Financial regulation: fourth quarter 1998

1. INTRODUCTION

As a consequence of the start of Stage Three of Economic and Monetary Union (EMU), the flow of financial regulations in the fourth quarter of 1998 has been the largest and most significant of recent years. As a result of the volume of regulation, a greater effort has been made to summarise and sort the new provisions, in order to highlight their most relevant and novel aspects.

First, five EU regulations which bring into force certain provisions of the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB) for the new stage now commenced are mentioned. Two of them define and develop the minimum reserves requirement, which the credit institutions of the countries that have adopted the single currency (euro-11) will have to comply with as from the present month of January. The three other regulations specify the ECB's powers to impose sanctions and to obtain statistical information both from financial institutions, in general, and in relation to the consolidated balance sheet of the monetary financial institutions sector.

With regard to the Banco de España, first the general clauses that will be applicable to monetary policy operations carried out in the exercise of its functions as a member of the ESCB are highlighted. Mention is then made of the expansion of the scope of collaboration of the Banco de España with the authorities charged with similar functions in other states.

An extensive commentary is included on the legislation amending Spanish law to give effect to the mechanisms for introducing the euro as single currency, establishing a set of general rules which complete and facilitate this task, in accordance with the provisions of Community law. A number of provisions of lower rank – closely linked to this process – which implement and complement the general provisions have been included in this chapter.

This period has also seen the publication of the reform of the securities market. Its basic objective, among other considerations, has been to incorporate the Community legislation promulgated in recent years into Spanish law. This has involved, as in the case of the Second Banking Directive, the introduction of the "Community passport" principle or single licence for investment services firms, which is based on the harmonisation of the conditions for authorisation and pursuit of the business, as well as the prudential supervision systems. This same law has been used to reform partially the law regulating collective investment undertakings

(CIUs), reinforcing the functions of the National Securities Market Commission (CNMV), clarifying the rules on investments in derivative instruments and adding new types of institution to meet the new demands of investors. In the same area, the regulation of the representatives of securities-dealer companies, securities agencies and portfolio management companies is highlighted.

A number of laws affecting different financial institutions are discussed. The updating of the law regulating currency-exchange bureaux, coinciding with the expansion of their activity and the large numbers setting up in Spain in recent years, is mentioned. The information to be submitted by mutual guarantee companies (MGCs) in relation to the funds ratio, their mandatory investments and the limit on tangible fixed assets and shares and other equity is mentioned. The new legal framework for venture capital entities, which reinforces their work in promoting and fostering small- and medium-sized firms engaged in activities relating to technological innovation or the like is also mentioned. Finally, the operating rules for the new general subsystems of fuel and travel cheques in the National Electronic Clearing System (SNCE) are alluded to.

In the area of insurance, the regulation implementing the 1995 Private Insurance Law has been published. Besides incorporating into Spanish law the Community legislation pending incorporation, it clarifies and specifies the content of the law, especially as regards the legal system for insurance undertakings and their cross-border activity.

As regards tax, the most important event this quarter was the reform of personal income tax (IRPF), centred on the establishment of a personal and family tax-free allowance *(mínimo vital),* which depends on the taxpayer's personal and family circumstances. In addition, other tax measures designed to protect and favour the family have been introduced and the taxation of savings has been improved.

The tax on the income of non-residents has been published. It is characterised as a direct tax on income obtained within Spain by individuals and entities not resident therein.

The regulations implementing various provisions relating to the obligations of pension schemes and funds, credit institutions and other entities engaged in banking or credit activities to provide information to the tax authorities on participant agents should also be highlighted. In particular, new obligations are established to provide information to the tax authorities on persons authorised to use bank accounts, on transactions involving financial assets and on operations to issue, subscribe for and transfer securities.

Finally, as usual in this period, there is a discussion of the State Budget. The 1999 budget incorporates the requirements for stability and budgetary discipline deriving from adoption of the euro. Along with the Budget Law, as in previous years, a number of fiscal, administrative and social measures have been adopted in order to facilitate the achievement of economic policy objectives.

2. EUROPEAN CENTRAL BANK: MINIMUM RESERVES

The start of Stage Three of EMU has involved, among other aspects, the development and implementation of the provisions laid down in the Statute of the ESCB and of the ECB. Specifically, under this Statute, the Governing Council of the ECB shall define the basis for minimum reserves that credit institutions of Member States must hold as from January 1999. The Recommendation of the European Central Bank for a Council Regulation (EC) concerning the application of minimum reserves by the European Central Bank (98/C 246/06) was submitted by the European Central Bank on 7 July 1998. Accordingly the Council adopted *Council Regulation (EC) No 2531/98 of 23 November 1998* (OJ of 27 November 1998). This regulation established the general principles, the basic aspects and the limits of minimum reserves, which were subsequently developed by *Regulation (EC) NO 2818/98 of the European Central Bank of 1 December 1998* (OJ of 30 December 1998) on the application of minimum reserves as from the start of Stage Three of EMU on 1 January 1999.

The reserve requirement is the requirement for certain financial institutions to hold minimum reserves on reserve accounts with the national central banks, determined in relation to a specified percentage of their reserve base. As from 1 January 1999, the following credit institutions of the euro-11 countries shall be subject to reserve requirements:

a) Credit institutions (1), other than national central banks.

b) Branches of credit institutions, including branches of credit institutions which have neither their registered office nor their head office in a euro-11 country.

(1) Council Directive 77/780/EEC of 12 December 1977 (First Banking Co-ordination Directive) defines a credit institution as an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

The ECB may, on a non-discriminatory basis, exempt from reserve requirements institutions which are subject to insolvency proceedings or reorganisation measures and institutions for which the purpose of the ESCB's minimum reserve system would not be met by imposing reserve requirements upon them. In reaching a decision on any such exemption, the ECB will take into account one or more of the following criteria: that the institution is pursuing special-purpose functions; that the institution is not exercising active banking functions in competition with other credit institutions; or that the institution has all its deposits earmarked for purposes related to regional and/or international development assistance. The ECB will publish a list of institutions subject to or exempt from reserve requirements.

Council Regulation (EC) No 2531/98 provides that reserve ratios which the ECB may specify shall not exceed 10 % of any relevant liabilities forming part of the basis for minimum reserves but may be 0 %. In accordance with these limits, Regulation (EC) No 2818/98 of the European Central Bank specifies the reserve ratios which shall be applied to liabilities included in the reserve base. These ratios shall be as follows:

1. A reserve ratio of 0 % shall apply to deposits with agreed maturity over 2 years, deposits redeemable at notice over 2 years, repurchase agreements and debt securities issued with an agreed maturity over 2 years.

2. A reserve ratio of 2 % shall apply to all other liabilities included in the reserve base, i.e. liabilities which do not comply with the aforementioned requirement and liabilities resulting from the acceptance of repayable funds.

Liabilities which are owed to any other institution not listed as being exempt from the ESCB's minimum reserve system and liabilities which are owed to the ECB or a national central bank of the euro-11 countries shall be excluded from the reserve base.

The amount of minimum reserves to be held by each institution in respect of a particular maintenance period shall be calculated by applying the aforementioned reserve ratios to each relevant item of the reserve base for that period. Each institution may deduct an allowance of EUR 100,000 (PTA 16.7 million) from the amount of the reserve requirement.

An institution shall have complied with its reserve requirement if the average end-of-day balance on its reserve accounts over the maintenance period is not less than its reserve requirement. The maintenance period shall be one month, starting on the 24th calendar day of each month and ending on the 23rd calendar day of the following month.

Holdings of required reserves shall be remunerated at the average of the ESCB's rate (weighted according to the number of calendar days) for the main refinancing operations according to the formula specified in Regulation (EC) No 2818/98.

An institution may apply for permission to hold its minimum reserves indirectly through an intermediary, which is resident in the same Member State. The intermediary shall be an institution subject to reserve requirements which normally effects part of the administration (e.g. treasury management) of the institution for which it is acting as intermediary, beyond the holding of minimum reserves. The intermediary shall maintain these minimum reserve holdings in accordance with the general conditions laid down in the aforementioned regulations. In the event of non-compliance, the ECB may impose any applicable sanctions on the intermediary, on the institution for which it is acting as intermediary, or on both, in accordance with the liability for non-compliance. In those cases, and in other circumstances specified in the regulations, the ECB or the relevant national central bank may, at any time, withdraw permission to hold minimum reserves indirectly.

The ECB shall have the right to collect and verify the information which financial institutions provide to demonstrate compliance with the minimum reserves. The ECB may delegate the execution of these tasks to the national central banks.

Regulation (EC) No 2531/98 specifies the sanctions, which may be imposed in cases of non-compliance with minimum reserve obligations. These sanctions may be: a payment of up to 5 percentage points above the ESCB's marginal lending rate; or twice the ESCB's marginal lending rate; or the requirement to establish a non-interest-bearing deposit with the ECB or the national central banks up to three times the amount of the minimum reserves.

The first maintenance period started on 1 January 1999 and will end on 23 February 1999. The reserve base of an institution for that period will be defined in relation to the elements of its balance sheet at 1 January 1999. The balance sheet data will be reported to the relevant national central bank in accordance with the reporting framework for the money and banking statistics of the ECB which is laid down in Regulation (EC) No 2819/98, as discussed in the following section.

3. EUROPEAN CENTRAL BANK: SANCTIONS, STATISTICAL INFORMATION AND CONSOLIDATED BALANCE SHEET

The Statute of the ESCB and of the ECB requires the Council of the EU to define the various powers that are to be conferred on the ECB at the start of Stage Three of EMU. Accordingly, the Council has adopted a series of regulations, in particular *Council Regulation (EC) No 2532/98 of 23 November 1998* (OJ of 27 November 1998) concerning the powers of the European Central Bank to impose sanctions and *Council Regulation (EC) No 2533/98 of 23 November 1998* (OJ of 27 November 1998) concerning the collection of statistical information by the European Central Bank. Additionally, the ECB has adopted *Regulation (EC) No 2819/98 of the European Central Bank of 1 De - cember 1998* (OJ of 30 December 1998) concerning the consolidated balance sheet of the monetary financial institutions sector.

With respect to the powers of the ECB to impose sanctions, Regulation (EC) No 2532/98 does not specify the type of institutions which are subject to the imposition of sanctions. The Regulation refers, in general, to natural or legal persons, private or public, with the exception of the public authorities of euro-11 countries, subject to obligations arising from ECB regulations and decisions.

The Regulation specifies in other sections the procedural rules to be applied and the limits within which the ECB may impose fines and periodic penalty payments on undertakings, unless specific Council Regulations otherwise provide. Finally, it should be noted that in determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall be guided by the principle of proportionality.

As regards statistical information, the ECB, assisted by the national central banks, shall collect the statistical information which is necessary for the fulfilment of its tasks according to the Statute of the ESCB. The reference reporting population shall comprise the following reporting agents:

a) Legal and natural persons falling within the financial sector: central banks, other monetary financial institutions (basically credit institutions) and other financial intermediaries, except insurance companies and pension funds.

b) Post office giro institutions, to the extent necessary to fulfil the ECB's statistical reporting requirements in the field of money and banking statistics and payment systems statistics.

c) Legal and natural persons residing in a Member State, to the extent that they hold cross-border positions or carry out cross-border transactions and that statistical information relating to such positions or transactions is necessary to fulfil statistical reporting requirements in the field of balance of payments or the international investment position. Also, legal and natural persons residing in a Member State, to the extent that statistical information relating to the securities or the electronic money issued by them is necessary to fulfil the ECB's statistical reporting requirements.

