FINANCIAL REGULATION: 2013 Q4

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Introduction

As has been customary in the final months of the year, a considerable amount of financial legislation was published in 2013 Q4. This article summarises it.

A series of urgent measures were published to adapt Spanish law to European Union (EU) supervisory and solvency regulations for financial institutions.

Further, two EU regulations were published: the first setting out the specific tasks of the European Central Bank (ECB) in respect of the prudential supervision of the participating Member States' credit institutions; and the second adapting the European Banking Authority's (EBA) regulations to the new supervisory environment in the EU. In this connection, an inter-institutional agreement between the European Parliament and the ECB has been published on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (SSM).

The ECB enacted several decisions and regulations: 1) additional measures relating to Eurosystem refinancing operations and eligibility of collateral in monetary policy operations; 2) additional temporary measures relating to asset-backed bonds and certain loans being eligible as collateral in monetary policy operations, and 3) the recasting of several regulations relating to the statistical reporting requirements of certain financial institutions.

The Banco de España published three measures: 1) certain amendments to the general clauses applicable to monetary policy operations; 2) the amendment of the accounting rules for credit institutions and the Central Credit Register (CCR), and 3) the amendment of the internal rules of the Banco de España.

As regards credit institutions, a new legal regime was promulgated for savings banks, and banking foundations are regulated for the first time.

Turning to State debt, legislation was published authorising the Treasury to conduct new operations to place its surplus balances with private banks.

Two securities market regulations were published: 1) banks asset funds' accounting rules, annual accounts, public financial statements and confidential statistical returns, and 2) the claims and complaints resolution procedure in relation to companies providing investment services.

Furthermore, new financial and tax measures were introduced affecting, inter alia, the tax regime for Sareb (the asset management company for assets arising from bank restructuring) and the regulations governing collective investment undertakings (CIUs).

Two laws were enacted: the first regulating transparency, access to public information and good governance in the case of all parties providing public services and exercising administrative power; and the second implementing the general principles necessary for ensuring market unity.

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Table 1 details the contents of this article.

The Spanish version of this article (Boletín Económico, January 2014, Banco de España) offers a deeper analysis and greater details of these regulations.

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Supervision and solvency of financial institutions: urgent measures to adapt Spanish law to European Union regulations

Royal Decree-Law 14/2013 of 29 November 2013 (Official State Gazette of 30 November) on urgent measures for the adaptation of Spanish law to EU supervisory and solvency regulations for financial institutions (hereafter, RDL) was published. It came into force on 1 December, although certain provisions will be enforceable during 2014, as will be indicated later.

The aim of this legislation is, on one hand, to incorporate directly into Spanish law Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013,[1]

1 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. See "Financial regulation: 2013 Q2", Economic Bulletin, July 2013, Banco de España pp. 47-91.

which will come into force on 1 January 2014, extending and adapting the supervisory functions of the Banco de España and the CNMV to the new powers laid down in European Union Law, which considers them to be competent authorities in the area of their respective remits. And, on the other, to transpose Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013[2], which must be incorporated into Spanish law by the above date.

Together, the Regulation and Directive have been the keystone for harmonising the Basel III accords in the European Union.

The main new developments are discussed below.

AMENDMENT OF THE LAW OF AUTONOMY OF THE BANCO DE ESPAÑA

Law 13/1994 of 1 June 1994[3] on the Autonomy of the Banco de España has been amended to authorise the central bank to respond to consultations about the exercise of its executive powers in respect of the supervision and inspection of credit institutions. Replies to such consultations will be of an informative nature, and no appeal may be lodged by the parties concerned against them. However, they will be binding upon the bodies of the Banco de España entrusted with exercising the powers to which the consultation relates, provided that the circumstances, background information and other data contained therein do not change.

SOLVENCY OF CREDIT INSTITUTIONS

Certain amendments have been made to Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements for financial intermediaries in order to align it with European Union regulations as from 1 January 2014. Credit institutions, whether part of a consolidable group or not, shall thus maintain at all times a sufficient volume of own funds relative to investments made and risks assumed, as stipulated in Regulation (EU) No 575/2013. Likewise, they shall specifically set in place sound, effective and exhaustive strategies and procedures to assess and maintain at all times the amounts, types and distribution of internal capital considered appropriate to cover the nature and level of their risks.

Moreover, as from the entry into force of the regulation the following may be imposed: 1) the obligation to have in place a minimum amount of liquid assets with which to withstand potential outflows of funds arising from liabilities and commitments, including in the event of serious incidents potentially affecting liquidity; 2) the maintenance of an appropriate structure of financing sources and of maturities in related assets, liabilities and commitments in order to avoid potential imbalances or liquidity tensions that may impair or jeopardise the institution's financial situation, and 3) a ceiling on the ratio of the institution's own funds to the total value of its exposures to the risks arising from its activity. These requirements may be stricter depending on the ability of each credit institution to obtain tier 1 capital.[4]

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2 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (OJEU of 27 June) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, and repealing Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, and Directive 2006/49/CE of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

3 See "Regulación financiera: segundo trimestre de 1994", Boletín Económico, July-August 1994, Banco de España, pp. 86-92.

4 According to Regulation (EU) No 575/2013, Tier 1 capital consists of the sum of the Common Equity Tier 1 capital (essentially comprising ordinary capital and reserves) and Additional Tier 1 capital (comprising hybrid instruments).

The functions that correspond to the Banco de España, in its capacity as the authority responsible for the supervision of credit institutions and their consolidable groups, have been revised. Specifically, stipulations have been made as to the minimal subject matter to be set out in the technical guidelines compiled by the Banco de España for supervised institutions and groups with a view to their proper compliance with supervisory regulations.

Finally, changes have been made regarding failure to comply with solvency rules, and the assumptions have been specified under which the Banco de España shall oblige credit institutions and their groups to hold own funds additional to the minimum levels required.

CORPORATE GOVERNANCE MEASURES

The aforementioned Law 13/1985 includes a new section that sets out a series of corporate governance measures for financial institutions that will come into force on 30 June 2014. In particular, the limitations on remuneration for categories of employees whose professional activities have a bearing on the risk profile of the institution, its group, parent or subsidiaries are set out.[5]

In this respect, the variable remuneration component shall not exceed 100% of the fixed component. However, shareholders may approve a higher level provided that it does not exceed 200% of the fixed component. If it deems it appropriate, the Banco de España may authorise institutions to apply a theoretical discount rate, in accordance with EBA guidelines, of up to 25% of total variable remuneration, provided that it is paid through deferred instruments over a period of five or more years.

PROVISIONAL LEGAL REGIME APPLICABLE TO SPECIALISED CREDIT INSTITUTIONS AND OTHER AMENDMENTS TO LRD 1298/1986 OF 28 JUNE 1986

A transitory regime has been established for specialised credit institutions which will continue to be considered as credit institutions until the specific legislation corresponding to them is approved.

Further, there is an amendment to Article 6.2 of Legislative Royal Decree-Law 1298/1986 of 28 June 1986 on the adaptation of the legislation in place for credit institutions to that of the European Communities, on collaboration regarding information and professional secrecy, foreseeing that the Banco de España, in the exercise of its supervisory functions, may publish the results of the stress tests conducted or convey the result to the EBA, so that the latter may publish them, in accordance with Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority.[6]

SUPERVISION AND SOLVENCY IN RESPECT OF INVESTMENT FIRMS

The Securities Market Law has been amended in order to introduce the reforms arising from Directive 2013/36/EU, relating to investment firms, which are akin to the reforms to credit institutions. The following, inter alia, are made extensive to the regulations governing investment firms: 1) the capacity of the CNMV, from 1 January 2014, to apply similar measures to those applicable to credit institutions when it has data allowing it to presume there are grounds denoting non-compliance with own-funds requirements or the failure to have in place an organisational structure, accounting or appropriate valuation internal control mechanisms and procedures, as well as establishing similar

5 Specifically, the remuneration of senior managers, employees who assume risks, those exercising control functions, and any employee who receives overall remuneration in the same remuneration bracket as the foregoing, whose professional activities have a significant bearing on the institution's risk profile.

6 See "Financial regulation: 2010 Q4", Economic Bulletin, January 2011, Banco de España pp. 149-152.

additional measures, and 2) corporate governance measures in respect of the limitations on the remuneration of certain categories of employees which, as at credit institutions, will come into force on 30 June 2014.

LEGAL ENTITY IDENTIFIER

For the first time in Spain, regulations have been laid down for a legal entity identifier, envisaged by Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012,[7] on OTC derivatives, central counterparties and trade repositories. Early next year, the central counterparties and trade repositories shall identify participants[8] in a derivatives contract (for the purposes of their registration in the trade repositories) through the use of a code known as an entity identifier. In Spain, their issuance and management will be incumbent upon the Mercantile Register.

REGIME GOVERNING THE ELIGIBILITY OF PREFERENCE SHARES AS OWN FUNDS

Prudential treatment is established for all preference shares as own funds, in accordance with the provisions of Regulation (EU) No 575/2013. Thus, they will be considered as additional Tier 1 capital if they meet the conditions laid down in Chapter 3 of Title I of Part Two of this Regulation.[9] However, those issued or that were eligible as own funds before 31 December 2011 shall count as Common Equity Tier 1 capital over the period from 1 January 2014 to 31 May 2021, as stipulated in Chapter 2 of Title I of Part Ten of the above-mentioned Regulation.

CORE CAPITAL

As from the entry into force of the regulation, the core capital requirement regulated under Royal Decree-Law 2/2011 of 18 February 2011[10] on the reinforcement of the financial system is repealed. However, a transition period running to 31 December 2014 has been set in order to mitigate the effects its repeal could have.

AMENDMENT OF THE REGULATIONS ON RESTRUCTURING AND RESOLUTION OF CREDIT INSTITUTIONS

Law 9/2012 of 14 November 2012[11] on the restructuring and resolution of credit institutions has been amended in order to enable the Fund for the Orderly Restructuring of the Banking Sector (FROB) to increase its own funds through the capitalisation of credits, loans or any other debt operation in which the State features as creditor. The management of its cash operations, previously in the hands exclusively of the Banco de España, has also been made more flexible.

Finally, the provision of Law 9/2012 of 14 November 2012 setting a deadline of 31 December 2013 for the application of Chapter VII of this law relative to the management of hybrid capital and subordinated debt instruments, has been eliminated. This elimination means the loss-absorption mechanisms derived from the restructuring or resolution of a credit institution, by its shareholders and subordinate creditors, prevail under Spanish

7 See "Financial regulation: 2012 Q3", Economic Bulletin, October 2012, Banco de España, pp. 1-41.

8 Participants shall be understood to be financial and non-financial counterparties to a derivatives contract; the beneficiaries; the intermediaries; the central counterparties; the clearing members, and the remittance entities, in accordance with the provisions of Regulation (EU) No 648/2012 and its implementing regulations.

