareholders already own more than 50% and the number of directors appointed by the acquiror does not increase) when they take place in the context of a situation of joint control, provided that the competition authority has deemed such a situation to exist.

Also excluded are those cases in which an individual acquires a significant holding as a consequence of the conversion of credits into shares, pursuant to an agreement reached in insolvency proceedings.

6.4. Other changes

Among the documentation that is required to accompany the offer, the new legislation enables the documents evidencing the offer guarantee to be presented within two business days of notification of the agreement to suspend the trading of the securities, in the event that the guarantee has been given in the form of a bank guarantee from a credit institution.

(9) See «Regulación financiera: tercer trimestre de 1988», Boletín económico, Banco de España, October 1988, pp. 61-62.

(10) See «Regulación financiera: tercer trimestre de 1991», Boletín económico, Banco de España, October 1991, pp. 57-58.

TABLE 1

RD 1197/1991 of 26 July 1991	*RD 432/2003 of 11 April 2003*
SITUATIONS REQUIRING MANDATORY BIDS	
BID for 10% When it is sought to acquire a holding of 25% or more of the company's capital.	No change.
BID for 10% When it is sought to increase an existing holding of between 25% and 50% (inclusive only of the lower limit) by at least 6% within a 12-month period.	No change.
Not envisaged.	**BID for 10%** When it is sought to acquire a holding of less than 25% of the capital of the target company, and the following circumstances also apply: a) It is sought to acquire a holding of 5% or more of the capital of the target company or a smaller holding that enables a number of directors to be appointed which, together with any that may already have been appointed, represent more than one third and less than one half plus one of the members of the board of directors of the target company. b) It is intended to appoint the number of directors indicated in the previous paragraph or they are actually appointed within two years of the acquisition.
BID for 75% When it is sought to acquire a holding of 50% or more of the capital of the target company.	**BID for 100%** When it is sought to acquire a holding of 50% or more of the capital of the target company.
Not envisaged.	**BID for 100%** When it is sought to acquire a holding of less than 50% of the capital of the target company, and the following circumstances also apply: *a)* It is sought to acquire a holding of 5% or more of the capital of the target company or a smaller holding that enables a number of directors to be appointed which, together with any that have already been appointed, represent more than half of the members of the board of directors of the target company. *b)* It is intended to appoint the number of directors indicated in the previous paragraph or they are actually appointed within two years of the acquisition.
Acquisitions by deposit guarantee funds in banks, savings banks or credit co-operatives, the insurance company liquidation board *(Comisión Liquidadora de Entidades Aseguradoras)* or other similar institutions, pursuant to the powers conferred on them by current law.	No change.
Acquisitions made in accordance with the Compulsory Expropriation Law and any others resulting from the exercise by competent authorities of public law powers under current law.	No change.
When all the shareholders of the company agree unanimously to sell or exchange all the shares representing the company's share capital.	When all the shareholders of the target company agree unanimously to sell or exchange all the shares representing the company's share capital or refuse to sell or exchange their shares in the event of a bid.
SITUATIONS NOT REQUIRING MANDATORY BIDS	
Acquisitions as a consequence of the reorganisation or restructuring of economic sectors, when the government Commission for Economic Affairs so decides.	Disappears.
Not envisaged.	Acquisitions when the competition authority has deemed that there exists a situation of joint control of the company by the acquiror, pursuant to Law 16/1989 of 17 July 1989 on Competition, and the following conditions apply: *a)* Before the acquisition took place, the shareholders who have joint control have an overall holding of more than 50% of the company's capital and between them have appointed more than half of the members of its board of directors. *b)* As a consequence of the acquisition the number of directors appointed by the acquiror will not be increased. *c)* The increase in the acquiror's holding in the capital does not exceed 6% within a 12-month period, and in no event shall the holding be 50% or more.
Not envisaged.	In the event that an individual acquires a significant holding as a consequence of the exchange or capitalisation of credits under an agreement reached in the context of insolvency proceedings, provided that the holder of such credits is the original holder and not a transferee.