If a reporting agent is suspected of an infringement of the statistical reporting requirements, the ECB or the national central bank concerned shall have the right to verify the accuracy and quality of the information provided and to carry out its compulsory collection. Finally, the ECB shall have the power to impose the sanctions set out in Regulation (EC) No 2533/98 on reporting agents that fail to comply with the obligations resulting from this Regulation.

As for monetary financial institutions resident in the territory of the euro-11 countries, Regulation (EC) No 2819/98 specifies that, except for given derogations, these institutions shall report monthly statistical information relating to their balance sheet to the relevant national central bank for the purposes of the regular production of the consolidated balance sheet of the MFI sector. Further details on certain items of the balance sheet shall be reported quarterly. This information shall be used, inter alia, to calculate the reserve base or verify the fulfilment of the reserve obligation discussed in the previous section. The Regulation also establishes the right of national central banks to verify or to compulsorily collect the information.

4. BANCO DE ESPAÑA: MONETARY POLICY OPERATIONS

4.1. Introduction

Law 13/1994 of 1 June 1994 on the Autonomy of the Banco de España (2) adapted ahead of schedule the legal status of the Banco de España to the provisions of the Treaty on European Union regarding monetary policy, the rela-

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

tionship between the Banco de España and the Treasury and its future participation in the ESCB. Later, fulfilling the mandate of the Law of Autonomy, the Banco de España's Internal Rules were issued through the Decision of 14 November 1996 of the Governing Council of the Banco de España (3). These Rules are the basic and highest ranking regulation governing the autonomy of the Banco de España. Subsequently, an additional provision to Law 66/1997 of 30 December 1997 on fiscal, administrative and social measures (4) incorporated into the aforementioned law all the independence requirements laid down in article 107 of the Treaty on European Union. Finally, Law 13/1994 was again amended by Law 12/1998 of 28 April 1998 (5) with a view to ensuring integration into the ESCB. Accordingly, the law recognised, inter alia, the powers of the ECB for the formulation of euro-area monetary policy and its implementation by the Banco de España and the powers of the European Community in relation to exchange rate policy.

In the exercise of its functions as member of the ESCB, the Banco de España shall follow the guidelines and instructions of the ECB. One of these functions will be to participate in the formulation and implementation of the Community monetary policy. In accordance with Law 13/1994 and with its own Internal Rules, the Banco de España shall be responsible, inter alia, for implementing monetary policy following the guidelines of the Governing Council of the ECB.

Furthermore, the *Decision of 11 December 1998* of the Executive Commission of the Banco de España (BOE [Official State Gazette] of 16 December 1998), in which the general provisions applicable to monetary policy operations are laid down, was issued with a view to establishing a general framework for monetary policy operations to be conducted by the Banco de España following the guidelines of the ECB.

4.2. Scope of application

The Banco de España shall operate solely with institutions that fulfil the criteria laid down in these general provisions. Only institutions subject to minimum reserve requirements may access standing facilities and participate in open market operations based on standard tenders.

In particular, the Banco de España will conduct monetary policy operations with institutions which fulfil the following criteria (6): *a)* they must be credit or other institutions subject to the minimum reserve requirements applicable in Spain (7); *b)* they must be financially sound and subject to EU/EEA harmonised supervision by the national authorities (although financially sound institutions subject to non-harmonised national supervision of a comparable standard can also be accepted as counterparties); and c) they must fulfil the operational requirements established by the Banco de España.

4.3. Monetary policy operations

In the performance of its duties, the Banco de España may conduct open market operations and offer standing facilities.

Open market operations will be executed on the initiative of the Banco de España in the financial markets in the form of reverse transactions (8), outright forward transactions, foreign exchange swaps (9) and collection of fixed-term deposits. Open market operations can be executed on the basis of standard tenders, quick tenders or bilateral procedures.

Open market operations are divided into the following categories:

a) Main refinancing operations which are regular liquidity-providing reverse transactions with a weekly frequency and a maturity of two weeks. These operations are executed on the basis of standard tenders (10).

b) Longer-term refinancing operations which are additional liquidity-providing reverse

(3) See "Regulación financiera: cuarto trimestre de 1996", in *Boletín económico,* Banco de España, January 1997, pp. 104-106.

(4) See "Financial regulation: fourth quarter of 1997", in *Economic bulletin,* Banco de España, January 1998, p.80.

(5) See "Financial regulation: second quarter of 1998" in *Economic bulletin,* Banco de España, July-August 1998, pp. 90 and 91.

(6) Outright securities transactions are not subject to these requirements.

(7) An institution is deemed to be established in Spain if it has its head office or an authorised branch in Spanish territory.

(8) Reverse transactions are operations whereby the Banco de España buys or sells assets under repurchase agreements or conducts credit operations against collateral.

(9) Foreign exchange swaps are simultaneous spot and forward transactions of one currency against another. The Banco de España will execute open market monetary policy operations in the form of foreign exchange swaps where it buys (or sells) euro spot against a foreign currency and, at the same time, sells (or buys) it back forward.

(10) At its meeting of 22 December 1998, the Governing Council of the ECB decided to conduct the first ESCB main refinancing operation through a fixed-rate tender at a specified interest rate of 3 %.

transactions with a monthly frequency and a maturity of three months. These operations are executed on the basis of standard tenders.

c) Fine-tuning operations which are executed with the aim of managing the liquidity situation in the market and of steering interest rates, in particular in order to smooth the effects on interest rates caused by unexpected liquidity fluctuations in the market.

d) Structural operations which are executed through the placement of ECB debt certificates, reverse transactions and outright transactions.

The Banco de España may also offer *standing facilities* to institutions subject to their fulfilment of the operational access conditions it has established. Through the marginal lending facility, the Banco de España may provide overnight liquidity against eligible assets and, through the deposit facility, it can take overnight deposits from institutions (11). Under exceptional circumstances, the Banco de España may set credit limits or even suspend access to the standing facilities.

4.4. Procedures applied in the conduct of monetary policy operations

All credit or refinancing operations must be based on adequate collateral accepted by all euro-area national central banks under the conditions described below. For intraday refinancing operations, open market operations and the marginal lending facility, the eligible assets will be those accepted by the ESCB for these operations.

Standard tenders will be used by the Banco de España in its regular open market operations and executed within a time frame of 24 hours. All counterparties fulfilling the general eligibility criteria will be entitled to submit bids in standard tenders.

Quick tenders will be used by the Banco de España mainly for fine-tuning operations when it is deemed desirable to have a rapid impact on the liquidity situation in the market. Quick tenders will be executed within a time frame of one hour and will be restricted to a limited set of counterparties.

Finally, through *bilateral procedures* the Banco de España will deal directly with only one or a few counterparties, without making use of tender procedures. Bilateral procedures include operations executed through stock exchanges or market agents.

After detailing the specific allotment procedure for the aforementioned tenders, the Decision specifies the procedures used in standing facilities, with regard to both marginal lending facilities and deposit facilities.

4.5. Eligible assets

Asset eligibility criteria and risk control measures will be established by the Banco de España and announced in advance to counterparties.

The Banco de España will require its monetary policy operations and provision of liquidity to settlement systems to be based on adequate collateral fulfilling the technical and legal requirements that will be communicated by the Banco de España.

The assets eligible for monetary policy operations and for the provision of liquidity to settlement systems will be made public through the media established by the Banco de España or by the ESCB. These will be the only eligible assets accepted by the Banco de España.

Eligible assets for monetary policy operations will, in general, be the same as those required for intraday credit granted by the Banco de España, without prejudice to the particular features which may be specified for certain categories of operation.

The assets eligible for Banco de España operations can be divided into two categories, referred to as “tier one” and “tier two”, which will be made public on a regular basis by the Banco de España.

Tier one will consist of the assets established by the Banco de España and by each national central bank of the EU Member States, subject to approval by the ECB and to the minimum eligible criteria applicable in each case. Tier two will consist of debt instruments and any other assets that the Banco de España may decide to include from time to time, subject to approval by the ECB.

(11) At its meeting of 22 December 1998, the Governing Council of the ECB decided that the interest rates on the marginal lending facility and the deposit facility would be 4.5 % and 2 %, respectively. These would be the interest rates on ESCB standing facilities at the start of Stage Three on 1 January 1999. As a temporary measure, these interest rates would stand at 3.25 % and 2.75 %, respectively, between 4 and 21 January 1999, in order to smooth the adaptation of market agents to the integrated euro money market at the outset of EMU.

The assets included in the tier two list of the Banco de España and those included in the list of other euro-area national central banks may be used, without distinction, as collateral for monetary policy operations of the Banco de España and of other ESCB national central banks. The assets established by national central banks must comply strictly with the following eligibility criteria: *a)* they must be issued by entities established in the euro area or by international financial organisations; *b)* they must be expressed in euro (or in the national denominations of the euro); *c)* and they must be located in the euro area. If they do not comply with the aforementioned criteria their use may be restricted to the national territory of the central bank which has included them in its tier two list, in which case the Banco de España would not undertake to accept them as eligible assets.

It should be noted that non-mortgage loans granted by credit institutions have recently been included in the list of eligible assets. In effect, the third additional provision to *Law 46/1998 of 17 December 1998* on the introduction of the euro (which is discussed below), implemented by *Ministerial Order of 18 December 1998* (BOE of 23 December 1998), envisages the possibility of using non-mortgage loans to ensure compliance with current or future obligations incurred by credit institutions with the Banco de España, the ECB or the national central banks of the euro-11 countries in the conduct of their monetary policy operations. For these purposes, they should comply with the following criteria:

a) Loans may be encumbered, whatever formal or material requirements may have been agreed by the parties with respect to assignment or lien.

b) Such encumbrance will be fully effective against third parties as from registration with the Banco de España.

c) Unless otherwise agreed, yields on encumbered loans will go to the credit institution which provides the collateral.

d) In the event of breach of the collateralised obligations, the beneficiary of the collateral will acquire full ownership of the encumbered loans and will be subrogated to the contractual position of the lending institution. In case of bankruptcy or suspension of payments of the institution that has encumbered the loans, the beneficiary of the collateral will also have full right of severance with respect to the creditor's rights derived from those loans.

Additionally, Law 46/1998 refers to the provisions of the law on securities markets regarding pledges and repurchase agreements securing obligations to the Banco de España arising from the execution of its monetary policy operations. Law 46/1998 specifies that the aforementioned provisions will also be applicable to similar operations carried out in Spain to secure obligations to the ECB and the national central banks of the euro-11 countries arising from the execution of their monetary policy operations.

However, the Decision also provides that the Banco de España may, at any time, communicate the exclusion or suspension of assets previously included in tier one or tier two, on grounds of lack of financial soundness, prudence or events which substantially affect the negotiability or transferability of those assets.

With respect to the legal regime applicable to the provision of collateral, the Decision prescribes a set of valuation criteria depending on whether the collateral provided consists of bonds, equities or other assets.

The Banco de España will apply *initial margins* to the effective amount of each liquidity-providing reverse transaction, calculated as a true percentage of that amount. The Banco de España will also apply *valuation haircuts,* by deducting a certain percentage from the value of the underlying assets, to determine the amount secured by such assets. *Additional haircuts* may be applied to specific assets. Haircuts will be established by the Banco de España according to the type of underlying asset. The main feature of the specific asset reflected in the valuation haircut will be residual maturity.

4.6. Daily collateral valuation adjustment

If the value of the underlying assets, as measured after applying haircuts, falls below the level required to cover outstanding operations, the Banco de España will require counterparties to supply additional assets. Similarly, if the value of the underlying assets, following their revaluation, exceeds the required level, the Banco de España will return excess assets to the counterparties.