9 Certain conditions, inter alia, must be met: 1) that they are not purchased by the institutions, their subsidiaries or companies with which there are control links; 2) they cannot be secured or subject to a guarantee provided by any group company that enhances the seniority of claims in the event of insolvency or liquidation; 3) they must be perpetual and the provisions governing them must include no incentive for the institution to redeem them; 4) where the provisions governing the instruments include one or more call options, those options may be exercised at the sole discretion of the issuer; 5) the instruments may be redeemed or repurchased only when authorised by the competent authority, and not before five years after the date of issuance; 6) the institution shall not indicate explicitly or implicitly that the competent authority would consent to a request to call, redeem or repurchase the instruments; and 7) the provisions governing the instruments require that, if a trigger event occurs, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments.

10 See "Financial Regulation: 2011 Q1", Economic Bulletin, April 2011, Banco de España, pp. 163-168.

11 See "Financial Regulation: 2012 Q4", Economic Bulletin, January 2013, Banco de España, pp. 36-41.

regulations. Hence, the instruments needed to distribute the losses of an institution in keeping with the principle laid down in the Law regarding the correct assumption of risks and the minimum use of public funds are maintained.

CHANGES IN THE TAX TREATMENT OF DEFERRED TAX ASSETS (DTAs)

The recast wording of the Law on Corporate Income Tax, approved by Royal Legislative Decree 4/2004 of 5 March 2004, has been amended to introduce specific measures aimed at allowing certain deferred tax assets (DTAs)[12] not to have to be deducted on calculating common equity tier 1 capital[13]. This is in line with the regulations in force in other EU Member States, so that Spanish credit institutions may operate on a level playing field.

Accordingly, for tax periods beginning as from 1 January 2014, DTAs relating to provisions for the impairment of loans or other assets derived from possible bad debts of debtors unrelated to the taxable person, and those derived from endowments or contributions to social welfare and, where appropriate, early retirement arrangements, shall be converted into a claim on the Tax Authorities in the event of any of the following circumstances arising: 1) that the taxable party posts book losses in its annual accounts, these having been audited and approved by the corresponding body, or 2) that the entity is subject to legally declared winding-up or insolvency.

European Central Bank: specific tasks relating to the prudential supervision of credit institutions

Last year saw the enactment of *Council Regulation (EU) No 1024/2013 of 15 October 2013* (OJEU of 29 October), conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions, which came into force on 3 November, and *Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013* (OJEU of 29 October) amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (EB) as regards the conferral of specific tasks on the ECB, which came into force on 30 October.

The European Council of 19 October 2012 considered, among other aspects, that the process towards closer economic and monetary union needs an integrated financial framework, by means of a "single supervisory mechanism" (SSM)[14], open to all Member States wishing to participate.

The key aspects of these Regulations are discussed below.

SCOPE

As indicated, Regulation 1024/2013 (hereafter, the Regulation) confers on the ECB specific functions relating to the prudential supervision of the participating Member States' credit institutions, without prejudice to the related responsibilities and powers of the competent authorities of these States.

The participating Member States are those of the euro area and other Member States that have established close cooperation, in keeping with the provisions laid down in the

12 DTAs are tax assets that give the right to reduce the tax that companies (including credit institutions) are required to pay in future to the tax authorities through corporate income tax. Basically they arise from three sources: 1) provisions made to cover the risk of losses on assets; 2) contributions to social security systems, and 3) previous years' tax losses. In the case that concerns us here, the reinstatement of DTAs has a limited scope, since it only covers those that have arisen from provisions for bad debts or contributions to social security systems.

13 According to Regulation (EU) No 575/2013, deferred tax assets that rely on future profitability are one of the items that come under deductions from Common Equity Tier 1 items.

14 The SSM is a European financial supervision system made up of the ECB and the competent national authorities of the participating Member States.

Regulation. Accordingly, these States must commit themselves, among other obligations, to the following: 1) to ensure that their respective national competent authorities adhere to the guidelines or requests formulated by the ECB; 2) to provide all the information on the credit institutions located in their territory that may be requested by the ECB in order to conduct a comprehensive assessment of these institutions, and 3) to adopt, in relation to credit institutions, whatsoever measure requested by the ECB.

Excluded from the supervisory functions conferred on the ECB are those institutions envisaged in Art. 2, paragraph 5, of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, namely: investment firms, central banks and, in Spain's case, the ICO (Official Credit Institute).

The ECB cooperates closely with the EBA, the European Securities and Markets Authority (ESMA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB), and with the other authorities making up the European System of Financial Supervision (ESFS), in order to ensure an appropriate level of regulation and supervision in the EU. It will also cooperate with the authorities entrusted with the resolution of credit institutions (in particular in the preparation of resolution plans) and, specifically, with public financial assistance mechanisms, including the European Financial Stability Fund (EFSF) and the European Stability Mechanism (ESM), when these have granted or are likely to grant direct or indirect financial assistance to a credit institution of a participating Member State.

FUNCTIONS CONFERRED ON THE ECB

The ECB shall have exclusive powers to exercise, for prudential supervisory purposes, inter alia, the following functions in relation to credit institutions established in participating Member States: 1) to authorise credit institutions and, where appropriate, withdraw such authorisations, and to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, which shall be discussed in detail below; 2) to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law in relation to credit institutions established in a participating Member State which wish to establish a branch or provide cross-border services in a non-participating Member State; 3) to ensure compliance with EU legislation and, where appropriate, national legislation, which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters; 4) to carry out supervisory reviews, including where appropriate stress tests, in order to determine whether the arrangements, strategies, processes and mechanisms set in place by credit institutions ensure a sound management and coverage of their risks, and 5) to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group does not meet or is likely to breach the applicable prudential requirements, or where it is determined that the arrangements, strategies, processes and mechanisms set in place by the credit institution, and the own funds and liquidity that the institution holds, do not ensure a sound management and coverage of their risks.

Lastly, the ECB shall adopt guidelines and recommendations, and it shall in particular be subject to binding regulatory and implementing technical standards developed by the EBA and adopted by the Commission, and to the provisions laid down in the European supervisory handbook to be developed by the EBA in accordance with Regulation 1022/2013.

AUTHORISING A CREDIT INSTITUTION'S ACCESS TO ACTIVITY

The authorisation shall be submitted to the competent national authorities of the Member State in which the institution is to establish itself, in accordance with the requirements laid down in the relevant national legislation. Once these requirements are met, the competent national authority shall adopt a draft decision to propose to the ECB the granting of the authorisation.

The ECB may only object to this draft if the authorisation conditions established in the relevant EU legal acts are not met. It may also withdraw the authorisation either on its own initiative, after having consulted the competent national authority, or at the proposal of the competent national authority.

While powers in the area of resolution of credit institutions remain within the remit of the participating Member States, in those cases where the national authorities consider that withdrawal of authorisation or application of the measures needed for the resolution of an institution might prove harmful to preserving financial stability, they shall notify the ECB, explaining the harmful effects in detail. In these instances the ECB shall abstain from withdrawing authorisation for a period mutually agreed with the national authorities, and it may extend this period if it considers that sufficient progress has been made. However, if the ECB determines that the national authorities have not applied the appropriate measures needed to preserve financial stability, the withdrawal of authorisation shall be applied immediately.

ASSESSMENTS OF ACQUISITIONS OF QUALIFYING HOLDINGS

The qualifying holding in a credit institution established in a participating Member State and all information relating to this acquisition shall be submitted to the competent national authorities of the Member State in which the institution is established. These authorities shall assess the proposed acquisition and forward to the ECB the notification and a proposal for a decision to oppose or not the acquisition. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in the applicable EU legislation.

COOPERATION WITHIN THE SSM

The ECB shall carry out its tasks within the SSM, taking responsibility for its effective and consistent functioning. Both the ECB and the national authorities shall be bound to cooperate and to exchange information in the exercise of their respective supervisory and investigatory powers.

The ECB may demand that the authorities provide them with whatsoever information is needed to perform the tasks conferred on it by the current Regulation, for supervisory purposes and statistical purposes in respect of the following institutions: credit institutions; financial holding companies; mixed financial holding companies; persons belonging to the aforementioned institutions, and third parties to which these institutions have outsourced tasks or activities.

Within the SSM, the ECB is considered as the supervisor of all the credit institutions of the Member States, but its function is performed in a different way depending on whether significant or less significant institutions are involved (direct or indirect ECB supervision).

However, the ECB may, without prior notice, conduct as many on-site inspections as it deems necessary of these institutions, and of any other company included in supervision on a consolidated basis if the ECB is supervisor on a consolidated basis.

ADMINISTRATIVE SANCTIONS

If a credit institution, a financial holding company or a mixed financial holding company fails, deliberately or through negligence, to comply with the obligations laid down by EU

legislation, the ECB may impose pecuniary penalties of up to double the amount relating to the profits obtained or the losses avoided as a result of the breach, if such profit or loss can be determined, or of up to 10% of total anual turnover, or other pecuniary penalties envisaged under EU law. The penalties applied shall be effective, proportionate and dissauasive.

SEPARATION OF THE MONETARY POLICY FUNCTION

In exercising the functions attributed to it by the Regulation, the ECB and the national authorities within the SSM shall act independently and objectively in the interest of the EU as a whole, and they shall not request or accept any instruction from their institutions or bodies, nor from any government or Member State or from any public or private entity. The ECB shall likewise carry out these tasks fully independently from its monetary policy functions, whereby there shall be no interference between the respective functions. Staff engaging in the execution of these functions shall be separated, from the organisational standpoint, from the rest of the ECB staff and shall belong to a different hierarchical structure.

ORGANISATIONAL PRINCIPLES

Annually, the ECB shall submit a report on the execution of the functions attributed to it by this Regulation to the European Parliament, the Council, the Commission and the Eurogroup. National parliaments may address their reasoned observations to the ECB on this report.

The ECB shall set up an Administrative Board of Review, entrusted with conducting the internal examination of the decisions adopted by the ECB in the exercise of the powers attributed to it by the Regulation. The members of this Board shall act independently and in the public interest. A Supervisory Board shall also be established, entrusted with planning and implementing the supervisory functions attributed to the ECB. This Board shall comprise a chair, vice-chair, four ECB representatives and a representative from each competent national authority of each participating Member State.