Royal Decree 1197/1991 did not regulate conditional offers, except those subject to acceptance thereof by a certain number of securities, which created a certain paralysis in the market as a result of operations to protect the position of management teams. With the reform, the effectiveness of bids may be made subject to conditions whose performance has to be approved by the bodies of the target company, and requires the offer to specify the conditions to which it is subject.

Finally, the rules for competing bids have also been improved. Thus the period in which they may be presented has been changed and the requirements for the consideration to be in the form of money and for the improvement in the prices or volumes in competing offers to be at least 5% have been removed. In addition, the new rules establish that, when the period for acceptance of the last of the competing bids has opened, a period opens for modification of the offers, in which all the prior offerors may present in a sealed envelope an improvement in the price or else an extension of the offer to a larger number of securities, or other improvements to their offer accredited by an independent expert.

7. CHANGES TO PROSPECTUSES FOR WARRANT ISSUES

CNMV Circular 2/1999 of 22 April 1999 (11) which approved certain standard prospectuses for use in the issuance and public offerings of securities establishes, inter alia, the standard-form prospectuses necessary to issue warrants, provided that the underlying asset is not the issuer's own shares, or those of the controlling or parent company of the group to which it belongs. The issuance of warrants on such underlying assets could only be carried out by registering individualised or special prospectuses, which required the registration of as many prospectuses as the intended number of issues.

To resolve this situation, *CNMV Circular 2/2003 of 18 March 2003* (BOE of 16 April 2003) has been published. This amends CNMV Circular 2/1999, in relation to prospectuses for warrant issues, which includes the prospectuses when the underlying assets are the issuer's own shares. This responds to the development of the warrants market, which is demanding more and more issues on this type of underlying asset, with the appropriate precautions to avoid abnormal movements in the price of the underlying asset.

(11) See "Financial regulation: second quarter of 1999", in Economic bulletin, Banco de España, July 1999, pp. 65-66.

8. CHANGES TO THE STATISTICAL INFORMATION REQUIREMENTS OF THE EUROPEAN CENTRAL BANK IN RELATION TO BALANCE OF PAYMENTS, INTERNATIONAL INVESTMENT POSITION AND INTERNATIONAL RESERVES STATISTICS

The Statute of the ESCB and of the ECB provided that the ECB, assisted by the NCBs, would collect the statistical information necessary to undertake the tasks of the ESCB either from the competent national authorities or directly from economic agents. As a result, Council Regulation (EC) No 2533/98 of 23 November 1998 (12) concerning the collection of statistical information by the ECB was published and subsequently developed by Guideline ECB/2000/4 of 11 May 2000 on the statistical reporting requirements of the ECB in the field of balance-of-payments statistics, the international reserves template and international investment position statistics.

This guideline has been replaced by the *Guideline of the ECB (ECB/2003/7) of 2 May 2003* (OJ of 28 May 2003) on the statistical reporting requirements of the ECB in the field of balance of payments and international investment position statistics, and the international reserves template. The changes basically concern the statistical information requirements relating to stocks and flows of portfolio investment and the related income flows, since common criteria have been established, detailed in Annex VI of this Guideline, for collecting this information, which must be applied before 1 July 2005. It also provides for making the centralised securities database available in future, although no specific date has been set, to the NCBs and to the competent authorities other than NCBs subject to any legal constraints. This database will contribute, in particular, to the production of data with new sectoral breakdowns of portfolio investment included in the tables of Annex II. These breakdowns will be made available as from 1 July 2005. However, if the centralised securities database system is not operational by 31 March 2004, the deadline will be 15 months from when the Statistics Committee informs the Governing Council that it is operational.

As in the case of the previous guideline, the required data on the balance of payments shall be made available on a monthly and quarterly basis; the required international reserves data shall be made available as at the end of the

(12) See "Financial regulation: fourth quarter 1998", in Economic bulletin, Banco de España, January 1999, p 78.

month to which the data relate, and the data on the international investment position shall be made available as at the end of the year to which they relate. As regards the deadlines for transmitting data, it should be noted that a calendar has been established for making available to the ECB revisions relating to the balance of payments and the international investment position of the euro area, which is set out in Annex IV of the Guideline.