To this end, the Banco de España will check on a daily basis that the adjusted market value (AMV) (12) calculated for a pool of underlying assets is sufficient to cover collateralised opera-

(12) In any reverse transaction, the adjusted market value is the market value of the traded assets, following the deduction of any haircut. This percentage or amount is established by the Banco de España according to its expected valuation of underlying assets for monetary policy operations.

tions as a whole, including accrued interest, plus the value of the aforementioned initial margin. If the total AMV of the underlying assets is not sufficient, the counterparty will be required to supply additional assets on the same date, in order to ensure that all the operations are fully covered by the new total effective value, after applying the relevant haircuts. Conversely, if the total AMV of the underlying assets is sufficient, the limit applied to the credit granted will automatically be reduced.

If the AMV of the underlying assets exceeds the amount calculated in the previous revaluation, excess assets will be available to the counterparty, which may withdraw them or apply for additional credit.

Likewise, the Banco de España may establish a trigger point for counterparties to supply additional collateral. When this trigger point, or lower level, is reached, daily valuation adjustments will be applied. As a result, if the AMV of the underlying assets, following their revaluation, exceeds this trigger point, no additional assets will be required.

4.7. Breach

The Decision establishes that the counterparty will automatically be considered in-breach of the obligations arising from these general provisions, if any of the following circumstances occur: *a)* the counterparty has been declared bankrupt and *b)* a universal winding-up decision has been adopted in respect of the counterparty in accordance with the legislation of another EU Member State. If any of these circumstances occur, it will automatically imply the early maturity of the monetary policy operations entered into at the date of the aforementioned breach.

The Decision also envisages the possibility that, after written notification to the counterparty, the Banco de España may declare that the latter is in breach of the obligations arising from the general provisions.

Finally, the Decision specifies other cases in which the counterparty may be in breach of its obligations in relation to tenders, end-of-day closing procedures, use of underlying assets, etc. In all such cases, penalties ranging from EUR 10,000 to EUR 1 million may be imposed and may lead, under certain circumstances, to suspension or exclusion of the counterparty's access to monetary policy operations.

5. BANCO DE ESPAÑA: UPDATING OF LEGISLATION ON INFORMATION AND PROFESSIONAL SECRECY

The eleventh additional provision to Law 37/1998 on the reform of the securities market, discussed below, amended Royal Legislative Decree 1298/1986 of 28 June 1986 (13), which adapted the law on credit institutions to Community law with regard to the information and professional secrecy obligations of the Banco de España. This provision widens the co-operation of the Banco de España with the authorities entrusted with similar responsibilities in other states. The Banco de España shall not only provide information on the conduct, management and soundness of credit institutions but also any other information which may facilitate the supervision of these institutions and permit the avoidances, pursuit or santioning of any kind of misconduct. In the case of non-EU countries, this information shall be provided on the basis of reciprocity.

The data, documents and information held by the Banco de España shall be *confidential* and shall not be disclosed to any person or authority. Parliamentary access to this information shall be through the governor of the Banco de España. To this end, the governor may request that a secret session should be held or that the appropriate procedures for access to classified material should be used.

The cases in which the obligation of secrecy shall not apply to the aforementioned information are extended to include the following:

— Information provided by the Banco de España to the ECB, the national central banks and organisations with functions similar to those of the EU, as well as to the authorities responsible for the supervision of payment systems.

— Information that the Banco de España is required to provide, in the pursuance of its duties, to the bodies or authorities responsible for the supervision of other non-banking institutions. However, this information shall be supplied on the basis of reciprocity and the aforementioned authorities shall be bound to the obligation of professional secrecy under conditions at least equivalent to those established under Spanish law.

— Information that the Banco de España decides to supply to a clearing house or any

(13) See "Regulación financiera: segundo trimestre de 1986", in *Boletín económico,* Banco de España, July-August 1986, pp. 45 and 46.

similar body legally authorised to provide clearing or settlement services in the Spanish markets, whenever such information is considered necessary to ensure the adequate operation of these bodies in the event of any breach of market rules.

— Information required by a Parliamentary Investigation Committee under the terms of its specific legislation, although the members of the Committee shall be required to adopt the appropriate secrecy measures.

6. LAWS ON THE INTRODUCTION OF THE EURO AND THEIR IMPLEMENTATION

6.1. Introduction

The Council of the European Union decided on 2 May 1998 that eleven countries, which included Spain, fulfilled the necessary convergence conditions to participate in the so-called "euro area", which would come into effect on 1 January 1999.

Council Regulation (EC) No 1103/97 of 17 June 1997 (14) and Council Regulation (EC) No 974/98 of 3 May 1998 (15) were issued to prepare the adoption of the single currency, the 'euro'. These Regulations were aimed at providing legal certainty for citizens and firms in all Member States on certain provisions relating to the introduction of the euro. More recently, *Council Regulation (EC) No 2866/98 of 31 December 1998* (OJ of 31 December 1998) on the conversion rates between the euro and the currencies of the Member States adopting the euro set the irrevocably fixed conversion rates between the euro and the national currencies of the eleven Member States participating in the euro area. Specifically, the rate of the Spanish peseta was set at PTA 166,386 per euro.

Although these Community Regulations could be applied directly, most Member States have adapted their national legislation to the changes required by the introduction of the euro. In Spain, *Law 46/1998 of 17 December 1998 on the introduction of the euro (BOE of 18 December 1998)* laid down a set of general rules aiming at facilitating the introduction of the euro as a single currency into the monetary system, in accordance with these Regulations. The government was empowered to implement the Law (also called "Umbrella Law") by issuing the regulations required to ensure the harmonious execution of all of its provisions.

Simultaneously with the publication of Law 46/1998, *Organic Law 10/1998 of 17 December 1998,* supplementary to the Law on the introduction of the euro (BOE of 18 December 1998), amending Organic Law 8/1980 of 22 September 1980, on the financing of the Regional (Autonomous) Governments, was issued to specify a number of points. Financing or issuing operations denominated in euro and carried out within the euro area shall not be considered foreign financing and shall therefore require no authorisation. References in organic laws to amounts expressed in pesetas shall be read as references to amounts in euro at the established conversion rate. Likewise, references to the ECU shall be read as references to the euro or to the relevant amount in euro.

The most important sections of Law 46/1998 and of its implementing regulations are briefly described hereunder, in particular with regard to financial aspects.

6.2. Integration of the Banco de España into the ESCB

One of the consequences of EMU was the integration of the Banco de España into the ESCB, governed by the Governing Council and the Executive Board of the ECB. As a member of the ESCB, the Banco de España will be required to apply harmonised procedures, together with the national central banks of the euro-11 countries and in accordance with the requirements of the ECB and the ESCB. These new requirements, ranging from the implementation of monetary policy to the operation of the TARGET system (16) and to market opening and closing procedures and related activities, will apply to the activities of the Banco de España carried out within a common framework. It was therefore necessary to include in the Law the reorganisation of the Banco de España's services and facilities.

Another consequence of this integration was the need to adapt the organisation and operation of the current STMD (Money-Market Telephone Service) to the new obligations assumed by the Banco de España as a result of the implementation of the TARGET system. Accord-

(14) See "Financial regulation: fourth quarter of 1997", in *Economic bulletin,* Banco de España, January 1998, p. 88.

(15) See "Financial regulation: second quarter of 1998", in *Economic bulletin,* Banco de España, July-August 1998, pp. 100 and 101.

(16) Trans-European Automated Real-time Gross settlement Express Transfer (TARGET) is a general EU interbank payment system which interconnects the different real-time gross settlement systems and the ECB's payment mechanism through an interlinking system.

ingly, the regulations of the STMD were updated by *Banco de España Circular 11/1998 of 23 December 1998 (BOE of 30 December 1998).* As a result, the STMD will change its name to SLBE (Banco de España Settlement Service) and any reference to it in the current legislation shall be read as a reference to the new name. The Circular provides an extensive list of institutions which may participate in the SLBE, if they fulfil the requirements and follow the procedures set out by the Banco de España in its Circular 5/1990 of 28 March 1990 (17). Participation is therefore open to any institution providing clearing and settlement services, if it is supervised by a competent authority. This Circular supplements Banco de España Circular 4/1997 of 29 April 1997 (18), which initially described and regulated the TARGET payment system, by defining *intraday credit* (19) and participants allowed to access such service. Finally, Banco de España Circular 11/1998 refers to *cross-border payment orders* through which participants in the SLBE may order funds transfers, against their account with the central bank, in favour of participants in other real-time gross settlement systems of EU national central banks, or receive transfers from those participants. Such orders shall be irrevocable, although conditional upon the availability of funds to the issuer.

6.3. Modification of national monetary system

As mentioned above, as from 1 January 1999, the currency of the national monetary system is the euro, which has been fully and immediately substituted for the peseta and shall be divided into one hundred cents. However, until 31 December 2001, the peseta may continue to be used as a unit of account in any legal instrument, as a sub-division of the euro and according to the conversion rate. Spanish banknotes and coins shall remain legal tender until 30 June 2002, unless this period is shortened by law.

The effects on and the principles applicable to the Spanish monetary system further to the introduction of the euro are the following:

— *Neutrality:* The substitution of the euro for the peseta shall not have the effect of altering the denomination of legal instruments in existence on the date of substitution.

— *Fungibility:* Where in a legal instrument reference is made to monetary amounts, this reference shall be equally valid whether these amounts are expressed in pesetas or in euro, provided that they have been calculated according to the conversion rate and to the rounding rules.

— *Nominal equivalence:* The monetary amount expressed in euro, after applying the conversion rate and the rounding rules, where appropriate, shall be equivalent to the monetary amount expressed in pesetas which was converted into euro.

— *Free of charge:* The substitution of the euro for the peseta shall be free of any fees, commissions, rates, costs or any other charges whatsoever to consumers. Any clause, arrangement or agreement to the contrary shall be null and void and this principle shall be considered a regulatory and disciplinary rule in the case of credit institutions.

— *Principle of continuity:* The substitution of the euro for the peseta shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter such an instrument, unless otherwise agreed by the parties. In particular, customers' and users' rights, which are recognised in customer protection regulations, shall be respected.

— *Rounding rules:* Monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit shall be rounded up or down to the nearest cent. Monetary amounts to be paid or accounted for which are converted into the peseta unit shall be rounded up or down to the nearest peseta. If the application of the conversion rate gives a result which is exactly half-way, the sum shall be rounded up.

6.4. Transitional period

During the transitional period, i.e. between 1 January 1999 and 31 December 2001, references to monetary amounts in new legal instru-

(17) See "Regulación financiera: segundo trimestre de 1997" in *Boletín económico,* Banco de España, July-August 1997, p. 82.

(18) See "Regulación financiera: segundo trimestre de 1997", in *Boletín económico,* Banco de España, July-August 1997, pp.106 and 107.

(19) Credit extended by the Banco de España to participants against adequate collateral provided by those institutions during a given daily session of the Banco de España Settlement Service. Intraday credit needs to be reimbursed during the day, either by providing sufficient funds or via the marginal lending facility, as defined in the general provisions applicable to the Banco de España's monetary policy operations and in the Law's implementing regulations.

ments may be expressed either in the peseta unit or in the euro unit. However, to be expressed in euro, in private law relationships the parties must have agreed to it and, in relationships with the general government, the agreement must include the possibility of using the euro unit and the party concerned must have chosen to use it.

Conversions made by credit institutions under the aforementioned regulation, and conversions of funds to be made by investment firms to execute customer orders shall be free of charge. Commissions and fees on financial services in euro shall be equal to those charged on the same services in pesetas. This shall be a statutory requirement for credit institutions.