SUPERVISORY CHARGES

The ECB will levy an annual supervisory charge from credit institutions established in the participating Member States and from branches established in those States of credit institutions belonging to non-participating Member States. This charge shall be designed to defray the expenses it incurs in the exercise of its supervisory functions, without exceeding the amount of the expenses relating to these tasks. The amount of the charge levied on a credit institution or on the branch shall be calculated in accordance with the arrangements previously defined and published by the ECB.

The ECB shall assume the functions conferred on it by the Regulation before 4 November 2014, unless it became apparent that it were not prepared to fully assume its functions, in which case the ECB may adopt a decision in order to ensure continuity during the transition from national supervision to that of the SSM.

European Central Bank: accountability to the European Parliament in relation to the tasks entrusted to the ECB under the Single Supervisory Mechanism

The *Inter-Institutional Agreement of 6 November 2013 between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism* (OJEU of 30 November) (hereafter, the Agreement) has been published.

The ECB's accountability and reporting obligations vis-à-vis the European Parliament and the Council are being implemented. These were envisaged in Regulation (EU) No 1024/2013 of the Council of 15 October 2013, conferring on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions of the Member States participating in the SSM.

Annually, the ECB shall submit to the Parliament an annual report on the execution of the tasks conferred on it by this Regulation. The Chair of the ECB Supervisory Board shall participate in ordinary public hearings on the execution of supervisory tasks at the request of the related competent parliamentary committee, with two such annual hearings envisaged. The Chair of the Supervisory Board may also be called on to participate in additional ad hoc exchanges of views on supervisory matters with the competent European Parliament committee.

Other aspects of the Agreement refer to the information that the ECB shall provide to the competent parliamentary committee on: 1) the procedures for selecting the chair and vice-share of the Supervisory Board, candidates for which will be proposed by the ECB and approved by the Parliament; 2) establishing the code of conduct envisaged in Regulation (EU) No 1024/2013, which shall address matters relating to conflicts of interest and shall ensure that the rules on the separation of the respective supervisory and monetary policy functions are observed, and 3) the procedures (including the timetable) established for the adoption of regulations, decisions, guidelines and recommendations ("acts"), subject to public consultation.

The Agreement entered into force on 7 November.

European Central Bank: refinancing operations and eligibility of collateral in monetary policy operations

ECB Decision ECB/2013/35 of 26 September 2013 (OJEU of 12 November) on additional measures relating to Eurosystem refinancing operations and eligibility of collateral (hereafter, the Decision) has been published.

The Decision introduces amendments and changes to certain provisions of Guideline ECB/2011/14 of 20 September 2011[15] on the monetary policy instruments and procedures of the Eurosystem, to strengthen its risk control framework. To do this, it adjusts the eligibility criteria and haircuts applied to collateral accepted in Eurosystem monetary policy operations and adopts certain additional measures to improve the overall consistency of the framework and its practical implementation.

In relation to the eligibility of fixed-income marketable assets, it is established that the principal should not be subjected to conditions linked to only one euro area inflation index at a single point in time. As to coupons, it is maintained that zero, fixed or floating coupons cannot result in a negative cash flow. With regard to floating coupons, the mathematical structure is established to which they should adjust for the assets to be eligible whereby, if they do not, they shall only continue to be eligible during the twelve-month period following the entry into force of the Decision.

There are additional eligibility criteria for commercial mortgage-backed securities, and it is specified that they shall not contain loans which are at any time structured[16], syndicated[17] or leveraged[18].

Under Eurosystem credit assessment arrangements, certain changes are introduced into the requirements for the assessment of credit quality by an accepted ECAI for marketable assets that are not asset-backed bonds. Thus, from the entry into force of the Decision, it is stipulated that, if there are several assessments by the ECAI of the credit quality of the

15 See "Financial regulation: 2011 Q4", Economic Bulletin, January 2012, Banco de España, p. 113.
16 A "structured loan" means a structure involving subordinated credit claims.
17 A "syndicated loan" means a loan provided by a group of lenders in a lending syndicate.
18 A "leveraged loan" means a loan provided to a company that already has a considerable degree of indebtedness, such as buy-out or takeover-financing, where the loan is used for the acquisition of the equity of a company which is also the obligor of the loan.

same issue or, where appropriate, of the issuance programme or series of issues, the best-result (i.e. the best assessment) rule shall apply. If this is not equal to or does not exceed the Eurosystem credit quality threshold, the asset will not be eligible, even though there is acceptable collateral[19] according to the provisions of Guideline ECB/2011/14.

As regards asset-backed securities subject to loan-level data reporting requirements, as specified in the Eurosystem credit assessment framework, it is established that the credit quality threshold shall correspond to "single A"[20], both at issuance and over the lifetime of the asset-backed security. Asset-backed securities that do not comply with the loan-level data reporting requirements shall remain subject to the credit assessment requirements foreseen in Guideline ECB/2011/14 (at least two credit quality assessments of the issue by accepted ECAIs are required, and both assessments should be "AAA"/"Aaa" and "single A" over the security's lifetime).

Regarding the haircuts applicable to marketable and non-marketable assets, several points are made. For marketable assets, slight upward changes to haircuts are made, based on the different liquidity categories of the assets (there are five levels). An additional valuation haircut is also applied to own-use covered bonds. The valuation markdown is 8% for own-use covered bonds[21] in credit quality step (CQS) 1 and 2, and 12% for own-use covered bonds in CQS3. Likewise, the haircut applied to asset-backed securities included in CQS5 will be 10%, irrespective of the coupon term structures. Finally, haircuts are also increased slightly for non-marketable assets.

The Decision came into force on 1 October.

European Central Bank: additional temporary measures relating to asset-backed securities and to specific loans for them to be considered eligible assets in monetary policy operations

The *Decision* of the European Central Bank – *ECB/2013/36 of 26 September 2013* (OJEU of 12 November 2013) – on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (hereafter, the Decision) has been published.

There has been a change to the haircuts applicable to asset-backed securities eligible for Eurosystem refinancing operations, including asset-backed bonds whose underlying assets include mortgage loans[22], loans to SMEs or both, in accordance with the temporary system introduced by ECB Guideline ECB/2013/4 of 20 March 2013.[23]

In relation to the eligibility of certain loans, in exceptional circumstances, the NCBs provide for the possibility of accepting them where they are included in a pool of credit claims or backed by real estate assets, if the law applicable to the loan or to the corresponding debtor (or, where appropriate, the guarantor) is that of any EU Member State other than that where the accepting NCB is established.

The Decision came into force on 1 October.

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19 A guarantee is deemed acceptable if the guarantor has unconditionally and irrevocably guaranteed the obligations of the issuer in relation to the payment of principal, interest and any other amounts due under the debt instruments to the holders thereof until they are discharged in full.

20 A 'single A' rating is a rating of at least 'A3' from Moody's, 'A-' from Fitch or Standard & Poor's, or 'AL' from DBRS.

21 "Own-use covered bonds" are deemed to be those issued by a counterparty or by entities closely linked to a counterparty, which use more than 75% of their outstanding amount.

22 Mortgage loans, as well as loans for the purchase of a house backed by a mortgage, also include those that do not have a mortgage if the guarantee has to be paid immediately in the event of default. This guarantee can be provided through different forms of agreement, including insurance contracts, provided that they are entered into by public-sector institutions or financial institutions subject to public oversight. The credit assessment of the guarantor for the purposes of these guarantees should be equivalent to CQS3 on the Eurosystem harmonised rating scale over the lifetime of the transaction.

23 See "Financial regulation: 2013 Q2", Economic Bulletin, July-August 2013, Banco de España, pp. 47-52.

European Central Bank: consolidation of several regulations on the statistical reporting obligations of certain institutions

Several ECB regulations were published in connection with the statistical information that certain institutions must report to euro area NCBs. Each new regulation has consolidated the preceding regulations in a single text incorporating the amendments introduced in all of them in order to adapt to Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union. This Regulation introduced a new European System of Accounts (ESA 2010), replacing ESA 95, which affects, inter alia, the definitions of categories of asset-side and liabilities-side financial instruments and sector classification.

Set forth below is a brief discussion of the changes in this set of rules.

BALANCE SHEET OF THE MONETARY FINANCIAL INSTITUTIONS SECTOR

Regulation *(EU) No 1071/2013 (ECB/2013/33) of 24 September 2013* (OJEU of 7 November 2013), has repealed Regulation (EU) No 25/2009 (ECB/2008/32) of 19 December 2008[24] concerning the balance sheet of the MFI sector.

Basically, two blocks of new features are distinguished: changes to adapt to ESA 2010 (essentially changes in the sectors and precision in the designation of certain instruments) and changes to cover new user needs (some extra detail in instruments and maturities plus more information on securitisations and other loan transfers, most notably that on securitisations where the loan has been derecognised and the MFI continues to act as servicer).

The ECB may impose sanctions on reporting agents which fail to comply with the reporting requirements regulated by this Regulation, which came into force on 27 November and shall apply from 1 January 2015. First reporting pursuant to the new Regulation shall start with data for December 2014.

STATISTICS ON INTEREST RATES APPLIED BY MONETARY FINANCIAL INSTITUTIONS

Regulation (EU) No 1072/2013 (ECB/2013/34), of 24 September 2013 (OJEU of 7 November) has repealed with effect from 1 January 2015 Regulation (EC) No 63/2002 (ECB/2001/18) of 20 December 2001, concerning statistics on interest rates applied by MFIs to deposits and loans vis-à-vis households and non-financial corporations.

The reporting agents belonging to this population will continue to file with the NCB of the corresponding Member State monthly statistical information on interest rates for all instrument categories of deposits and loans referring to new business and outstanding amounts. The type of interest rate is the annualised agreed rate (AAR), which is defined as the interest rate that is individually agreed between the reporting agent and the household or non-financial corporation for a deposit or loan converted to an annual basis and quoted in percentages per annum. The AAR covers all interest payments on deposits and loans, but no other charges that may apply.

However, NCBs may require their reporting agents to provide the NDER[25] for all or some deposit and loan instruments referring to new business and outstanding amounts, instead of the AAR, as is the Spanish case.

24 See "Financial Regulation: 2009 Q1", Economic Bulletin, April 2009, Banco de España, p. 184.

25 The NDER is defined as the interest rate, on an annual basis, that equalises the present value of all commitments other than charges (deposits or loans, payments or repayments, interest payments), future or existing, agreed by the reporting agents and the household or non-financial corporation. Similarly, the NDER is equivalent to the interest rate component of the annual percentage rate of charge (APRC) as defined in Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers. The NDER uses successive approximation and can therefore be applied to any type of deposit or loan, whereas the AAR uses the algebraic formula defined in the Regulation and is therefore only applicable to deposits and loans with regular capitalisation of interest payments.