Another change relates to co-operation with the competent authorities other than NCBs. Where the sources for part or all of the data are competent authorities other than NCBs, NCBs shall establish the appropriate modalities of co-operation with these authorities to ensure a permanent structure for transmission of data which fulfils the ECB's standards, in particular on data quality, and any other of its requirements as set out in this Guideline, unless the same result is already achieved by national legislation.

Where competent authorities other than NCBs are the source of statistical information marked as confidential, such information shall be used by the ECB exclusively for the exercise of ESCB-related statistical tasks, unless the reporting agent or the other legal or natural person, entity or branch which provided the information, assuming that it can be identified, has explicitly given it consent to the use of such information for other purposes.

For the financial account of the balance of payments, related income and the international investment position, the NCBs shall be responsible for ensuring that the concepts, methodology and data collection, compilation, analysis and transmission in these areas are maintained and developed.

9. DIRECTIVE ON INSIDER DEALING AND MARKET MANIPULATION (MARKET ABUSE)

Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing was one of the first steps in coordinated regulation at the Community level to combat cross-border insider dealing more effectively.

In recent years, technical and financial developments have enhanced the means and opportunities for market abuse through new products, new technologies, increasing cross-border activities and the Internet. This has made a new directive desirable, to update and complete the existing Community legal framework to protect market integrity from practices of price manipulation and dissemination of misleading information.

As a result, *Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003* (OJ of 12 April 2003) on insider dealing and market manipulation (market abuse), which repeals Council Directive 89/592/EEC, has been published. Its objective is to ensure the integrity of Community financial markets and to enhance investor confidence in those markets.

9.1. Scope of application and definitions

The Directive shall apply to any financial instrument admitted to trading on a regulated market in at least one Member State, or for which a request for admission to trading on such a market has been made, irrespective of whether or not the transaction itself actually takes place on that market. Those of its provisions relating to the use of inside information shall also apply to any financial instrument not admitted to trading on a regulated market in a Member State, but whose value depends on a financial instrument referred to above.

It shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State, by the European System of Central Banks, by a NCB or any other officially designated body, or by any person acting on their behalf. It shall not apply either to trading in own shares in buy-back programmes or, in such cases as may be determined by regulations, to the stabilisation of a financial instrument.

For the purposes of this Directive, *inside information* shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Market manipulation shall mean transactions or orders to trade which give, or are likely to give, false or misleading signals as to the supply or, demand for or price of financial instruments, or which secure the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned.

Market manipulation also includes transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, as well as any dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In particular, the Directive gives the following examples of market manipulation:

1) Conduct by a person or persons acting in collaboration, to secure a dominant position over the supply or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions.

2) The buying or selling of financial instruments at the close of the market with the effect of misleading investors on the basis of closing prices.

3) Taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

9.2. Measures to preserve market integrity

Member States shall prohibit any person who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates. This prohibition shall apply to any person who possesses that information by virtue of: his membership of the administrative, management or supervisory bodies of the issuer; or his holding in the capital of the issuer; or his having access to the information through the exercise of his employment, profession or duties; or his criminal activities.

This prohibition shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Also, Member States shall require that issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them.

Likewise, any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay. Finally, Member States shall ensure that persons who produce or disseminate research concerning financial instruments or their issuers exercise reasonable care.

9.3. Obligations of issuers of financial instruments

Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers, and ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly.

An issuer may under his own responsibility delay the public disclosure of inside information such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and that the issuer is able to ensure the confidentiality of that information. Member States may require that an issuer shall without delay inform the competent authority of the decision to delay the public disclosure of inside information.

Whenever an issuer or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, Member States shall require that they make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.

9.4. Cooperation and powers of supervisory authorities

The competent administrative authority shall be given all supervisory and investigatory pow-

ers that are necessary for the exercise of its functions, which it shall exercise: directly; or in collaboration with other authorities or with the market undertakings; or under its responsibility by delegation to such authorities or to the market undertakings; or by application to the competent judicial authorities.

The powers shall be exercised in conformity with national law and shall include at least the right to: have access to any document in any form whatsoever, and to receive a copy of it; demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any such person; carry out on-site inspections; require existing telephone and existing data traffic records; require the cessation of any practice that is contrary to the provisions adopted in the implementation of this directive; suspend trading of the financial instruments concerned; request the freezing and/or sequestration of assets; request temporary prohibition of professional activity.