The law prescribed the following measures to guarantee the use of the two units of account and means of payment during the transitional period:

6.4.1. Redenomination of Banco de España certificates

Law 46/1998 provided that, as from 1 January 1999, all debt issues made by the government or by regional bodies should be in euro. As a result, the recording of these securities in the Central Book-Entry Office, as well as their trading, clearing and settlement should be solely in euro. This requirement applied to Banco de España certificates (CBEs) (20) whose accounts are held by the government debt market Central Book-Entry Office of the Banco de España. These certificates were included in the list of tier one Spanish securities which may be used in the implementation of monetary policy during Stage Three of EMU and had, therefore, to be redenominated in euro. The redenomination procedure was implemented by the Banco de España in accordance with Law 46/1998 through *Banco de España Circular 12/1998 of 23 December 1998* (BOE of 30 December 1998).

According to the aforementioned Circular, the Central Book-Entry Office shall redenominate CBEs by applying the conversion rate to the nominal holdings of security codes of CBEs which were recorded in market members' accounts at the close of the market on the last business day of 1998. The amount of the resulting nominal holdings shall be rounded to the nearest euro cent. Under no circumstances will there be any cash settlement as a result of the rounding process. The minimum tradable amount of redenominated CBEs shall be EUR 1,000 or whole multiples of that amount. Until full redemption, the features of CBEs shall remain unchanged and they shall be governed by the aforementioned Instruction and Circular. In particular, it should be noted that CBEs may not be traded, nor assigned by institutions which have an overdraft on their current account with the Banco de España, unless specifically authorised by the Banco de España. They may be purchased on the market by the Banco de España, which may redeem them early for monetary policy purposes or under exceptional circumstances.

6.4.2. Redenomination of government debt

As described in the previous section, as from 1 January 1999, debt issued by the government or by regional bodies shall be in euro. Outstanding book-entry debt issued before 1 January 1999 shall be redenominated in euro by applying the conversion rate and by rounding, where appropriate, to the nearest euro cent. If a market member's nominal holdings by security code are made up of several entries, each of them shall be redenominated and rounded separately, and they shall be added up to obtain the nominal holdings in euro.

It should be noted that *Ministerial Order of 14 October 1998* (BOE of 23 October 1998) had already determined that the face value of book-entry government debt would be eliminated. Therefore, single debt holdings of the same security code shall be changed into nominal single holdings, in order to facilitate their subsequent redenomination in euro.

Further to the publication of Law 46/1998, *Ministerial Order of 23 December 1998* (BOE of 30 December 1998) regulated the issue of government debt in euro during the month of January 1999. Additionally, two *Decisions of 23 December 1998* (BOE of 30 December 1998) of the Directorate General for the Treasury and Financial Policy (hereinafter the Treasury) regulated certain issues of bonds and Treasury bills in euro to be launched during the aforesaid month.

The features of all the securities shall remain unchanged, except for the denomination unit which shall change from the peseta to the euro. The minimum amount to be subscribed shall be EUR 1,000 (PTA 166.386) for twelve-month and eighteen-month bills and EUR 500,000 (PTA 83.5 million) for six-month bills. Bids for higher amounts shall be whole multiples of EUR

(20) CBEs are eligible assets whose features were defined in the Instruction of 16 March 1990. Banco de España Circular 1/1996 of 27 September established that the aforementioned Instruction would remain in force until full redemption of CBEs.

1,000 for twelve-month and eighteen-month bills and of EUR 100,000 for six-month bills.

With regard to bonds, the minimum amount shall be EUR 1,000 for non-competitive bids and EUR 5,000 for competitive bids. In both cases, bids for higher amounts shall be whole multiples and, in the case of non-competitive bids, their nominal amount shall be higher than EUR 200,000.

The government was empowered by Law 46/1998 to establish the procedure to be applied to the redenomination of book-entry government debt in euro. Accordingly, this procedure was laid down in *Royal Decree 2813/1998 of 23 December 1998 (*BOE of 24 December 1998).

For all purposes, the date of debt redenomination in euro was 4 January 1999 (first market business day). The Central Book-Entry Office redenominated the debt by applying the conversion rate to the nominal holdings of each of the security codes of debt recorded at the close of the market on the last day of 1998, in favour of each market member, either in their own account or through a registered dealer. The resulting amount was rounded, where appropriate, to the nearest euro cent, in accordance with the rounding rules laid down in the Law. Under no circumstances was there any cash settlement as a result of rounding, nor was redenomination considered an exchange transaction. Therefore, no capital gains or losses will emerge for accounting or fiscal purposes.

Each registered dealer was required to perform the same operation for each security code of the nominal holdings of each of its customers or principals. These amounts would be in euro cents and would be the definitive figures. Once the redenomination process was over, registered dealers issued and delivered to market members new book-entry formalisation vouchers in which debt holdings were expressed in euro.

With respect to stripped debt, the Banco de España made the required adjustments to maintain, after redenomination, the equivalence between total outstanding holdings of each security code representing stripped coupons and interest on strips which have the same coupon maturity date and have been stripped. The Banco de España also made the required adjustments to maintain the equivalence between the sum of the nominal amounts of the stripped principals and of the nominal amount of the non-stripped strips of each issue and the nominal amount of the corresponding strip issue. Besides, *Banco de España Circular 1/1999 of 8 January 1999* (BOE of 15 January 1999) implemented Royal Decree 2813/1998 with a view to modifying the minimum amounts in euro in stripped debt transactions. To this end, in each stripping or restoration order in respect of strips, the minimum nominal amount of the strip shall be EUR 500,000. Additional amounts shall be multiples of EUR 100,000. Minimum tradable amounts shall be EUR 100,000 for stripped principals and EUR 1,000 for stripped coupons. Higher tradable amounts shall be whole multiples of EUR 100,000 and EUR 1 for stripped principals and coupons, respectively.

As regards borrowing through single loans, redenomination was carried out by applying the conversion rate to the loan principal. In order to make debt issued as from 1 January 1999 more homogeneous, a minimum tradable amount of EUR 1,000 shall be applied to both Treasury bills and government bonds. Higher tradable amounts shall be whole multiples of that amount. As far as stripped debt is concerned, these minimum amounts shall be EUR 100,000 for stripped principals and EUR 1,000 for stripped coupons. In each stripping or restoration transaction in respect of strips, the minimum nominal amount of the strip shall be EUR 500,000. Likewise, market members holding accounts with the Central Book-Entry Office shall be allowed to pool the nominal holdings of a single security code to reach the required minimum tradable amount or multiples of that amount.

The aforementioned Royal Decree allows access to membership of the book-entry government debt market to the following institutions:

a) Investment firms and credit institutions authorised in another EU Member State provided that, besides complying with the current legislation, the authorisation given by the home country authorities allows these entities to provide the services of book-entry market members.

b) Investment firms and credit institutions authorised in a non-EU country provided that, besides complying with the current legislation, the authorisation given by the home country authorities allows these entities to provide the services of book-entry market members. In this last case, the Ministry of Economy and Finance may deny or condition the authorisation, if Spanish institutions are not given equal treatment in the home country of these entities (principle of reciprocity), or if compliance with Spanish government debt market regulatory and disciplinary rules is not assured.

Finally, this Royal Decree modifies Royal Decree 116/1992 of 14 February 1992 (21) on book-entry, clearing and settlement of securities with a view to allowing access to membership to any Spanish entity which is engaged in activities that are similar to those of the Securities Clearing and Settlement Service (22).

6.4.3. *Changeover to the new unit of account in securities markets other than the government debt market*

As from 1 January 1999, securities markets other than the book-entry government debt market are authorised to change the unit of account used in their securities trading, clearing, settlement and other financial procedures from the peseta unit to the euro unit. Changeover shall be free of charge to investors in all secondary securities markets.

During the transitional period, the information to be provided by the regulatory bodies of securities markets other than the book-entry government debt market shall be in euro, according to the rules laid down by the Ministry of Economy and Finance in *Ministerial Order of 23 December 1998* (BOE of 30 December 1998). Specifically, as from 1 January 1999, the regulatory bodies of securities markets other than the book-entry government debt market, which opt to change over to the euro unit in their operating procedures, shall provide information in euro on transactions carried out in these markets according to the following rules:

a) Information on quotation of securities and other financial traded instruments, and on payment of dividends and other yields, shall be in euro and cents.

b) Information on trading volumes of securities and other transactions carried out in those markets, and on total traded volume, may be provided in rounded thousand euro.

Similarly, the official information published by the regulatory bodies of official secondary markets in the stock exchange bulletin shall be in euro. Information shall be provided in euro and in pesetas if it refers, at least, to the following data: monetary amounts of closing prices, previous average weighted exchange rate of listed securities and other traded instruments (except forward financial contracts), liquidation value of units and assets of investment funds, as well as notional value of shares of open-end investment companies.

Collective investment undertakings which have adopted the euro unit, on their own initiative or on the decision of their management company, shall provide the information required by law in euro. The Ministry of Economy and Finance, on a report by the CNMV, specified in the aforementioned Ministerial Order the cases and conditions in which the information prepared by collective investment undertakings and their management companies shall be provided in euro and in pesetas. Finally, this Ministerial Order modifies Ministerial Order of 25 March 1991 on the system of credit in spot stock exchange transations (23), and Ministerial Order of 5 December 1991 (24) on special stock exchange transactions, with a view to converting the amounts expressed in pesetas into their equivalent amounts in euro.

In one of its articles, Law 46/1998 refers to private insurance and pension schemes and funds. In the exercise of the powers conferred upon it by this Law, the government issued *Royal Decree 2812/1998 of 23 December 1998* (BOE of 24 December) concerning the adaptation of the specific regulations on insurance and pension schemes and funds to the introduction of the euro, bearing in mind the need for harmonious implementation emphasised by the Law. Additionally, the Ministry of Economy and Finance issued *Ministerial Order of 23 December 1998 (*BOE of 31 December 1998) which implements certain provisions of the regulations on private insurance and lays down the reporting requirements entailed by the introduction of the euro. Accordingly, management companies of pension funds which have adopted the euro unit shall provide the information required by law in euro to control commissions. However, during the transitional period, annual accounts may be prepared, submitted and published in pesetas and in euro. Similarly, *insurance undertakings, including social-welfare mutual societies,* which have adopted the euro unit shall provide the information required by law in euro to policy-holders, insured and beneficiaries. Otherwise, they shall provide it in pesetas, unless the insurance policy is expressed in euro, in which case the

(21) See "Regulación financiera: primer trimestre de 1992", in *Boletín económico,* Banco de España, April 1992, pp. 68 and 69.

(22) Up to now, members included credit institutions, the Banco de España, the Caja General de Depósitos (government depositary), securities-dealer companies and securities agencies and foreign entities engaged in activities that were similar to those of the Securities Clearing and Settlement Service.

(23) See "Regulación financiera: primer trimestre de 1991", in *Boletín económico,* Banco de España, April 1991, pp. 49 and 50.

(24) See "Regulación financiera: cuarto trimestre de 1991", in *Boletín económico,* Banco de España, January 1992, pp. 64 and 65.

information shall be solely provided in euro. As these life insurance operations give rise to redemption and reduction rights, the denomination in euro of these rights shall not be considered an intermediate operation. With regard to accounting aspects, the Ministerial Order defines the scope of application of the regulations on the introduction of the euro for insurance undertakings to which the Chart of Accounts of the insurance sector is applicable. Otherwise, general accounting rules shall be applied.

Lastly, this section should include the publication of *CNMV Circular 7/1998 of 16 December 1998* (BOE of 30 December 1998) which prescribes the changes to be made to certain circulars as a result of the introduction of the euro. Specifically, the circulars which must be modified and adapted refer to secondary securities markets and regulatory bodies, securities-dealer companies and securities agencies, collective investment undertakings, reporting of significant holdings and publication of information on a regular basis by entities admitted to listing.