The ECB may impose sanctions on reporting agents which fail to comply with the reporting requirements regulated by this Regulation, which came into force on 27 November and shall apply from 1 January 2015. First reporting pursuant to the new Regulation shall start with data for December 2014.

STATISTICS ON THE ASSETS AND LIABILITIES OF INVESTMENT FUNDS

Regulation (EU) No 1073/2013 (ECB/2013/38) of 18 October 2013 (OJEU of 7 November) has repealed Regulation (EC) No 958/2007 (ECB/2007/8) of 27 July 2007 concerning statistics on the assets and liabilities of investment funds.

In relation to the quarterly and monthly statistical reporting requirements, there is the additional obligation of separate reporting of new issuance and redemptions of investment fund shares/units during the reporting month.

As for derogations, a new feature is that in euro area Member States where the combined total assets of national investment funds do not exceed 1% of the euro area investment fund total assets, NCBs may grant said derogation to the smallest investment funds in terms of total assets, provided that the investment funds that contribute to the quarterly aggregated balance sheet account for at least 80% of the total of national investment funds' assets in terms of stocks. Derogations may also be granted provided that the statistical information can be obtained from other available sources.

The Regulation came into force on 27 November 2013 and will be applicable from 1 January 2015. First reporting shall begin with monthly and quarterly data for December 2014.

STATISTICAL REPORTING FOR POST OFFICE GIRO INSTITUTIONS THAT RECEIVE DEPOSITS FROM NON-MONETARY FINANCIAL INSTITUTION EURO AREA RESIDENTS

Regulation (EU) No 1074/2013 (ECB/2013/39) of 18 October 2013 (OJEU of 7 November 2013) has repealed Regulation (EC) No 1027/2006 (ECB/2006/8) of 14 June 2006 on statistical reporting requirements for post office giro institutions that receive deposits from non-monetary financial institution euro area residents.

The actual reporting population continues to consist of the post office giro institutions resident in the territory of the euro area Member States of the euro area. These institutions shall report monthly statistical information relating to their end-of-month balance sheet, in terms of stocks, to the relevant NCB. The statistical information required shall be reported in accordance with the minimum standards for transmission, accuracy, compliance with concepts and revisions already established. NCBs may grant derogations to post office giro institutions from the requirement provided that the required statistical information is collected from other available sources.

The Regulation came into force on 27 November 2013 and will be applicable from 1 January 2015.

STATISTICS ON THE ASSETS AND LIABILITIES OF FINANCIAL VEHICLE CORPORATIONS ENGAGED IN SECURITISATION TRANSACTIONS

Regulation (EU) No 1075/2013 (ECB/2013/40) of 18 October 2013 (OJEU of 7 November 2013) has repealed Regulation (EC) No 24/2009 (ECB/2008/30) of 19 December 2008,[26] concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions.

26 See "Financial Regulation: 2009 Q1", Economic Bulletin, April 2009, Banco de España, pp. 183-184.

Certain changes have been made to the definition of financial vehicle corporations.[27] Thus, monetary financial institutions, investments funds, insurance undertakings or reinsurance undertakings and managers of alternative investment funds, which manage and/or market alternative investment funds, are excluded from its scope.

The definition of securitisation has been updated and deems securitisation to be a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking, issues financing instruments to investors and certain circumstances detailed in the Regulation must take place.

Furthermore, the NCBs may also require the provision of security-by-security data on financial transactions in debt securities held by financial vehicle corporations. Instead of these data, they may provide, in agreement with the relevant NCB, revaluation adjustments and other changes in volume which allow the NCB to derive the financial transactions.

In the statistical information required, which is specified in the Annexes of the Regulation, some specific changes have been made. Thus, in addition to adjusting the definitions of financial vehicle corporations' asset-side and liability-side financial instruments to ESA 2010, for some categories, maturity breakdowns are required. Finally, all financial assets and liabilities must be reported on a gross basis, i.e. financial liabilities must not be deducted from financial assets.

The Regulation came into force on 27 November 2013 and shall apply from 1 January 2015. First reporting shall refer to quarterly data for the fourth quarter of 2014.

Banco de España: amendment of the general clauses applicable to monetary policy operations

The *Resolution of 29 November 2013* of the Executive Commission of the Banco de España (BOE of 30 November 2013) amends the Resolution of 11 December 1998[28] approving the general clauses applicable to the monetary policy operations of the Banco de España.

The Resolution amends paragraph 9.2 of Clause VI with the result that the Banco de España shall calculate the settlements of remuneration of cash balances transferred due to valuation adjustments applied to collateral at an identical interest rate to that of the deposit facility rate, instead of at the marginal rate of the Banco de España's main refinancing operations, as occurred previously.

The Resolution came into force on 30 November 2013.

Banco de España: amendment of the accounting regulation of credit institutions and of the Central Credit Register

CBE *5/2013 of 30 October 2013* (BOE of 9 November 2013), amending CBE 4/2004 of 22 December 2004[29] on public and prudential reporting rules and formats for financial statements, and CBE 1/2013 of 24 May 2013[30], on the Central Credit Register (CCR) were published. The Circular came into force on 31 October 2013 and shall apply from 1 January 2014, except for

27 Their principal activity must meet both of the following criteria: 1) they intend to carry out, or carry out, one or more securitisation transactions and their structure is intended to isolate the payment obligations of the undertaking from those of the originator, or the insurance or reinsurance undertaking, and 2) they issue, or intend to issue, debt securities, other debt instruments, securitisation fund units, and/or financial derivatives, and/or legally or economically own, or may own, assets underlying the issue of financing instruments that are offered for sale to the public or sold on the basis of private placements.

28 See "Financial regulation: fourth quarter 1998", Economic Bulletin, January 1999, Banco de España, pp. 78-82.

29 See "Financial regulation: 2004 Q4", Economic Bulletin, January 2005, Banco de España, pp. 3-7.

30 See "Financial regulation: 2013 Q2", Economic Bulletin, July-August 2013, Banco de España, pp. 70-74.

certain derogations in relation to CBE 4/2004, which in some cases shall be applied to the financial statements of the year beginning 1 January 2013.

The main features of these Circulars are discussed below.

AMENDMENTS TO CBE 4/2004

The amendments made to CBE 4/2004 have essentially been in response to the transposition into Spanish law of the changes made to EU legislation[31] when certain modifications to the International Financial Reporting Standards (IFRS) were introduced.

Joint arrangements

The concept of "joint ventures" is given which will now be called more broadly "joint arrangements".[32] No party shall control the arrangement individually but jointly with the others which means that, contractually, the decisions about relevant activities require the unanimous consent of the parties sharing control. These arrangements may be structured in the following two ways: 1) as joint operations, whereby the parties to the arrangement have rights to the assets and obligations for the liabilities relating to the arrangement, be they designed through separate vehicles or not, and 2) as joint ventures whereby the parties have rights to the net assets of the arrangement. Joint ventures need to be structured through separate vehicles. Similarly, general accounting rules applicable to each vehicle are laid down.

In the notes to financial statements, the entity shall list and describe interests in significant joint ventures and associates, including their name, registered office, percentage of ownership (indicating whether its percentage of voting rights is different) and a description of the method used to record these investments.

When the entity, in order to give its customers access to certain investments, or for the transmission of risk or other purposes, has formed or has interests in entities (sometimes known as "special purpose entities"), such as, for example, structured entities, it shall determine, in accordance with internal procedures and criteria, whether control exists and therefore whether or not they should be consolidated.

Finally, the proportionate consolidated method has been withdrawn for joint ventures.

Employee benefits

The amendments to the IFRSs adopted by the EU are introduced in the Circular since the possibility of deferring actuarial results in accordance with a fluctuation band is removed in defined benefit plans, at the same time as new information and a new expense recognition method are included.

Consolidated accounts of the group of credit institutions. Concept of control

A definition of control is given as regards consolidated accounts. Thus, one entity is deemed to control another where the former: 1) has the power to direct its relevant activities, namely, those which significantly affect its returns, by statute or agreement;

31 In particular, Commission Regulation (EU) No 1254/2012 of 11 December 2012 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 10, International Financial Reporting Standard 11, International Financial Reporting Standard 12, International Financial Reporting Standard 27 (2011) and International Financial Reporting Standard 28 (2011) and Commission Regulation (EU) No 475/2012 of 5 June 2012 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 1 and International Accounting Standard (IAS) 19.

32 Arrangements which grant two or more entities, called "venturers", control over an activity which is subject to joint control.

2) has the ability to exercise rights to use that power in order to influence its returns, and 3) is exposed or has rights to variable returns from the investee. Where facts and circumstances indicate that there has been a change in any of the three conditions above, the entity shall reassess whether it controls an investee.[33]

In relation to the first paragraph, the meaning of "the power to direct relevant activities" is given which arises from rights, which are sometimes shown in a straightforward manner and on other occasions in a complex manner that may give rise to considering a variety of factors and circumstances.

Where it is difficult to determine whether an entity has sufficient rights to obtain power over an investee, it must be assessed whether it unilaterally has the ability to direct the investee's relevant activities.[34] If voting rights are not the determining factor for directing the investee's relevant activities, analysis of the control will take into consideration other factors described in the Circular, such as financial reliance on the entity or that the parent guarantees the investee's obligations.

Considerations about the fair value of financial instruments

Some considerations are made about the fair value of financial instruments. Thus, the entities shall disclose for each class of assets or liabilities measured at fair value after initial recognition, certain information (which will be included in the notes to the individual accounts).

Notes to individual accounts

The following paragraphs have been removed: 1) the indication of the fair value for each class of financial assets and financial liabilities; 2) the information on the methods for each class of financial assets and financial liabilities and, where a valuation technique is used, the models and significant assumptions used to determine fair value and 3) the effects on the income statement of changes in fair value.

The information that the entity shall provide for all financial assets transferred in full or in part which have not been derecognised[35] has been updated, as well as an ongoing involvement in the financial assets transferred[36] existing as of the reporting date, irrespective of when the corresponding transaction took place.

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33 Previously, it was understood that one entity controlled another where it had the power to govern the latter's financial and operating policies by statute or agreement so as to obtain benefits from its activities. In particular, it was presumed that control existed, unless proved otherwise, where there is a relationship between an entity, classified as the parent, and another entity, classified as the subsidiary, and one of the following situations applied: 1) the parent held the majority of the voting rights in the subsidiary; 2) the parent had the power to appoint or remove a majority of the members of the board of directors; 3) through agreements with other shareholders, the parent could exercise a majority of the voting rights in the subsidiary, or 4) the parent had, with its votes, appointed most of the members of the board of directors in office at the time the consolidated accounts had to be prepared and during the two immediately preceding accounting periods.