The foregoing shall be without prejudice to national provisions on professional secrecy (13).

Competent authorities shall cooperate with each other, whenever necessary for the purposes of carrying out their duties, making use of their powers whether set out in this Directive or in national law. Competent authorities shall render assistance to those of other Member States. In particular, they shall exchange information and cooperate in investigation activities, although they may refuse to act on a request for information where: communication might adversely affect the sovereignty, security or public policy of the Member State addressed; judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

Member States shall ensure that the appropriate administrative measures can be taken or administrative sanctions imposed against persons who do not comply with the provisions of the Directive. These measures shall be effective, proportionate and dissuasive.

Finally, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 12 October 2004, and shall forthwith inform the Commission thereof.

(13) The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts instructed by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.

10. ECONOMIC REFORM MEASURES

Royal Decree Law 2/2003 of 25 April 2003 (BOE of 26 April 2003) on economic reform measures, which adopts certain extraordinary and urgent measures to continue the structural reform process, has been enacted. Some of the main measures are summarised below.

10.1. Measures to improve the workings of the mortgage market

One of the areas requiring urgent action is the mortgage market. To this end, certain measures have been taken to promote competition and mitigate the exposure of borrowers to the interest rate risks typical of the financial market. These consisted in amending Law 2/1994 of 30 March on subrogation and modification of mortgages in order to facilitate and reduce the cost of mortgage novation and subrogation transactions and to promote the development and dissemination of new products providing insurance against interest rate risk. The main changes made to the law in this area are described below (see Table 2 for a comparison of the two laws).

First, notary and registration fees for novations (14) and for subrogations (15) have been lowered, as follows: by 90% if a variable-rate system is changed to a fixed-rate system, and 75% for any other transaction.

In subrogations, changes are now also permitted to the term (not just the interest rate), which means that, unlike in the past, this change is exempt from payment of stamp duty. Further, the maximum penalty for prepayment of variable-rate loans has been halved.

In novations, changes to the term alone are now permitted (previously the term could only be changed if the interest rate was improved at

(14) Novation occurs when it is agreed to change the terms and conditions of the loan. A novation may lower the interest rate,, change a fixed interest rate to a variable rate, extend the loan repayment period, etc.

(15) Subrogation is when a mortgage loan is transferred to another credit institution.

TABLE 2

Law 2/1994 of 30 March 1994	*Royal Decree-Law 2/2003 of 25 April 2003*
MORTGAGE LOAN SUBROGATION	
Cases — Improvements can only be made to the initially agreed or current ordinary or default interest rates. — The deed shall set out, inter alia, the new interest rate terms.	**Cases** — As before, except that the term of the loan may be extended too, either on its own or in tandem with an improvement in the interest rate. — As before, except that, where applicable, the new term of the loan shall be included.
Tax concessions — Exempt from the progressive rates of stamp duty	**Tax concessions** — No change.
Prepayment penalty: — In variable-rate mortgages, where a prepayment penalty has been agreed of 1% or less, the penalty payable shall be that agreed. In all other cases, it shall be 1%.	**Prepayment penalty:** — In variable-rate mortgages, where a prepayment penalty has been agreed of 0.5% or less, the penalty payable shall be that agreed. In all other cases it shall be 0.50%.
MORTGAGE LOAN NOVATION	
Cases — Only improvements in the initially agreed or current interest-rate terms can be agreed. A change to the term can also be agreed together with such an improvement.	**Cases** — Modification refers to initially agreed or current interest-rate terms, or to alteration of the mortgage term, or both.
Tax concessions — Exempt from the progressive rates of stamp duty.	**Tax concessions** — No change.
Fees for changing the interest rate — Notary and registry fees shall be calculated on the basis of the amount obtained by applying the difference between the existing and the new interest rates to the amount of the outstanding mortgage liability.	**Fees for changing the interest rate** — Based on the outstanding principal and not the mortgage liability.
Fees for extending the mortgage term — Not envisaged.	**Fees for extending the mortgage term** — In the case of novations which only alter the mortgage term the basis for the calculation shall be 0.1% of the outstanding principal at the time of novation. — For extending the mortgage term the mortgagee may not charge a fee of more than 0.1% of the outstanding principal.

the same time). A maximum fee for extension of the term has been set and the basis is established for calculating the fees in the event of such extension.