6.4.4. Redenomination of issues of other bonds

As from 1 January 1999, the issues of bonds other than those regulated in the above sections may be redenominated in euro. The option to redenominate shall be subject to the market on which the issue is traded having adopted the euro unit (25). The issue may be redenominated if so decided by the issuer, unless the redenomination option is expressly excluded until 31 December 2001 in the issue contract. If bonds are traded in a secondary market, the advertising of redenomination shall be in accordance with securities market legislation.

During the transitional period solely, bonds traded in an organised secondary market may also be redenominated by the holder through the redenomination of holdings of securities with the same identification code, under the regulatory conditions laid down in each case, provided that technical or market conditions permit the aggregation of the final nominal holdings of the issue.

6.4.5. National Electronic Clearing System: adaptation to the euro

The adaptation of the National Electronic Clearing System (SNCE) to Stage Three of EMU made it necessary to introduce some changes into its regulations, namely to specify that as from 1 January 1999 the unit of account of the Spanish monetary system would be the euro. Accordingly, the Banco de España issued *Circular 9/1998 of 30 October 1998* (BOE of 19 November 1998) which would enter into force on 1 January and which modified the circulars discussed below.

Banco de España Circular 8/1998 is amended to specify that the amount of interbank transactions processed by the SNCE shall be expressed in euro. However, between 1 January and 31 December 2001, the amount of transactions issued in pesetas shall be expressed in that currency. Under exceptional circumstances, for the purposes of introducing and exchanging data within the SNCE, between 1 January 2002 and 31 March 2002, the amount of interbank transactions issued in pesetas prior to 1 January 2002 may be reported in that currency, without prejudice to their legal equivalence in euro. As from 1 April, the amount of these transactions shall be expressed in euro.

Banco de España Circular 11/1990 is amended to replace references to instruments expressed in pesetas by references to euro. In the section dealing with exclusion from the general commercial paper subsystem regulated by Banco de España Circular 1/1998, two indents are eliminated: instruments paid by banker's order which are debited to non-resident accounts for an amount exceeding PTA 500,000 and instruments which are not drawn or issued in pesetas.

6.4.6. Redenomination of bank accounts

During the transitional period, if so agreed by the parties, credit institutions shall redenominate in euro cash accounts in pesetas held by private individuals and the general government with the institution concerned.

Redenomination shall be free of charge and shall be carried out on the account balance on the redenomination date, by applying the conversion rate and the established rounding rules. Redenomination shall apply to the various instruments through which the account can be used, though cheques against the account may still be issued in pesetas.

6.5. End of the transitional period

As from 1 January 2002, the euro shall be the sole unit of account used by the monetary

(25) At the present time, all organised securities markets have performed redenomination in euro.

system. From 1 January to 30 June 2002 (26), banknotes and coins in pesetas shall be exchanged for banknotes and coins in euro at the conversion rate and in accordance with the established rounding rules.

Banknotes and coins shall be exchanged at the Banco de España, banks, savings banks and credit co-operatives. The only cash exchange allowed shall be of banknotes and coins in euro delivered in exchange for banknotes and coins in pesetas. The reverse exchange shall not be allowed. Exchange shall be free of charge and no fees, commissions, rates, costs or any other charges whatsoever shall be applied.

As from 1 July 2002, banknotes and coins denominated in pesetas shall lose their status of legal tender but shall still be exchanged for banknotes and coins in euro at the Banco de España, at the conversion rate and as determined by the Ministry of Economy and Finance.

As from 1 January 2002, any legal instrument which has not been redenominated during the transitional period shall automatically be deemed to be expressed in the euro unit, by applying the conversion rate and the established rounding rules.

6.6. Measures aimed at facilitating the introduction of the euro

The regulations described in the above sections were supplemented by a series of general measures aiming at facilitating the introduction of the single currency during the transitional period.

In the financial area, as from 1 January 1999, the *official exchange rate* of the peseta against other currencies shall be the euro exchange rate published by the ECB, either directly or through the Banco de España. The Banco de España may also publish euro exchange rates against currencies other than those considered by the ECB. During the transitional period, the Banco de España shall publish, for information purposes, the equivalent value of the official exchange rate in pesetas.

The *one-year interbank offered rate* (MIBOR) to be applied to outstanding mortgage loans at 1 January 1999 shall continue to be calculated and published as long as it can technically be calculated. If it cannot be calculated due to technical or market difficulties, the Ministry of Economy and Finance is empowered by the Law to determine its calculation formula or to establish a new equivalent reference rate or index to replace the MIBOR. This shall not affect the parties' freedom to modify their relevant contracts. In other financial transactions using as a reference a MIBOR rate which cannot be calculated because it has lost any financial meaning, the interest rate which is the closest substitute for the MIBOR shall be applied instead. However, this will be so, provided that the parties have not established a substitute or subsidiary rate to replace the initially agreed one, or rules to be applied in case this rate disappears or is no longer meaningful.

In relation to accounting obligations, in addition to the general rules laid down in Law 46/1998, the Government, in the exercise of the powers conferred upon it by the Law, issued *Royal Decree 2814/1998 of 23 December 1998* (BOE of 24 December 1998) which defines the rules applicable to the accounting aspects of the introduction of the euro, taking into account the special characteristics of Spanish entities. During the transitional period, an optional asymmetrical system shall allow entities to choose to express their individual and consolidated annual accounts either in euro or in pesetas but, if they opt to use the euro unit in their account books and annual accounts, this decision shall be irreversible. However, credit institutions shall be required to keep their accounts solely in euro. With respect to the valuation of certain assets as a result of the introduction of the euro, the Royal Decree regulates specific aspects, such as the accounting treatment of exchange differences arising in the currencies of euro-11 countries, and the translation differences in consolidated annual accounts when they include companies from euro-11 countries. The Royal Decree also addresses the treatment of expenses arising from the introduction of the euro and of rounding procedures, as well as cases in which the close of the financial year of undertakings does not coincide with the calendar year. Finally, the aforementioned regulation specifies the information to be included in the annual financial report in relation to the effects of the introduction of the euro.

As regards company law, the redenomination of the amount of the share capital of commercial companies by applying the conversion rate and, where appropriate, the established rounding rules to that amount is regulated. Likewise, a simple formula is allowed to adjust to the nearest euro cent the face value of shares which, as a result of redenomination, would have more than two decimals.

(26) Or at an earlier date, if the period is shortened by law.

As far as tax regulations are concerned, the Ministry of Economy and Finance or other competent authorities are empowered by the Law to establish the terms, conditions, procedures and models for submitting tax returns in euro. In doing so, they shall combine a flexible system with an irreversible process, in the same way as for accounting obligations. Equivalent regulations are applied to social security contributions and general government proceedings, contracts and general provisions shall be required to include the equivalent amount in euro as long as the peseta unit is used.

7. REFORM OF THE SECURITIES MARKET

7.1. Background

Comprehensive reform of the Spanish securities markets, as carried out in Law 24/1988 of 28 July 1988 (27), was undertaken somewhat later than the modernisation effected in other EU countries. As stated in the preamble to the Law, one of its main objectives was to strengthen the Spanish Securities market in the lead up to a single securities market in 1992.

The construction of a single European financial market has been based in recent years on three important directives:

First, the Second Banking Directive [Directive 89/646/EEC of 15 December 1989 (28)] was essential to achieve a common framework for the activities of credit institutions within the European Union (EU), from the point of view of both the right of establishment and of freedom to provide services. The Directive was incorporated into Spanish law by means of Law 3/1994 of 14 April 1994 (29), which basically widened and modified the contents of Law 26/1988 of 29 July 1988 (30) on the discipline and administration of credit institutions, in order to include the provisions of this Directive.

Second, Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions was published, with the aim of harmonising the elements considered essential to secure the mutual recognition of authorisation and of prudential supervision systems of investment firms.

Finally, Directive 93/22/EEC of 10 May 1993 (31) on investment services in the securities field (32) was essential to the achievement of the internal market, from the point of view of both the right of establishment and of the freedom to provide services, in the field of investment firms. The investment services Directive, like the Second Banking Directive, introduced the principle of the Community passport or single licence (33), which is based on the harmonisation of the conditions for authorisation and pursuit of the activity, as well as of the prudential supervision systems (34) for investment firms.

Ten years after the promulgation of Law 24/1988 of 28 July 1988, and with the aim of incorporating into Spanish law Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (ISD), *Law 37/1998 of 16 November 1998* (BOE of 17 November 1998) (35) has been published. Adaptation to the ISD means that any investment services firm (ISF), whether or not Spanish, that is authorised in one EU Member State, has the right to *enter all EU markets,* including the Spanish market, as a member, with the possibility of access to or membership of clearing and settlement systems. In other words, both Spanish ISFs and those authorised in other EU countries are acknowledged to have the right to operate as members in official secondary markets. However, in view of the exception made in the Directive, credit institutions shall not have such a right until 1 January 2000.

At the same time, with the start-up of Stage Three of EMU and the adoption of the single

(27) See "Regulación financiera: tercer trimestre de 1988", in *Boletín económico,* Banco de España, October 1988, pp. 61-62.

(28) See "Regulación financiera: primer trimestre de 1990", in *Boletín económico,* Banco de España, April 1990, pp. 71-72.

(29) See "Regulación financiera: segundo trimestre de 1994", in *Boletín económico,* Banco de España, July-August 1994, pp. 92-96.

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

(31) See "Regulación financiera: segundo trimestre de 1993", in *Boletín económico,* Banco de España, July-August 1993, pp. 106-108.

(32) Its content has already practically been incorporated into Spanish law. See Banco de España Circular 5/1993 of 26 March 1993 and CNMV Circular 6/1992 of 30 December 1992.

(33) This principle means that an investment services company, under the authorisation granted by the State in which its registered office is located, may provide investment services and undertake complementary activities in the rest of the EU, both by establishing branches in other Member States and offering services there.

(34) Recognition of supervision systems enables the principle of supervision by the home Member State to be applied.

(35) This Law entered into force on 18 November 1998, except for the provision stipulating that credit institutions, of whatever nationality, may be members of the Stock Exchanges, which shall not enter into force until 1 January 2000.

currency on 1 January 1999, the government has promulgated *Royal Decree 2590/1998 of 7 December 1998* (BOE of 18 December 1998), in order to increase efficiency and competition in the securities markets, while preserving the basic operating and organisational principles.

7.2. Scope of the reform

7.2.1. Extension of the scope of application of the Law

The scope of application (36) is extended to include, in addition to marketable securities, the following:

a) Contracts of any kind that are traded on official or unofficial secondary markets.

b) Financial futures, options and swap contracts, provided that the underlying assets are marketable securities, indices, currencies, interest rates or any other kind of financial asset, irrespective of the way in which they are settled and even if they are not traded on any official or unofficial secondary market.

c) Contracts or operations involving other instruments, provided that they are capable of being traded on an official or unofficial secondary market, even if their underlying asset is not financial, but rather merchandise, commodities or any other fungible good.

7.2.2. Keeping of securities accounting records

As from the entry into force of the Law, the accounting records for marketable book-entry securities not traded on official secondary markets shall no longer be kept exclusively by securities-dealer companies and securities agencies; rather the entity concerned shall be freely designated by the issuer from among the ISFs and credit institutions authorised to pursue this activity.

7.2.3. New composition and new powers for the Consultative Committee of the CNMV

The composition of this committee has been updated so that the members are appointed to represent the members of all official secondary markets, the issuers and investors. In addition, a further representative is appointed by each of the Regional (Autonomous) Governments with powers in relation to securities markets in whose territory there is an official secondary market.