34 The relevant activities, will usually be financial and/or operational activities or those related to appointing and remunerating management bodies however, on occasions they may be limited to decisions concerning situations or specific events which affect the investee's returns, in which case, it will be necessary to assess the contractual agreements which provide the basis for taking such decisions. This would be the case of entities designed so that their activities are predetermined and the power over relevant activities only arises in specific circumstances which significantly affect their returns. For example, where the sole activity of an investee is the purchase of financial claims such that its returns are significantly affected only when there is a default, the relevant activity will be the management of the default and, accordingly, the party which is capable of managing the default, will have the power to direct the investee's relevant activities irrespective of whether any default has occurred or not.

35 An entity is deemed to transfer the whole or a portion of a financial asset, if and only if: 1) it has transferred the contractual rights to receive cash flows of that financial asset, or 2) it retains the contractual rights to receive cash flows of the financial assets, but assumes a contractual obligation to pay the cash flows to one or more recipients, as part of an agreement.

36 An entity has an ongoing involvement in a financial asset if, within the framework of the transfer, it retains any of the contractual rights or obligations inherent in the financial asset transferred or obtains any new contractual right or obligation in relation to said asset.

Finally, information has been added which credit institutions must include on the offsetting of financial assets and liabilities, as well as master netting arrangements, irrespective of whether they are subject or not to offsetting. Furthermore, they shall describe the offsetting rights associated with recognised financial assets and liabilities subject to enforceable master netting arrangements which have not been offset.

Notes to consolidated accounts

The information provided by institutions in their consolidated accounts on business combinations has been updated. The information that they must provide on their interest in joint arrangements has been introduced and that relating to their interest in associates has been updated. Likewise, the information on individual and consolidated confidential returns which they must submit to the Banco de España has been updated.

Lastly, certain changes have been introduced to the accounting statements included in the Annexes of the Circular. These include most notably, inter alia, the replacement of return T.13, "Classification of credit to other resident sectors (operations in Spain)", by return M.14, "Breakdown of credit to other sectors (operations in Spain)". The information in said return will be reported monthly.

AMENDMENTS TO CBE 1/2013

Indirect risk counterparties can be excluded from reporting provided that their commitment is less than €6,000 and they are part of a commercial credit transaction with recourse.

Transactions transferred to third parties in which reporting institutions retain management vis-à-vis counterparties, have to continue to be reported to the Central Credit Register (CCR) as though they had not been transferred, irrespective of whether they remain in full in the balance sheet or have been fully or partly derecognised in accordance with accounting regulations applicable to asset transfers. A derogation has been established from the reporting obligation where counterparties belonging to the sectors "households", "non-financial corporations" and "non-profit institutions serving households" meet certain requirements. These requirements include their cumulative exposure being less than €6,000, and that the products concerned are current account overdrafts, credit card debt, pension or salary advances, other call loans, or consumer loans with an original amount of less than €3,000 and a repayment period of less than 12 months.

Similarly, certain obligations have been specified for reporting institutions which have acquired loans from other institutions that continue to manage them vis-à-vis the counterparties.

Certain changes are introduced for clarification purposes in Annex 1, "Data Modules", and in Annex 2 "Instructions for preparing the data modules".

Finally, the transitional staggered enforcement regime is extended until the close of reporting for data of 31 August 2015 (previously March 2015), although in some exceptional cases it may reach 31 March 2016.

Amendment of the internal rules of the Banco de España

The *Resolution of 21 October 2013 of the Governing Council of the Banco de España* (BOE of 23 October 2013) has been published, approving the amendment of its Internal Rules included in the Resolution of 28 March 2000 which came into force on 24 October. Its purpose is to adapt the internal rules to the various amendments of Law 13/1994 of 1 June 1994 of autonomy of the Banco de España, which have affected, among other aspects, the regulation of its powers on the circulation of banknotes, payment systems, renewal and dismissal of its governing bodies and the legal framework for its staff.

GOVERNING BODIES

In accordance with Law 8/2012[37] of 30 October 2012 on write-downs and sales of the financial sector's real-estate assets which amended Law 13/1994, the age limit at which the Governor, Deputy Governor and elected council members are to leave their posts, which was previously set at 70 years, has been eliminated.

As for the composition of the Executive Commission[38], its members are permitted to participate and cast their vote by means of audio or video conferencing unless the other members object. The minutes of the meeting shall specify the means of communication used, acceptance by the other participants of such means and the declaration of recognition of the identity of the participant.

Finally, certain provisions in relation to the Bank's organisational chart are modified in order to adapt them to its current organisation.

STAFF POLICY

The Banco de España shall apply to its staff personnel costs-related measures equivalent to those generally established for staff in the service of the public sector, principally by the State budget laws for each year. For this purpose, those measures, whose aggregate effect on the overall wage bill, in percentage terms, does not exceed that set in general for staff in the service of the public sector, shall be deemed equivalent.

In any event, the Banco de España may not agree remuneration increases that involve an increase in the overall wage bill beyond the limits set for such staff in the service of the public sector, nor remuneration decreases that involve a decrease in the overall wage bill below the percentages that such measures represent for public-sector staff.

Lastly, the Resolution has been used to eliminate and update certain terminological references which had become obsolete.

Savings banks and bank foundations

Law 26/2013 of 27 December 2013 (BOE of 28 December 2013) on savings banks and bank foundations, which contains the new legal regime for savings banks, and the regulation of bank foundations for the first time in Spanish law, was published.

This law repeals: Law 31/1985 of 2 August 1985 on the regulation of the basic rules relating to the governing bodies of savings banks; Royal Decree-Law 11/2010 of 9 July 2010 on governing bodies and other aspects of the legal regime for savings banks,[39] except the paragraphs that refer to the tax regime for institutional protection schemes; and certain paragraphs of Article 7 of Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting obligations of financial intermediaries, insofar as they concern non-voting equity units.

The Law entered into force on 29 December 2013, and regional governments have six months within which to adapt their legislation on savings banks to its provisions.

The most notable changes it has introduced are commented on below.

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37 See "Financial Regulation: 2012 Q4", Economic Bulletin, January 2013, Banco de España, pp. 32-36.

38 The Executive Commission comprises the Governor, the Deputy Governor and two elected members, the General Secretary of the Banco de España acts as secretary with the right to speak but not to vote. The Directors General of the Bank will also attend the meetings of the Commission with the right to speak and to vote.

39 See "Financial regulation: 2012 Q3", Economic Bulletin, October 2010, Banco de España, pp. 137-142.

NEW LEGAL REGIME FOR SAVINGS BANKS

The Law specifies and determines the object of their activity, which is the traditional object of savings banks, these being credit institutions with a charitable nature and social purpose, whose financial activity must be primarily oriented towards the acceptance of repayable funds and the provision of banking and investment services to retail customers and SMEs (see Table 2 of the main changes to the legal regime of savings banks in relation to the previous legislation).

The scope of their activities shall be confined to a single autonomous region, although it may extend beyond its borders as long as it remains within a maximum of ten provinces bordering one another. The welfare projects of savings banks may be targeted at depositors, their own employees and needy groups, or may be devoted to public interest purposes within the territory in which they are established.

Governing bodies

The Law takes the important step of professionalising the governing bodies of savings banks, basically by reducing the representation of government and public law entities and corporations, and by extending the requirements for integrity, experience and good governance to all the members of the board of directors (previously they only applied to the majority of directors), including general managers and similar officers, those responsible for the functions of internal control and those who perform other key duties for the daily activity of savings banks. In short, the legislation applicable to banks is extended to the members of the board of directors and equivalent officers.

The board of directors is the body entrusted with administration and financial management, as well as the social projects of the savings bank, to fulfil its objects. In addition to the requirements for integrity, experience and good governance which apply to all the members of the board of directors, it should be noted that most of the directors must be independent. By contrast, the previous legislation did not specify independence, but did specify that there had to be representatives of municipal corporations, depositors, founding persons or entities and personnel of the savings bank.

Finally, the regulation of the representation rights of non-voting equity unit holders both at the general assembly and on the board of directors and the control committee disappears from the legislation, since it has been made obsolete by the new regime established for non-voting equity units. In this respect, the Law provides that, within six months of its entry into force, savings banks that have previously issued non-voting equity units must submit a plan for their redemption to the Banco de España for approval. After this time, the non-voting equity units of savings banks will no longer be eligible as capital.

Corporate governance report and annual remuneration report

As envisaged by the previous legislation, savings banks are required to publish a corporate governance report on an annual basis, which will be sent to the CNMV, to the Banco de España and to the competent regional government bodies.

The Law also lays down a new requirement, for preparation of an annual report on the remuneration of the members of the board of directors and of the control committee. This report must include, inter alia, complete, clear and comprehensible information on the institution's remuneration policy approved for the year in course, as well as, where applicable, that planned for future years.

Mergers of savings banks and change in the address of their registered office

Mergers of savings banks will be subject to the authorisation procedure provided for in the implementing regional legislation. The change in address of the registered office of a savings bank will be subject to the authorisation procedure of the transfer project, in