Finally, credit institutions that have granted variable-rate mortgage loans shall inform the borrowers concerned about instruments available to hedge against interest rate rises or, in the case of new customers applying for variable-rate mortgage loans, shall offer at least one instrument for hedging against interest rate rises, the features of which shall be set forth in binding offers and in the other information documents provided for in the regulatory and disciplinary rules on the transparency of mortgage loans. The cost of the hedge instrument is tax deductible.

10.2. Measures designed to boost the activity and setting up of small and medium-sized enterprises

Business savings accounts have been introduced in the context of the personal income tax (IRPF). These savings accounts have very similar features to the existing home-savings accounts. The object of this tax incentive is to facilitate business start-ups by fostering entrepreneurship, stimulating Spanish savers to reorient their investment efforts towards the setting up and development of new businesses through tax incentives to boost such saving.

Second, the number of businesses that may have access to the tax concessions for small businesses has been increased by raising the entitlement ceiling from 5 million to 6 million of net turnover.

10.3. Boost to the rented housing market

Special rules have been introduced into the corporate income tax for entities whose sole corporate purpose is to rent out housing. The aim is to stimulate the market for rented housing and to respond to the social need for a stock of rented housing, which is currently very small.

The special rules will benefit persons offering housing for rent which, on account of the

size and the rental asked, is aimed at medium and low-income sectors. They involve a reduction in the tax payable under the general rules of the tax on income obtained from the renting of housing and the gains arising from its disposal, under certain conditions. The reduction is increased in the case of rented housing that fulfils a wider social role in the terms defined by the law (16), VAT being charged on the acquisition of such housing at the super-reduced rate.

10.4. Tax measures to boost investment

First, to increase firms' capital endowment, the possibility of increasing the rate of amortisation is offered, the maximum amortisation coefficients set in the tables authorised for IRPF and corporate income tax taxpayers being raised by 10%. This measure is temporary, given that its aim is to stimulate investment, and without prejudice to a future revision of the official amortisation tables.

Second, furthering the policy of granting tax incentives to persons who actively participate in improving the environment, the tax deduction for investment in new assets used to harness renewable energy is now available to any entity, not just small ones. At the same time as this change has been made the corporate income tax deductions for investment to defend or protect the environment in the corporate income tax have been reorganised, and are now grouped into a new article of the law on this tax.

Third, and also to promote the use of renewable energy, local councils have been authorised, under the laws regulating local finance departments, to grant a reduction in the Property Tax for the installation of systems using solar energy to generate heat or electricity for the consumption of the owners or occupiers of the housing.

Fourth, the deduction for research, development and technological innovation activities is extended to include the generation of advanced software to facilitate the access of disabled persons to information society services, thereby improving their social and labour-market integration and helping to boost the demand for this type of product.

10.5. Other measures

A set of measures has been introduced to improve the protection afforded by the Social Security System to self-employed workers, and to promote their activity. Thus, at the option of the individual concerned, contributions may be temporarily reduced for the under 30s and women over the age of 45 registering for the first time as self-employed workers. Also, the relief from contributions currently given to the over 65s has been extended to self-employed workers in the special regimes for agricultural and maritime workers. Finally, 100% reductions have been established for employers' contributions for common contingencies in respect of workers returning to work following maternity leave and the existing reductions for the temporary hiring of disabled women are extended.

Finally, in order to continue improving the Spanish model of competition law with regard to the control of mergers and acquisitions, the reports of the Competition Court shall now be made public from the moment they are received by the Minister of Economy for presentation to the government. As a result, the report of the main consultative body in relation to the control of mergers and takeovers will be known before the final decision is made by the government, so improving the transparency, efficacy and predictability of this instrument in the oversight of competition.

3.7.2003.

(16) Such as when the rental agreement contains an option to purchase and, in the case of housing not officially sponsored or declared protected, when the initial annual rental payable by the lessee does not exceed 4% of the maximum legal selling price of rented protected housing.