The Committee has also been conferred new responsibilities, among which the following are noteworthy: *a)* the mandatory reports for the granting and revocation of authorisation for the branches of ISFs of non-EU countries, as well as for other securities market agents, where regulations so establish, and *b)* reports on proposed legislation of a general nature on matters directly relating to the securities market.

7.2.4. Official secondary securities markets

The new law defines official secondary securities markets as those which regularly operate in accordance with the provisions of this Law and its implementing provisions, in particular, as regards the conditions of access, admission to listing and operating, information and publicity procedures. In addition to stock exchanges and the government debt market, *futures and options markets,* whatever the type of underlying asset, are now considered to be official secondary securities markets too. The possibility is also left open that other nationwide markets, authorised pursuant to this Law and its implementing provisions, and other regional markets authorised by the Regional (Autonomous) Governments with powers in this field, may be so defined.

The new law distinguishes between ordinary and extraordinary transactions. The former are those subject to the basic rules of operation of the market (in particular, those requiring the mediation of members and the processing of the transaction through the ordinary dealing systems). Extraordinary transactions are those which are not subject to all or some of these basic rules, and can only be carried out in three cases:

1. When the buyer and the seller are habitually resident or established outside Spain.

2. When the transaction is not carried out in Spain (37).

3. When the buyer and seller have previously expressly authorised an investment services firm (securities-dealer company or securi-

(36) Previously it only included marketable securities.

(37) The requirements which must be fulfilled for an operation to be deemed carried out outside Spain shall be determined in regulations.

ties agency) or a credit institution in writing to carry out the transaction in question without it being subject to the rules of operation of the market (38).

In any event, and regardless of whether or not they are market transactions, ISFs are placed under an obligation to notify all kinds of transactions to the market regulatory bodies, in order to ensure their proper operation and the protection of investors.

Likewise, repurchase agreements (both the Spanish and ordinary variety) may be recognised as secondary market operations.

For its part, Royal Decree 2590/1998 amends Royal Decree 116/1992 of 14 February 1992, on the representation of securities by means of book-entries and clearing and settlement of Stock Exchange transactions, to regulate a special procedure for the clearing and settlement of Stock Exchange transactions that are a consequence of monetary policy operations conducted by the Banco de España, the ECB and the central banks of the ESCB. Thus, irrespective of the nationality of the issuer, and in order to facilitate the settlement of the government-securities transactions which the ESCB uses to implement monetary policy, the Banco de España may establish the connections with the securities settlement systems in which such classes of securities are recorded. In particular, these links may take the form of:

a) The opening of accounts at the Central Book-entry Office of the government debt market for other securities clearing and settlement systems in which the overall balances of Spanish government debt held by foreign investors through such systems may be recorded.

b) Likewise, the Central Book-Entry Office may keep accounts with the securities settlement systems of other countries in which the balances of foreign government securities – both those acquired by the Banco de España itself to implement monetary policy and those acquired by institutions belonging to the STMD (Money-Market Telephone Service), now the SLBE (Banco de España Settlement Service), and to the Central Book-Entry Office – may be recorded. The latter shall record the individual balances of these kinds of securities held by its member institutions.

(38) The content of the requirements for the said authorisation shall be determined in regulations. Among other aspects, the nature of the investor, the amount of the operation and the price conditions shall be taken into account for the purpose.

7.2.5. Lending of securities traded on secondary markets

In relation to market operations, it has been considered appropriate to clarify the regulations for a certain type of lending of securities traded on secondary markets, in order to increase market depth and efficiency and at the same time to establish the regulatory framework for the relevant tax regime conducive to the development of the same. It shall be subject, inter alia, to the following principles:

a) Only those securities which, by reason of the frequency with which they are traded and their liquidity or of their suitability to serve as collateral in monetary policy operations, have been designated by the regulatory body of the market in question may be lent. Securities identical to those of the issuer which are subject to a public offering or securities subscription may also be lent, provided that the operation is recorded in the prospectus.

b) Securities delivered on loan must belong to and be in the possession of the lender.

c) The lender, unless otherwise agreed, shall be entitled to the proceeds of the financial rights inherent in the securities.

d) The maturity of the loan may not exceed one year.

e) The borrower must secure the return of the securities by means of the guarantees that may be determined by the CNMV.

7.2.6. Pledging of book-entry securities

Law 37/1998 lays down new regulations for security based on the *pledging of book-entry securities* in order to favour the development and efficient operation of secondary markets. Pledges may be created over book-entry securities admitted to listing on secondary markets to secure the general obligations contracted vis-à-vis a secondary market or its clearing and settlement systems, or to secure the performance of the obligations arising from transactions in these markets. Such pledges may be created:

a) By a contract authorised by an official broker *(corredor de comercio colegiado)* or by a notarial deed.

b) By a private document, the entity responsible for keeping the accounting records being required to make the relevant entry

when it has notice of the consent of the person who appears as the holder in such records and of the entity in whose favour the pledge is created.

c) By a unilateral declaration, including by electronic-data transmission methods, by the person who appears as holder in the accounting records. In this case, acceptance of the entity in whose favour it is created shall be deemed to have occurred from when such unilateral declaration is notified to the entity responsible for keeping the accounting records of the securities, provided that this is envisaged in the regulations of the market or clearing and settlement system in question, or that the parties concerned have expressly agreed upon this form of acceptance beforehand.

The pledge so created shall be effective with respect to third parties from the date on which it is recorded in the accounting records.

As regards the execution of pledges, notwithstanding the provisions of the Commercial Code, it shall be sufficient to evidence the documents stipulated, if applicable, by the regulatory and disciplinary rules of the market when regulating the creation of the pledge to evidence the existence of the pledge and the amount owed. When the guarantees consist of cash deposits, with or without a power of management, the execution of the same shall be by means of simple set-off. In other cases, if there is no procedure specially provided for by law, they shall be executed by auction conducted by a Notary Public or official broker, notice having been given to the debtor and, if not the same person, the owner of the asset, security or right given as security.

This regime shall also be applicable to pledges to secure obligations contracted vis-à-vis the *Banco de España in the conduct of its monetary policy operations* as well as those which institutions participating in an interbank payment system have to create as security for the performance of their obligations.

For their part, the regulatory bodies of secondary markets and their clearing and settlement systems shall enjoy the privileges which the Civil Code confers on secured creditors with respect to the assets, securities and rights subject to the guarantees executed in their favour by the members or investors in such markets. This is regardless of the nature of the assets, securities or rights concerned and the formalities of their creation, provided that they have been created in accordance with the legislation applicable and the particular rules of each market.

7.2.7. Members of official secondary securities markets

As mentioned above, another fundamental aspect of the reform, in line with Directive 93/22/EEC of 10 May 1993, on investment services, is the acknowledgement of the right of access with member status to official secondary markets of the following institutions:

a) Securities-dealer companies and securities agencies.

b) Spanish credit institutions.

c) Spanish ISFs and credit institutions authorised in other EU Member States, provided that, in addition to fulfilling the requirements laid down in this Law to operate in Spain, they are empowered under the authorisation of their home country to provide certain investment services (the execution of orders on behalf of third parties and trading for own account).

d) Spanish ISFs and credit institutions authorised in a non-EU state, provided that, in addition to fulfilling the requirements laid down by this Law to operate in Spain, they are empowered under the authorisation of their home country to provide the investment services mentioned in the previous paragraph. This notwithstanding, the Ministry of Economy and Finance may refuse these entities access to Spanish markets or place conditions on such access for prudential reasons, where Spanish entities are not accorded the same treatment in their home country, or where compliance with the Spanish securities regulatory and disciplinary rules is not assured.

e) Such others as the Regional (Autonomous) Governments with responsibilities in this area may determine.

7.2.8 New issues and public offerings of securities

The opportunity afforded by the reform has also been used to redefine the concept of a public offering of securities (39), in such a way that it includes not only an offering of unlisted securities, but also an offering of securities already traded on a secondary market. For its part, Royal Decree 2590/1998 amends Royal Decree 291/1992 of 27 March 1992 (40), on

(39) A public offering shall be considered to be an offering to the public, for own account or for that of a third party, of previously issued marketable securities.

(40) See "Regulación financiera: primer trimestre de 1992", in *Boletín económico,* Banco de España, April 1992, pp. 70-72.

new issues and public offerings of securities, to improve advertising activities. Advertising activities shall be deemed to include all forms of communication directed at investors in order to promote, either directly or through third parties acting on behalf of the issuer or offeror, the subscription or acquisition of marketable securities, including telephone calls, home visits, personalised letters, e-mail or any other electronic-data transmission method, provided that, in all cases, the issuer or offeror of the securities is actively facilitating the acquisition of the same.

Special mention is required of the changes made to prospectuses, to improve them and to widen the range of types available, so as to enable issuers to have more efficient access to markets. Thus, to reduce the costs of enabling a security to be traded on the market, the new issue prospectus may also serve as the prospectus for admission to listing on the market in question. The changes introduced into the shortened prospectus and the two possible varieties: the new issue or offering prospectus (41) and the programme prospectus (42) should be noted. Also, the concept of the "triptych", a leaflet containing extracts from the prospectus, is introduced in order to improve information for potential investors. Finally, fulfilment of the requirements is made more flexible when changes are made to securities in circulation, as well as the parties involved in a new issue or public offering (placing entity, lead-manager, co-ordinator or underwriter).

7.2.9. Book-entry government debt market

The new Law covers trading in fixed-income securities issued by the ECB and EU national central banks (43).

It also introduces the possibility of securities admitted to listing on this market being traded, on the terms laid down by regulations, on other official secondary markets. This trading shall be subject to the rules regulating the book-entry government debt market.

The new legal regime for the book-entry government debt market should be governed by this Law and its implementing provisions, as well as by a Regulation to be approved by the Ministry of Economy and Finance at the proposal of the Banco de España, following a report by the CNMV. This Regulation – which may be issued in the form of Banco de España circulars – will regulate:

— Tthe rules relating to listing, trading, obligations to provide information to the Banco de España and to publicise transactions, including the rights and obligations of market members.

— The recording, clearing and settlement of transactions, potentially including procedures to ensure that securities are delivered and paid for, as well as the requirement for guarantees to this end.

— The rights and obligations of the holders of accounts in their own name and managing entities.

As regards members of the book-entry government debt market, in addition to the Banco de España, the same entities as specified for official secondary securities markets, as well as such other entities as may be determined by regulations, shall be entitled to hold the status of market members.

7.2.10. Official book-entry futures and options secondary markets

The Law renames Chapter IV of Law 24/1988 to introduce official book-entry futures and options secondary markets. These have already been developed in the Spanish financial system. They shall be authorised by the government, in the case of nationwide markets, at the proposal of the CNMV, and, in the case of regional markets, by the relevant Regional (Autonomous) Government with responsibilities in this area.

Futures and options contracts, whatever the underlying asset, may be traded on these markets. Other financial derivatives may also be traded, on such conditions as may be determined in regulations.

As in the case of the government debt market, the same entities as specified for official secondary securities markets may be members of these markets. In the case of markets in which financial derivatives with non-financial underlying assets are traded, the acquisition of such status by entities other than those mentioned may be determined in regulations, provided that they fulfil the requirements of specialisation, professionalism and solvency. There shall be a regulatory body, in the form of a public limited company, whose basic functions shall

(41) Relating, exclusively, to a specific new issue or public offering of securities.

(42) Referring to a plan of different issues or securities offerings which a single person or entity intends to make in Spain over the following 12 months.

(43) Traditionally, the book-entry government debt market was solely for trading fixed-income securities in the form of accounting entries issued by the State, Regional (Autonomous) Governments, other public entities and corporations and by international bodies of which Spain was a member.

be to organise and supervise, record the contracts and, where applicable, manage the clearing and settlement. It may also hold an account with the Central Book-Entry Office for the purpose of managing the system of guarantees.