NEW LEGAL REGIME FOR SAVINGS BANKS

TABLE 2

Law 31/1985 of 2 August 1985 and Royal Decree-Law 11/2010 of 9 July 2010	Law 26/2013 of 27 December 2013
Purpose and scope of activity	
The corporate purpose and scope of activity were similar to those of commercial banks.	Their corporate purpose is primarily the acceptance of repayable funds and the provision of banking and investment services to retail customers and SMEs. The scope of their activities shall be confined to a single autonomous region, although it may extend beyond its borders as long as it remains within a maximum of ten provinces bordering one another.
Governing bodies	
Governing bodies: the general assembly, the board of directors, the control committee, the general manager, the credit, compensation and appointments committees, and the welfare fund.	The governing bodies are unchanged except for the general manager.
The members of the governing bodies must meet requirements of commercial and professional integrity. At least a majority of the board members must have the specific knowledge and experience to exercise their functions.	The requirements of integrity, experience and good governance apply to all members of the board of directors, general managers or similar officers, and those responsible for the functions of internal control, in a similar fashion to the requirements applying to the board members and other senior officers of commercial banks.
Membership of a savings bank governing body is incompatible with holding an elected political position, an executive post in a political party, business association or trade union, or a senior post in general government. Such incompatibility lasts for two years after the date of termination of the senior posts.	No significant changes.
The number of members of the General Assembly shall be fixed by the articles of association of each savings bank, in accordance with its economic size, subject to a minimum of 60 and a maximum of 160 members.	Minimum of 30 and maximum of 150.
The number of general assembly members designated by general government and public-law entities and corporations may not exceed 40% overall.	The percentage is reduced to 25%.
The number of general assembly members designated by depositors may not be lower than 25% or higher than 50%; those designated by employees may not be below 5% or above 15%; and those designated by entities representing collective interests shall be at least 5% of the voting rights in each body.	The number of general assembly members designated by depositors may not be lower than 50% or higher than 60%; those designated by employees may not exceed 20%; and those designated by entities representing collective interests may not exceed 20%.
The number of board members may not be fewer than 13 or more than 17. The board must include representatives of municipal corporations, depositors, founding persons or entities and savings bank employees. If the savings bank has outstanding non-voting equity units, the foregoing limits may be exceeded, provided that the board of directors may in no case have more than 20 members.	The number of board members may not be fewer than five or more than 15. Most of the directors must be independent. Directors representing the interests of non-voting equity unit holders are no longer envisaged under the new regime established for non-voting equity units. Thus, within six months savings banks must submit to the Banco de España a specific plan for redeeming their outstanding non-voting unts. Thereafter, non-voting units will cease to qualify as own funds.
A legal regime regulates the representation rights of non-voting equity unit holders in the general assembly, board of directors and control committee.	This regime disappears for the reasons given above regarding non-voting units.
Corporate governance report	
Savings banks have to make public an annual corporate governance report. The corporate governance report must be notified to the CNMV and that notification accompanied by a copy of the document containing the report. The CNMV will send a copy of the notified report to the Banco de España and to the competent bodies of the regional governments. For savings banks which issue securities admitted to trading on organised markets, the report must be published as a significant event.	No significant changes.
Annual remuneration report	
Not envisaged.	The yearly report on the remuneration of members of the board of directors and of the control committee must include complete, clear and comprehensible information on the institution's remuneration policy approved for the year in course, as well as, where applicable, that planned for future years.

SOURCES: Official State Gazette and Banco de España.

accordance with the provisions of the implementing regional legislation. The denial of authorisation of the merger or of the transfer may only occur through a reasoned resolution when the resulting institution may not comply with any of the objective requirements laid down in the said legislation.

BANK FOUNDATIONS

The Law introduces the regulation of bank foundations into the Spanish legal system. These entities have a direct or indirect holding of at least 10% of the capital or voting rights of a credit institution, or that enables them to appoint or replace one or more members of the board of directors of such institution (see the summary in Table 3).

They have a social purpose and their main activity is focused on attending to and developing their welfare fund assets and the appropriate management of their holding in a credit institution. Bank foundations will be subject to the legal regime provided for in this Law and, supplementarily, to Law 50/2002 of 26 December 2002 on foundations, or else to the applicable regional law.

Procedure for the transformation of ordinary foundations into bank foundations

Ordinary foundations that acquire a direct or indirect holding of at least 10% of the capital or voting rights of a credit institution, or that enables them to appoint or replace one or more members of the board of directors of such an institution, must be transformed into bank foundations. The resolution of transformation into a banking foundation must be passed within six months of legalisation of the acquisition of the holding. Upon the expiry of this period without the transformation having been implemented the foundation will be dissolved and the winding-up procedure commenced. This procedure will be conducted by the foundation's board, under the supervision of the Foundation Commission.

Governing bodies of bank foundations

The governing bodies of bank foundations will be the board, any committees of the board that may be envisaged, the general manager and any others that may be established in their statutes in accordance with the general law on foundations.

The board will be the most senior governing and representation body of a bank foundation. The board will be responsible for complying with the founding purposes and for diligently administering the goods and rights that make up the foundation's assets.

The control regime for such foundations will be the responsibility of the Foundation Commission, which will ensure the legality of the formation and operation of bank foundations, without prejudice to the functions that the Banco de España is responsible for performing.

The trustees shall exercise their functions exclusively for the benefit of the interests of the bank foundation and fulfilment of its social function. They will be relevant natural or legal persons in the area of the activities of the bank foundation's welfare fund. The number of trustees representing general government or public law entities or corporations on the board may not exceed 25%.

Like the members of the boards of directors of savings banks, trustees must meet the requirements for integrity, experience and good governance imposed by the legislation applicable in this respect to members of the board of directors and equivalent officers of banks. Likewise, they are subject to an incompatibility regime similar to that established for the governing bodies of savings banks, although a temporary compatibility regime is established until 30 June 2016.

SUMMARY OF BANK FOUNDATIONS TABLE 3

1. Overview	
Definition and legal regime	Bank foundations have a direct or indirect holding of at least 10% of the capital or voting rights of a credit institution, or that enables them to appoint or replace one or more members of the board of directors of such institution.
	They have a social purpose and their main activity is focused on attending to and developing their welfare fund assets and the appropriate management of their holding in a credit institution.
	They are subject to the legal regime provided for in Law 26/2013 of 27 December 2013 and, supplementarily, to Law 50/2002 of 26 December 2002 on foundations, or else to the applicable regional law
	Ordinary foundations that acquire a direct or indirect holding of at least 10% of the capital or voting rights of a credit institution, or that enables them to appoint or replace one or more members of the board of directors of such an institution, must be transformed into bank foundations.
2. Governing bodies of a bank foundation	
Governing bodies	The governing bodies of bank foundations will be the board, any committees of the board that may be envisaged in their statutes, the general manager and any others that may be envisaged in their statutes in accordance with the general law on foundations.
The board	The board will be the most senior governing and representation body of a bank foundation. The number of trustees representing general government or public law entities or corporations on the board may not exceed 25%.
	Trustees must meet the requirements for commercial and professional integrity, in the same way as the directors of savings banks must meet the requirements for integrity, experience and good governance imposed by the applicable legislation on members of the board of directors and equivalent officers of banks.
	Their incompatibility regime is similar to that established for the governing bodies of savings banks.
3. Management protocol and financial plan of bank foundations	
Scope	Bank foundations that have a holding in a credit institution amounting to 30% or more of its capital or that gives control over such institution.
Management protocol	The management protocol must contain, among other aspects, the basic criteria of a strategic nature that govern the management by the bank foundation of its holding in the credit institution in which it has a holding. It will be drawn up by the board and sent to the Banco de España for approval.
Financial plan	It specifies how the possible capital requirements of the institution in which the bank foundation has a holding will be met and the basic criteria of its financial institution investment strategy. It will be sent annually to the Banco de España for its approval.
	When bank foundations have a holding in a credit institution amounting to 50% or more of its capital or that gives control over such institution the financial plan must also be accompanied by an investment diversification and risk management plan, and the funding of a reserve fund to cover possible capital requirements of the investee credit institution that cannot be covered with other funds.
4. Corporate governance obligations	
Annual report	Bank foundations must publish, on an annual basis, a corporate governance report, the content, structure and publication of which must be in line with the requirements of the Ministry of Economic Affairs and Competitiveness.
5. Transformation of savings banks into bank or ordinary foundations	
Size of savings banks	Transformation into a bank foundation will take place if the savings bank possesses a holding in a credit institution of at least 10% of the capital or voting rights of such institution, or if it has the ability to appoint or replace one or more members of its board of directors, or else into an ordinary foundation in either of the following two cases: 1) when the consolidated total asset value of the savings bank, according to its latest audited balance sheet, exceeds €10 billion, or 2) when its share of the market for deposits in the territory in which they are active is greater than 35%.
Indirect performance of their financial activity	Savings banks that exercise their financial activity indirectly through a bank will have to be transformed within one year into a bank foundation or an ordinary foundation, as applicable, depending on the percentage holding in the credit institution (i.e. whether the holding amounts to at least 10% of its capital or not).
Other cases	Savings banks that are subject to one of the legal grounds for transformation into a special foundation of those regulated in Royal Decree Law 11/2010 of 9 July 2010 will have the period that remains of the six months from when they became subject to such a ground to continue their transformation into a bank foundation or an ordinary foundation, as appropriate.
	Savings banks that have commenced the process of transformation into a special bank foundation, without being subject to a legal ground for such transformation, will continue the procedure and will be transformed into a bank foundation or an ordinary foundation as appropriate, without there being any possibility of extending the procedure beyond six months from the entry into force of this Law.
	Special foundations that have been created in accordance with the provisions of Royal Decree-Law 11/2010 of 9 July 2010 will be transformed into bank or ordinary foundations, as appropriate, within six months from the date of entry into force of this Law.

SOURCES: Official State Gazette and Banco de España.

Management protocol and financial plan of bank foundations

Bank foundations that have a holding in a credit institution amounting to 30% or more of its capital or that gives control over such institution are required to draw up, individually or jointly,[40] a management protocol and a financial plan for the financial holding. The financial plan must determine the way in which the possible capital requirements of the institution in which they have a holding will be met and the basic criteria of their financial institution investment strategy. The management protocol and financial plan will be sent annually to the Banco de España for its approval, except the initial financial plan which must be submitted within two months of the creation of the bank foundation. Like the management protocol, the Banco de España will assess the financial plan within the framework of its powers and, in particular, having regard to the possible influence of the bank foundation on the sound and prudent management of the credit institution concerned.

When bank foundations have a holding in a credit institution amounting to 50% or more of its capital or that gives control over such institution the financial plan must also be accompanied by: 1) an investment diversification and risk management plan; 2) the funding of a reserve fund to cover possible capital requirements of the investee credit institution that cannot be covered otherwise, and 3) any other measure that, in the opinion of the Banco de España, is considered necessary to ensure the sound and prudent management of the investee credit institution and the ability of the latter to comply and continue to comply with the organisational and disciplinary rules applicable to it.

Functions of the Banco de España

As the authority responsible for supervising the investee credit institution, the Banco de España will be responsible for monitoring compliance with the rules contained in this Law, and in particular for assessing the influence of the bank foundation on the sound and prudent management of the credit institution concerned, in accordance with the criteria established in the rules on qualifying holdings in Law 26/1988 of 29 July 1988. For these purposes, the Banco de España may carry out such inspections and checks as it may deem appropriate in the exercise of its functions, and request of the bank foundation all such information as it may need to perform its functions.

Corporate governance obligations

Bank foundations must publish, on an annual basis, a corporate governance report, the content, structure and publication of which must be in line with the requirements of the Ministry of Economic Affairs and Competitiveness. The minimum content of such report is set out in the Law.

Tax regime for bank foundations

Bank foundations will be taxed under the general tax regime for companies and will not be subject to the special tax regime of Law 49/2002 of 23 December 2002 on the tax regime for non-profit entities and tax incentives for patronage.

The Law establishes that transfers to the welfare fund made by bank foundations may reduce the tax base of the credit institutions in which they have holdings. The reduction will be a proportion of the transfer equal to the dividends received from such credit institutions divided by the total revenues of the bank foundation, up to the total amount of such dividends.

Finally, like savings banks, bank foundations are included in the group of entities that are exempt from the transfer tax and stamp duty (ITPAJD by its Spanish initials) on acquisitions directly earmarked for their welfare fund.

40 Where ordinary or bank foundations act in concert in a single credit institution their holdings will be treated as one single holding and they will be required to comply with the obligations laid down in this chapter jointly.

TRANSFORMATION OF SAVINGS BANKS INTO BANK OR ORDINARY FOUNDATIONS

The Law establishes various cases in which savings banks must be transformed into bank foundations (if they possess a holding in a credit institution of at least 10% of the capital or voting rights of such institution, or if they have the ability to appoint or replace one or more members of its board of directors) or ordinary foundations. These cases are discussed in the following paragraphs:

Size of savings banks

As regards size, savings banks must be transformed into foundations in the following two cases: 1) when the consolidated total asset value of the savings bank, according to its latest audited balance sheet, exceeds €10 billion, or 2) when its share of the market for deposits in the territory in which they are active is greater than 35%.

From the moment the existence of either of these two cases is confirmed, the savings bank must be transformed, within six months, into a bank foundation or ordinary foundation, as applicable, with all the assets and liabilities relating to its financial activity being transferred to another credit institution in exchange for shares in the latter, and loss of its licence to act as a credit institution.

Indirect exercise of financial activity

Savings banks that, when this Law enters into force, exercise their financial activity indirectly through a bank will have to be transformed within one year into a bank foundation or an ordinary foundation, as applicable. Until that time, the previous rules, basically contained in Law 31/1985 of 2 August 1985 on Regulation of Basic Rules on the Governing Bodies of Savings Banks and its implementing regulations, will apply to them, along with any applicable provisions of Royal Decree-Law 11/2010 of 9 July 2010 on governing bodies and other aspects of the legal regime for savings banks.

Other cases

Savings banks that, when this Law enters into force, are subject to one of the legal grounds for transformation into a special foundation of those regulated in Royal Decree Law 11/2010 of 9 July 2010,[41] whether or not they have applied to surrender their licence to act as a credit institution, will have the period that remains of the six months from when they became subject to such a ground to continue their transformation into a bank foundation or an ordinary foundation, as appropriate.

Savings banks that have commenced the process of transformation into a special bank foundation, without being subject to a legal ground for such transformation, will continue the procedure and will be transformed into a bank foundation or an ordinary foundation as appropriate, without there being any possibility of extending the procedure beyond six months from the entry into force of this Law.

Finally, special foundations that have been created in accordance with the provision of Royal Decree-Law 11/2010 of 9 July 2010 on governing bodies and other aspects of the legal regime of savings banks will be transformed into bank or ordinary foundations, as appropriate, within six months from the date of entry into force of this Law.

OTHER CHANGES MADE BY THE LAW

The seventh additional provision of Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions, under which Sareb was created, is amended to introduce

41 Royal Decree-Law 11/2010 of 9 July 2010 envisaged the following cases of transformation of savings banks into special foundations: 1) if the savings bank pursues financial activity indirectly through a bank, and it ceases to have control over or reduces its holding so that it does not reach 25% of the voting rights of such credit institution; 2) as a consequence of the restructuring or resolution of a credit institution in accordance with the provisions of Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions, provided that the corresponding restructuring or resolution plans so determine, and 3) as a consequence of the surrender of the licence to act as a credit institution and in other cases of revocation.

new obligations. Thus, with certain exceptions, Sareb must prepare annual accounts in the terms provided in Royal Legislative Decree 1/2010 of 2 July 2010, approving the Consolidated Text of the Share Capital Companies Law, with certain special features. Also, the Banco de España is authorised to implement the aforementioned specific features, by means of a circular, within three months from the entry into force of this Law.

State cash management: new transactions

Royal Decree-Law 15/2013 of 13 December 2013 (BOE of 30 December 2013) on restructuring of the public-sector business entity Administrador de Infraestructuras Ferroviarias (ADIF) and other urgent economic measures was published.

From the viewpoint of financial regulation, the third final provision of this Royal Decree-Law amends Law 47/2003 of 26 November 2003, in order to enable the Minister of Economic Affairs and Competitiveness to authorise the Treasury to conduct time deposit transactions and to place funds in cash accounts, in addition to those already envisaged for the lending and temporary acquisition of assets. Such authorisation must specify the conditions under which such transactions may be carried out, which will respect the principles of solvency, publication, competition and transparency, adapted to the type of transaction concerned in each case.

The Royal Decree-Law entered into force on 14 December 2013.

Bank asset funds: accounting rules, annual accounts, public financial statements and confidential statistical returns

CNMV Circular 6/2013 of 25 September 2013 (BOE of 25 October 2013) on accounting rules, annual accounts, public financial statements and confidential statistical returns for bank asset funds (BAFs) was published, and entered into force on the same day.

The CNMV uses the powers granted by Royal Decree 1559/2012 of 15 November 2012, which establishes the legal regime for asset management companies,[42] to specify the reporting obligations of these institutions and, in particular, those others that it considers necessary to exercise its powers.

OBJECT AND SCOPE

The object of the Circular is to regulate the specific accounting rules, as well as the content and form of presentation of the annual accounts, public half-yearly financial statements and the quarterly statistical returns for BAFs that have not issued securities admitted to listing on an official secondary market. In this case, the reporting obligations are replaced by those envisaged for these cases in Law 24/1988 of 28 July 1988 on the securities market and its implementing regulations. However, BAFs that are registered with the CNMV, even when their issued securities are admitted to listing on an official secondary market, must send the quarterly confidential statistical returns, in accordance with the general preparation rules laid down in the Circular.

BAFs, whose assets and liabilities are structured in independent compartments, will keep separate accounts that distinguish the assets and liabilities, net worth and income and expenses attributable to each compartment, without prejudice to the presentation of a single set of annual accounts.

The management company must establish appropriate policies, methods and procedures to ensure the correct valuation and monitoring of the asset and liability risks, and must have detailed documentation of the transactions carried out by the BAF.

42 Royal Decree 1559/2012 develops the regulation of BAFs, separate portfolios of assets initially regulated in Royal Decree-Law 24/2012 of 31 August 2012, as instruments for the restructuring and resolution of credit institutions, whose legal regime was subsequently developed by Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions, which reserved the name BAF for them.

SPECIFIC ACCOUNTING POLICIES

The main accounting principles, the general accounting definitions and the general valuation and recording criteria applicable are those contained in the General Chart of Accounts approved by Royal Decree 1514/2007 of 16 November 2007. However, the Circular establishes the specific accounting policies for BAF transactions which, due to their nature, are not expressly regulated in the General Chart of Accounts or, despite being expressly regulated, need to be more specific or detailed.

PUBLIC FINANCIAL STATEMENTS

The set of public financial statements includes the half yearly statements, the annual accounts and notes to the accounts and the management report.

The management company must present to the CNMV the half yearly public financial statements in accordance with the formats included in Annex I of the Circular for each of the BAFs it manages, within two months of the last day of the period to which they refer.

CONFIDENTIAL STATISTICAL RETURNS

In line with the initiatives established by the ECB, and for enhanced monitoring and supervision of BAFs, the Circular incorporates the quarterly statistical returns that must be sent to the CNMV by their management companies, in accordance with the formats included in Annex II. These include, among other aspects, the statistical information relating to the assets and liabilities of the BAF, its financial transactions, write-offs and recoveries, and its issues.

Regardless of the foregoing, the CNMV may require of management companies, generally or individually, all such clarification and details of the above statements as it may specify, or information for any other purpose that may arise in the performance of the functions with which it has been entrusted.

The first half yearly public financial statements will be those corresponding to 30 June 2014, and the first confidential statistical returns those corresponding to 31 March 2014.

Firms which provide investment services: resolution procedure for claims and complaints relating to the securities market

CNMV Circular 7/2013 of 25 September 2013 (BOE of 1 November 2013), which regulates the procedure for resolving claims and complaints against firms which provide investment services and for answering enquiries relating to the securities market, was published and entered into force on 1 December 2013.

The CNMV uses the powers granted by Order ECC/2502/2012 of 16 November 2012, which regulates the procedure for submitting claims to the claims services of the Banco de España, the CNMV and the Directorate General Insurance and Pension Funds, to issue the necessary rules, within the scope of its powers, to develop and implement the provisions contained in such Order.

SUBMISSION OF CLAIMS AND COMPLAINTS

Before claims and complaints may be admitted and processed it is essential to establish that they have previously been submitted to the customer service department or, where applicable, to the ombudsman of the institution against which the claim is made, in the terms established in Order ECC/2502/2012. To be able to submit claims or complaints relating to the securities market, in addition to the legitimation requirements established in said Order, the claimants must be considered to be retail customers.[43]

43 According to Law 24/1988 of 28 July 1988 on the Securities Market, retail customers are considered to be all those who are not professionals (those who are presumed to have the experience, knowledge and skills necessary to take their own investment decisions and to correctly assess the risks involved).

PROCEDURE FOR SUBMITTING CLAIMS AND COMPLAINTS

The CNMV will enable the on-line complaint and claim submission mechanism, through its head office and Electronic Register. In the case of individual claimants, the submission of complaints and claims on-line will be voluntary, but advice of the state of the processing of the complaints and claims will only be provided on-line to those who have accepted this means of communication. Other claimants must contact the Claims Service.

INADMISSIBILITY OF CLAIMS AND COMPLAINTS

Claims and complaints that have the same subject-matter as an on-going administrative, judicial or arbitration proceeding will not be admissible.

PROCESSING AND TERMINATION OF CLAIMS AND COMPLAINTS

Claims will be processed in accordance with the rules regulating the procedure for submitting claims, complaints and financial-service-user enquiries contained in Order ECC/2502/2012, with certain special features. The procedure for processing complaints will be subject, in general, to the provisions of the rules regulating the procedure for submission of claims of financial services users regulated in Order ECC/2502/2012 and, where applicable, to the procedure established for the processing of claims.

PROCESSING AND RESOLUTION OF ENQUIRIES

Finally, the procedure is established for processing and resolving enquiries submitted by financial service users. These must be in the form of requests for advice and information relating to questions of general interest on rights in relation to transparency and customer protection rules, or on the legal channels for the exercise of such rights.

New financial and tax measures

Law 16/2013 of 29 October 2013 (BOE of 30 October 2013) laying down certain environmental tax-related measures and other tax and financial measures came into force on 31 October 2013.