These markets, besides being governed by this Law and its implementing provisions, shall be governed by a specific Regulation which shall specify the classes of members, legal relations with clients, rules of supervision, system of guarantees, settlement operations, contracts, and any other aspects specified in regulations.

7.2.11. Investment services firms (ISFs)

Title V of Law 24/1988, which refers to securities-dealer companies and securities agencies, has been renamed *empresas de servicios de inversión* (investment services firms), to use a wider term and to introduce the terminology used by Directive 93/22/EEC. This category includes, in addition to securities-dealer companies and securities agencies, *portfolio management companies.* The investment services shall be provided in relation to the marketable securities and financial instruments discussed in previous paragraphs.

The following are considered to be *investment services:*

1. The receipt and transmission of orders and, where applicable, the execution of such orders on behalf of a third parties.

2. Trading for own account.

3. Discretionary and individualised management of investment portfolios in accordance with the mandates conferred by investors.

4. Mediation, directly or indirectly, on behalf of the issuer in the placement of new issues and public offerings of securities, as well as underwriting the subscription of new issues and public offerings.

Additional activities which they may pursue include, inter alia: the custody and administration of financial instruments, the rental of safe-deposit boxes, the extension of credit or loans to new investors to enable them to enter into transactions in relation to one or more of such instruments and acting as registered entities to enter into currency transactions connected with investment services.

Credit institutions, even though they are not ISFs, may normally carry out all the above-mentioned activities, provided that their legal regime, their articles of association and their specific authorisation enable them to do so. However, they cannot be members of stock exchanges until 1 January 2000.

The government may regulate the creation of other entities, and also permit other persons or entities which, even though they are not ISFs, may perform some of the latter's activities (44), or which help to improve the development of securities markets.

As regards the conditions for taking up the business, ISFs, in the same way it was securities-dealer companies and securities agencies, shall be authorised by the Ministry of Economy and Finance, at the proposal of the CNMV. Along with the application for authorisation and others such documents as may be determined in regulations, the shall submit a *programme of activities,* in which they shall specify which type of services of those stipulated as potentially provided by ISFs they intend to pursue, as well as their organisation and resources. The authorisation of an investment firm shall also be subject to *prior consultation* with the supervising authority of the relevant EU Member State, when certain circumstances pertain, including, when the new firm is going to be controlled, directly or indirectly, by an investment services firm or, as the case may be, a credit institution already authorised in that State.

To obtain the authorisation they must fulfil a number of requirements, similar to those specified for securities-dealer companies and securities agencies, but with a few changes. Hence, they must join the Investment Guarantee Fund (see below) and have internal rules of conduct, adjusted to the provisions of this Law, as well as safety and control mechanisms in the area of information technology and adequate internal control procedures.

7.2.12. Significant holdings in ISFs

As envisaged in Law 24/1988, a direct or indirect holding in an ISF representing at least 5 % of the capital or voting rights of the firm is deemed to be a significant holding. In addition, a holding which, without reaching the above-mentioned percentage, nonetheless enables a *significant influence* to be exercised in the firm is also deemed to be a significant holding (45).

(44) They may only provide investment services in relation to marketable securities, in their different forms, including shares in mutual funds and money-market instruments which have such status, provided that they do not receive from their customers funds or financial instruments on deposit.

(45) Regulations shall determine the circumstances in which it is presumed that a person exercises a significant influence.

Persons – legal or natural – intending to acquire a significant holding shall first inform the CNMV. They must also do so if they intend to increase a holding to the extent that it would reach or rise above any of the following thresholds: 10 %, 15 %, 20 %, 25 %, 33 %, 40 %, 50 %, 66 % or 75 %. The CNMV shall have two months in which to object to the acquisition. If it fails to do so, the intention shall be deemed approved. Likewise, if as a consequence of the acquisition, the ISF becomes controlled by an ISF or credit institution belonging to an EU Member State, the CNMV must consult the competent supervising authority in that State. If it becomes controlled by a firm authorised in a non-EU country, the CNMV shall take into account the reciprocity principle.

Finally, if the acquisition or increase in the holding takes place without the CNMV being informed or when it has expressly objected, the following effects shall arise: *a)* the voting rights corresponding to the irregularly acquired holdings may not be exercised or, if they are exercised, shall be void; *b)* the firm may be ordered to suspend its activities, and *c)* where necessary, an administration order or an order for replacement of the directors shall be issued.

3. Cross-border activities of ISFs

Cross-border activities of EU-domiciled ISFs

In accordance with the provisions of Directive 93/22/EC, now being incorporated into Spanish law, ISFs authorised in another EU Member State may carry on in Spain, either by opening a branch, or else under the freedom to provide services (without a permanent establishment), all the specific activities of these institutions mentioned above. For this purpose, it is essential that the authorisation, the articles of association and the legal regime of the institution empower it to pursue the activities it intends to carry on.

In the pursuit of their business in Spain they must observe all the provisions issued before the general interest, the rules of conduct, including *physical presence in markets whose method of trading so requires,* and the regulatory rules applicable to them. Under the principle of a single licence for the whole EU (Community passport) proposed in the Directive, the establishment of branches and the freedom to provide services can never be made conditional upon the obligation to obtain an additional authorisation, or to provide an endowment of funds, or any other measure having the same effects.

Cross-border activities of ISFs not domiciled in the EU

Non-EU ISFs which intend to open a branch in Spain shall be subject to the authorisation procedure provided for in the general conditions for taking up the business, as adapted by regulations, if any. The authorisation may be denied or made subject to conditions for prudential reasons, where Spanish institutions are not given the same treatment in their home country, or where compliance with the regulatory and disciplinary rules of the Spanish securities markets is not assured.

Cross-border activities of Spanish ISFs

Spanish ISFs intending to open a branch or provide services without a branch in a non-EU country must first obtain an authorisation from the CNMV. The provision of services without a branch in a Member State merely requires prior notification to the CNMV, specifying the activities, which are to be carried on.

Where a Spanish ISF or a group of Spanish ISFs intends to create a foreign ISF or intends to acquire a holding in an existing foreign ISF, and such company is going to be established or is domiciled in a non-EU country, prior authorisation of the CNMV shall be required.

7.4. Investment Guarantee Fund (FGI)

Directive 97/9/EC of the European Parliament and of the Council of the 3 March 1997 on investor-compensation schemes, now being incorporated into Spanish law, required the introduction and official recognition in the territory of each Member State of one or more investor-compensation schemes, so that no investment firm authorised in that Member State may carry on investment business unless it belongs to such a scheme.

Pursuant to the above, FGIs (similar to the deposit guarantee funds of credit institutions) are now regulated for the first time to ensure that investors are covered in the event of situations of insolvency or when ISFs are unable to meet their obligations to investors. Such obligations include both those arising from the provision of their services and from the supplementary activity of custody and administration of financial instruments. However, FGIs are not given certain other functions which deposit guarantee funds have (such as to take preventive or restructuring measures).

FGIs shall be created as separate pools of assets, without their own legal identity, which

shall be represented and managed by one or more management companies with the status of a public limited company. The capital of the latter shall be distributed among the investment services firms belonging to the FGI in the same proportion as their contributions to its/their respective funds.

The following shall join an FGI:

— Spanish ISFs are obliged to join. Nonetheless, regulations may provide for certain exceptions.

— The branches of Community ISFs may join voluntarily.

— The branches of non-EU ISFs shall be subject to such rules as may be established in regulations.

An ISF may be excluded from the FGI when in breach of its obligations. This entails the automatic revocation of the authorisation granted to the firm. The guarantee of the FGI shall extend to clients who have made their investments up to that time. The CNMV shall have the power to order exclusion, after a report from the fund's management company. The exclusion ruling must be disseminated sufficiently to ensure that the clients of the ISF concerned are immediately aware of the measure taken.

It should be noted that investors who are unable to obtain directly from a member institution repayment of the amounts or return of the securities or instruments belonging to them may apply to the management company of the same for execution of the guarantee provided by the fund, in any of the following circumstances:

a) When the institution has been declared insolvent.

b) Where proceedings applying for a declaration of suspension of payments by the institution have been instituted.

c) Where the CNMV declares that the FSI is apparently unable to meet its obligations to its investors, provided that the latter have requested the return of their funds and have not obtained satisfaction from the institution within 21 business days.

As regards their tax regime, it should be noted that FGIs shall enjoy an exemption from the indirect taxes which may be payable in connection with their establishment, their operations and the acts and transactions they may perform in pursuit of their objectives. The exemption shall also cover transactions subject to indirect taxes, the amount of which shall be charged to them in accordance with the provisions regulating the taxes.

7.5. Redefinition of the rules of conduct and sanctioning regime for ISFs

The new arrangements for the securities market have obliged both the rules of conduct and the scope of supervision of the CNMV and its sanctioning regime to be redefined. Thus, the ISFs, credit institutions and persons or entities operating in the securities market must observe the rules of conduct laid down in the Law and its implementing provisions and those contained in its own internal conduct regulations.

These institutions must give absolute priority in their operations to their clients' interests, in conformity with the spirit already indicated in Law 24/1988, and where there is a conflict of interests between different clients, no particular client shall be given any special preference. Other principles of good conduct are: diligent and transparent dealings with clients, orderly and prudent management, etc.

The new Law specifies the meaning of *privileged information,* this being information of a specific nature which refers to one or more securities and one or more issues, which has not been made public and which, if it were to be, might influence or would have influenced significantly the price of such securities. Likewise, it specifies the measures which firms must take to ensure that secret or *privileged information* is not, directly or indirectly, accessible to the staff of the same institution who provide their services in a different area of activity, so that each function is exercised autonomously.

7.6. Other issues

The thirteenth additional provision to Law 37/1998 makes certain amendments to Royal Legislative Decree 18/1982 of 24 September 1982 on *the deposit guarantee funds of credit institutions,* in order to afford protection to investors who have entrusted money, securities or other financial instruments to them for the provision of some investment service. The provision cited indicates the circumstances which give rise to such protection (insolvency or suspension of payments preventing the return of the securities, or the proven impossibility of securing their return), the obligation to compensate in cash and the way in which the funds shall be subrogated to the rights of the compensated investors. Finally, in the event that a fund's resources are exhausted, the possibility

is envisaged of imposing special levies on the members, in proportion to their current contributions.

The fourth additional provision to the same Law provides for the possibility of creating, with due legal certainty and transparency, mortgage securitisation funds, regulated by Law 19/1992 of 7 July 1992, made up of *shares in impaired mortgage loans,* provided that such loans and the mortgages created to secure them meet the other requirements laid down in the mortgage market legislation, mechanisms or instruments are established to improve their credit quality and they are duly supervised by the CNMV.

Finally, the fifteenth additional provision should be mentioned. This makes various amendments to the consolidated text of the Public Limited Companies Law, approved by Royal Legislative Decree 1564/1989 of 22 March 1989. As a result companies are permitted to issue shares without voting rights which will give entitlement to the same dividends as ordinary shares, and it is possible for *repurchaseable shares* to be issued. The latter may be repurchased upon the request of the issuer itself (in which case they shall have a minimum duration of three years) or their holders or both. They shall be repurchased using profits, distributable reserves or the proceeds of a new issue of shares.

8. REFORM OF THE LAW GOVERNING COLLECTIVE INVESTMENT UNDERTAKINGS

Law 37/1998 (already mentioned above) also amends certain provisions relating to collective investment undertakings (CIUs). First, the functions of the CNMV are reinforced to facilitate the setting up of CIUs; the corporate objects of CIU managers are widened; a new type of institution is added to the existing ones, namely that of the *Fund of Funds* (umbrella fund) and *Principal and Subordinate Funds,* a category of securities fund characterised by having most of their funds in the securities of other CIUs.