The main new financial and tax measures are as follows.

TAX REGIME OF SAREB

Sareb (asset management company for assets arising from bank restructuring) shall have the status of a credit institution for the purposes of Article 20 of the Corporate Income Tax Law, which stipulates that financial expenses are deductible up to a limit of 30% of the operating profit for the year. It shall have the same status for the purposes of loan interest and fees which constitute income and have been transferred to it, in accordance with Article 48 of Royal Decree 1559/2012 of 15 November 2012 which sets out the legal regime for asset management companies.

The posting of collateral for the financing of real estate asset purchases from Sareb, from investees at least 50% owned immediately before the transfer or as a result thereof or from bank asset funds shall be exempt from the progressive transfer tax and stamp tax on notarial deeds.

Finally, novations amending loans extended by common accord between the creditor and the debtor will be exempt from the progressive transfer tax and stamp tax on notarial deeds when Sareb is the creditor and the other requirements and conditions specified in Law 2/1994 of 30 March 1994 on subrogation and modification of mortgage loans are met.

AMENDMENT OF THE REGULATIONS GOVERNING COLLECTIVE INVESTMENT INSTITUTIONS (CIIs)

The amendments effective 1 January 2014 to Law 35/2003 of 4 November 2003 on CIIs are as follows: 1) regarding transfers of units or shares between CIIs or, where applicable, between sub-funds of a particular CII, the obligation of the unit-holders or shareholders to state expressly in the transfer application form whether, during the period of ownership of the units or shares, they have simultaneously held homogeneous units or shares of the same CII registered at another entity, and 2) the obligation to retain the documentation relating to

transactions carried out at CIIs which may be necessary to determine and, where appropriate, accredit the purchase amounts and dates attributable to the units and shares of the CIIs of origin and destination for the purpose of subsequent reimbursements or transfers.

Further, a marketing entity may not simultaneously include the same class of units or shares in the marketing entity's register of unit-holders/shareholders and in the CII management company's register of unit-holders/shareholders, such that all its investment in the fund channelled through the same marketer must be registered in the name of the unit-holder/shareholder in a single register.

Contracts between the fund management company and marketer must establish the obligation of the latter to send or make available to the unit-holders/shareholders captured through it the prospectuses and other information they are entitled to receive. Also, these contracts must set forth the marketer's obligation to send to the management company all the statistical information of an aggregate nature relating to unit-holders/shareholders which current regulations require the management company to send to the CNMV.

Subscriptions or purchases of units or shares must be made by cheque payable to the CII, bank transfer to it or delivery of cash directly by the interested person to the depositary for subsequent payment into the account of the fund or company.

Certain additional information of a tax nature has to be provided to certain investors in CIIs.

CHANGES IN CORPORATE INCOME TAX

Measures applicable from 1 January 2013

The following items are deemed to be non-deductible expenses from that date: 1) impairment losses on equity securities; 2) negative income obtained abroad through a permanent establishment, except in the case of transfer or cessation of its business operations; and 3) negative income obtained by the members of a joint venture operating abroad, except in the case of transfer of the ownership interest in the joint venture or extinguishment. The purpose here is to avoid the double deductibility of losses firstly at the entity or permanent establishment generating them and secondly at the investor or controlling company.

However, the Law introduces a transitional regime applicable to impairment losses on equity securities and to negative income obtained abroad through a permanent establishment arising in tax periods initiated before 1 January 2013 which permits them to be included in the tax base under certain conditions.

As regards tax credits for international double taxation, it is stipulated that the amount of negative income derived from the transfer of a holding in a non-resident entity shall be reduced by the amount of dividends or share in income received from the investee from 2009, provided that such dividends or holdings have not reduced the acquisition value of the investee and have not carried entitlement to application of double taxation tax credits. This rule applies also to negative income derived from the transfer of holdings in entities resident in Spain.

Temporary measures applicable in corporate income tax

The following measures are extended to 2014 and 2015: 1) accelerated depreciation of new items of tangible fixed assets and investment property used in economic activities, up to a limit of 40% of the tax base, provided that in the twenty-four months following the start of the tax period in which the purchased items come into operation, the average total headcount of the entity is maintained with respect to that of the previous twelve months; 2) the offsetting of negative tax bases generated in previous years, which will continue to be

restricted to 50% for those entities whose turnover during the previous year was between €20 million and €60 million and to 25% if the turnover exceeds €60 million; 3) the deduction for goodwill arising from acquisitions of businesses, which will be subject to an upper annual limit of 1% of the related amount; 4) the ceiling on the tax deduction for intangible fixed assets with an indefinite useful life remains at 2%; and 5) the temporary system of partial payments, such that if the volume of operations in the previous year exceeds €20 million, the minimum partial payment shall be 12% of the positive income of the previous year, and 6% for entities in which at least 85% of income is eligible for the application of international double taxation tax credits (dividends or gains from an internal source).

CHANGES TO PERSONAL INCOME TAX

For the purpose of determining net income, it is stipulated that, regardless of what may be established in corporate income tax, negative income obtained abroad through permanent establishments is deemed to be a deductible expense from 1 January 2013. Finally, taxpayers exempt from personal income tax declarations are deemed to include those whose gross investment income and capital gains subject to withholdings or prepayments do not exceed an overall limit of €1,600 per year. Now, effective 1 January 2014, it is specified that this limit does not apply to capital gains arising from transfers or reimbursements of CII shares or units in which, under applicable law, the withholding tax base does not have to be determined in view of the amount to be included in the tax base.

Transparency, access to public information and corporate governance

Law 19/2013 of 9 December 2013 (BOE of 10 December 2013) on transparency, access to public information and good governance regulates and enhances the transparency of the activity of all parties providing public services or exercising administrative authority from a double perspective: commitment to inform citizens and access to public information.

Its scope includes all levels of general government, autonomous agencies, state agencies, public corporations and public law entities, public law entities with legal personality linked or attached to general government, including, inter alia, the Royal Household of His Majesty the King, the Banco de España and commercial-law firms directly or indirectly more than 50% owned by government agencies.

The most notable changes are as follows: 1) the parties falling within the scope of the Law must publish regular up-to-date information wherever its disclosure is important for ensuring the transparency of their activity relating to the functioning and control of government conduct, the content of which is described in the Law; 2) the government is empowered to develop a "Transparency Portal" attached to the Ministry for the Office of the Prime Minister, which will include, apart from the information which must obligatorily be made public, that which citizens most frequently request access to; 3) access to public information is defined as a right of all citizens without need to give reasons for requesting such assess; and 4) the Transparency and Good Governance Council is created and regulated as an independent body with full legal capacity to act and a simple structure which, while ensuring its specialisation and operability, avoids creating large administrative structures.

In the area of disputes, provision is made for optionally filing claims with the Transparency and Good Governance Council. These claims have been introduced to replace administrative appeals and are prior to lodgement of appeal for judicial review. Decisions of the Transparency and Good Governance Council will be published electronically as provided by law once the interested parties have been notified.

The Law came into force on 11 December 2013, except for certain provisions which will come into force on 10 December 2014. Regional and local governments have a maximum

period of two years to adapt to the requirements of the Law.

Market unity

Law 20/2013 of 9 December 2013 (BOE of 10 December 2013) to ensure market unity came into force on 11 December 2013, except for certain sections.

The purpose of the Law is to set out the provisions needed to implement the principle of market unity in Spain. In particular it seeks to ensure the overall orderliness of the economy and to facilitate the harnessing of economies of market scale and scope through the free access to and exercise and expansion of economic activities throughout Spain, ensuring their appropriate supervision.

The Law sets out various principles for ensuring freedom of establishment and of movement, including, among others, that of non-discrimination, such that all economic operators have the same rights throughout Spain, without discrimination based on place of residence or establishment.

Finally, it is made obligatory to publish public invitations to tender and their results; a mandate was issued to government and its agencies to promote the voluntary use of quality standards; provision is made for citizen's action and the right to petition; the State Agency for Assessing Public Policies and the Quality of Public Services is entrusted with regularly assessing the implementation and effects of the Law; and provision is made for submitting annually a work and monitoring programme to the government's Standing Committee for Economic Affairs.

State budget for 2014

As is usual in December, *Law 22/2013 of 23 December 2013* on the 2014 State budget was published in the BOE on 26 December 2013.

Notable from the standpoint of financial and tax regulation are the following:

STATE DEBT

The Ministry of Economic Affairs and Competitiveness has been authorised to increase the outstanding balance of State debt in 2014 by up to €72,958 million on its level at the start of the year (€71,021 million was the limit set in the previous budget). This limit may be exceeded over the course of the year upon authorisation of the Ministry of Economic Affairs and Competitiveness, with a series of predetermined situations in which it is automatically reviewed.

The Fund for the Financing of Payments to Suppliers is authorised to incur debt in 2014 of up to €47,500 million after subtracting the balance of cash and current assets.

With regard to government and other guarantees, the limit on the total guarantees granted by the State and other government agencies may not exceed €3,725 million (the limit set in the previous budget was €161,044 million).

CHANGES IN TAXATION

The levy supplementing the gross personal income tax payable at state level introduced for the 2012 and 2013 tax periods has been extended to 2014.[44] Also extended to 2014 is the reduction of 20% in the positive net income from economic activities with overall net

44 This supplementary levy progressively raises the gross tax payable at state level according to a specific scale. Thus it will be 0.75% for bases up to €17,707.20 and reach 7% for bases above €300,000.20. This supplementary levy also applies progressively to the tax base for income from savings, starting at 2% for bases up to €6,000 and rising to 6% for bases above €24,000.

turnover of less than €5 million and average staff below 25 employees, such reduction being granted for job maintenance or creation.

Compensation is maintained for loss of tax benefits affecting the recipients of certain income from capital produced over a period of more than two years in 2013, as was the case under the Income Tax Law approved by Legislative Royal Decree 3/2004 of 5 March 2004.

As for personal income tax, the reduced corporate income tax rate for job maintenance or creation is extended to 2014 for firms with a net turnover of less than €5 million and average staff below 25 employees. They will thus be taxed as follows: 1) at 20% on the tax base up to €300,000, and 2) at 25% on the remainder. Similarly maintained for 2014 is the favourable tax treatment of expenses and investments to accustom employees to use new information and communications technologies. The Law also fixes the coefficients applicable to real estate assets in the event of transfer, and regulates the method of determining partial payments of corporate income tax in 2014.

Finally the wealth tax levy is extended to 2014.

Other financial measures relate to the legal interest rate and the late-payment interest rate, which are unchanged at 4% and 5%, respectively.

02.1.2014.