Three new categories of CIU are created: fund closed-end investment companies (SIMF), fund open-end investment companies (SIMCAVF) and fund securities funds (FIMF), which are characterised by investing most of their assets in the shares or other equity of one or more financial CIUs.

Within these categories, subordinate and principal CIUs are distinguished. Subordinate CIUs are those which invest in a single CIU, their Spanish acronyms being: SIMS, SIMCAVS and FIMS. Principal CIUs are those whose *shareholders* are subordinate CIUs, their Spanish acronyms being: SIMP, SIMCAVP and FIMP. Rules on investments in the shares or other equity of one or more CIUs, on risk diversification, minimum capital ratios, valuation and accounting, and for share subscription and redemption will be established in regulations.

Also, closed-end (SIMs) and open-end (SIMCAVs) investment companies can be set up as securities funds (FIMs) which invest most of their assets in *securities not traded on regulated securities markets;* and as securities funds (FIMs) or money-market funds (FIAMMs), as well as any financial CIU in the form of a mutual fund whose shareholders are exclusively *institutional or professional investors.*

At the same time, the rules on the investments of CIUs in derivative instruments are more clearly stated; and, as regards CIU management companies, on one hand they are attributed the power to market securities representing CIUs, and, on the other, the provision for intervention and supervision is extended.

9. REGULATION OF THE REPRESENTATIVES OF SECURITIES-DEALER COMPANIES AND SECURITIES AGENCIES

Royal Decree 276/1989 of 22 March 1989, established that natural and legal persons not connected with securities-dealer companies and securities agencies can perform their activities, as representatives of the latter, without this being considered to violate the principal of exclusivity, when their actions are carried out for and on behalf of a single securities-dealer company or securities agency. These representation relationships must be notified by the securities-dealer companies and securities agencies to the CNMV. Subsequently, CNMV circular 7/1989 of 5 December 1989, specified the way such notice must be given and the publicity required.

Recently, the CNMV has regulated, by means of CNMV circular 5/1998 of 4 November 1998 (BOE of 19 November 1998), a new procedure for notifying such representation relationships, simplifying the present procedure. It should be pointed out that the principle of exclusivity and of compulsory declaration of the activities to be performed by the representative will appear in the contractual documents. As regards the method and period for notifying representation relationships to the CNMV, the forms included in this circular must be used and submitted by a computerised medium, in accor-

dance with the technical requirements established by the Commission, within the 20 days following the end of each calendar quarter.

Finally, the above-mentioned decree removes the obligation on credit institutions (46) to notify the CNMV of the activities of their agents in the securities market, provided that they are included in the programme of activities that the institution has declared to the Banco de España.

10. CHANGE IN THE LEGAL REGIME FOR CURRENCY-EXCHANGE BUREAUX

Law 13/1996 of 30 December 1996 (47), on fiscal, administrative and social measures, which accompanied the 1997 Budget Law, pointed to the need to complete the regulation of currency-exchange bureaux, other than credit institutions, with more comprehensive legislation, similar to that in other European countries, regarding the persons who perform such operations, authorising the government to implement the same. This has now been done by Royal Decree 2660/1998 of 14 December 1998 (BOE of 15 December 1998), which regulates the activity of these establishments while giving due regard to free competition and the proper protection of clients.

As regards its scope of application, the activity of currency-exchange bureaux, whatever they may be called, is widened to include not only the exchange of currency (the purchase and sale of foreign banknotes) but also the management of transfers received from or sent abroad through credit institutions. Currency-exchange bureaux authorised to make such transfers shall channel the movements of debits, credits and settlements of balances which arise or are necessary to perform this activity through accounts with credit institutions operating in Spain. Likewise, settlement by clients, orderers or beneficiaries of the transfers, where the amount exceeds PTA 500,000, shall necessarily be made by crediting or debiting the amount to a bank account in the name of the currency-exchange bureau.

Authorisation to engage in this activity shall still be given by the Banco de España and shall be granted providing the following requirements are fulfilled:

a) The owners of the bureaux and, as the case may be, the partners, managers, managing directors, and the like shall be persons of recognised business and professional integrity.

b) Bureaux shall have the legal status of a public limited company with the sole object of engaging in transactions to buy and sell foreign banknotes and travellers cheques and to manage cross-border transfers.

c) Their share capital shall be fully subscribed and paid up in cash. Its amount shall depend on the transactions to be performed: when their objects are limited exclusively to the sale and purchase of foreign banknotes and travellers cheques it shall be PTA 10 million; and when their objects also include the management of cross-border transfers for various purposes it shall be PTA 300 million.

d) They shall have taken out insurance against the liabilities that may arise from their activities of managing cross-border transfers, for an amount of between 50 and 100 million pesetas, depending on the circumstances.

Among the obligations of the currency-exchange bureaux, the Royal Decree mentions exchange rates and the protection of clients, the recording of transactions and obligations to provide information to the Banco de España. As regards the exchange rates applicable to foreign-currency buying and selling transactions, these shall be freely determined, provided that the rules on publicity, transparency and client protection that may be established by the provisions implementing this Royal Decree are observed. As regards the recording of transactions, bureaux must identify individually the persons who participate in transactions and report to the Banco de España and the tax authorities in the manner and subject to the limits laid down by current legislation. In particular, when a bureau performs cross-border transfer management operations for a single client for an amount of more than PTA 500,000, it shall first obtain all material data on the transfer: full identification of both the orderers and beneficiaries, their tax identification codes, the amount and the reason for the transfer. Finally, currency-exchange bureaux must send to the Banco de España such information as it may request of them regarding their accounting statements, boards of directors and any other similar data that it may deem appropriate.

Lastly, the Royal Decree specifies the supervision and sanctioning regime for currency-ex-

(46) This obligation shall however continue to exist for portfolio management companies.

(47) See "Regulación financiera: cuarto trimestre de 1996", in *Boletín económico,* Banco de España, January 1997, p. 115.

change bureaux. The Banco de España shall be responsible for supervising and inspecting their activities, and may request all such financial, accounting or other information as it shall deem fit to perform its functions. As for the sanctioning regime, it shall be that laid down in Law 26/1988 of 29 July 1988 on the discipline and administration of credit institutions, adapted to the particular characteristics of currency-exchange bureaux, and it may result in the revocation of their authorisation.

11. MUTUAL GUARANTEE COMPANIES: INFORMATION ON THEIR MINIMUM OWN FUNDS

Law 1/1994 of 11 March 1994 (48) on mutual guarantee companies (MGCs), amended the regulation of these entities (49). The aim was to facilitate the expansion of the mutual guarantee system, thereby improving the access of small- and medium-sized companies to finance and making MGCs genuine instruments of business promotion. Among the changes included in the Law, was the classification of MGCs as financial institutions, which helps to clarify the position of these companies within the Spanish financial system; the system of administrative authorisation of the Ministry of Economy and Finance for their establishment; and an increase in solvency and liquidity requirements. Subsequently, Royal Decree 2345/1996 of 8 November 1996 (50) on the administrative authorisation rules and solvency requirements for MGCs, laid down the minimum solvency requirements, the minimum amount of own funds, and the conditions under which these companies may issue bonds.

The Banco de España has recently issued *Banco de España Circular 10/1998 of 27 November 1998* (BOE of 9 December 1998), which lays down the information MGCs must submit in relation to the own-funds ratio, their mandatory investments, and the limit on tangible fixed assets and the shares and other equity regulated by said Royal Decree 2345/1996. It also reproduces some of the provisions of this Decree to facilitate compliance therewith.

Given that the MGCs are subject to the same regime as credit institutions as regards the solvency ratio, currency risk and limits on large risks, the Circular specifies this regime by referring to Banco de España Circular 5/1993 of 26 March 1993 (51), on the determination and monitoring of own funds, including in its text only the special rules which the particular characteristics of the MGCs make appropriate. In this respect, the MGCs shall send weekly (52) returns to the Banco de España, in the forms included in the annex to the Circular, relating to: compliance with the minimum own-fund requirements; eligible own funds; the own-fund requirements for credit, counterparty and currency risk; the limits on large risks and the limit on tangible fixed assets and the shares, other equity and bonds in which the own-funds are invested.

As Royal Decree 2345/1996 obliges these companies to send their current articles of association to the Banco de España for registration, the Circular extends to the MGCs the rules established for credit institutions in Banco de España Circular 7/1993 of 27 April 1993, to ensure that this obligation is applied uniformly to all the institutions subject to it.

Finally, in view of Spain's adoption of the single currency and in order to facilitate the treatment of the accounting and statistical information sent to the Banco de España, the Circular takes the opportunity to require MGCs, as from 1 January 1999, to express their prudential and year-end returns in thousands of Euro.

12. VENTURE-CAPITAL ENTITIES AND THEIR MANAGING ENTITIES

The legal regime for venture-capital entities, initially contained in Royal Legislative Decree 1/1986 of 14 March 1986, on urgent administrative, financial, fiscal and labour measures, has been subject to a number of amendments aiming to bring it up to date (53).

Law 1/1999 of 5 January (BOE of 6 January 1999) has now been promulgated in order to

(48) See "Regulación financiera: primer trimestre de 1994", in *Boletín económico,* Banco de España, April 1994, pp. 98 and 99.

(49) Royal Decree 1885/1978 of 26 July, regulated for the first time the legal, fiscal and financial regime for mutual guarantee companies set up under Royal Legislative Decree 15/1977 of 25 February.

(50) See "Regulación financiera: cuarto trimestre de 1996" in *Boletín económico,* Banco de España, January 1997, pp. 109 and 110.

(51) See "Regulación financiera: primer trimestre de 1993", in *Boletín económico,* Banco de España, April 1993, pp. 88 and 89.

(52) Although the Banco de España may request certain institutions, depending on their particular circumstances, to send their returns quarterly.

(53) Worthy of note are those introduced by Law 33/1987 of 23 December, Law 3/1994 of 14 April, whereby Spanish law on credit institutions is adapted to the Second Banking Directive, and those effected by Royal Legislative Decree 7/1996 of 7 June, on urgent measures of a social nature and for the promotion and deregulation of economic activity.

establish a stable and complete legal framework for these entities. This establishes and reinforces the foundations enabling these entities to continue promoting and fostering small- and medium-sized non-financial firms engaged in activities relating to technological innovation or other activities, through the acquisition of temporary holdings in their capital.

Among the main changes introduced by the Law is the establishment of a legal regime for authorisation, supervision, inspection and sanctioning comparable to that which applies to the other entities operating in Spanish financial markets. Accordingly, the CNMV is conferred most of the powers of supervision over the new entities: venture-capital companies (SCRs), venture-capital funds (FCRs) and their managing companies. The Law even allows CIU management companies to manage FCRs or the assets of SCRs.

SCRs are public limited companies whose main corporate object is to take temporary holdings in the capital of unlisted non-financial firms. In order to facilitate the pursuit of this object, venture-capital companies may grant equity loans or other forms of financing to the companies in which it takes holdings. Likewise, they may provide professional consultancy to the companies in which they take holdings. As for FCRs, these are funds administered by a management company and they have the same main object as SCRs.

Equity loans, already regulated by Royal Legislative Decree 7/1996 of 7 June 1996 (54), on urgent measures of a social nature and for the promotion and deregulation of economic activity, are characterised by a variable rate of interest fixed in accordance with the activity of the borrowing companies, as measured by criteria such as: net profit, turnover, total assets or any other indicator that may be freely agreed upon by the contracting parties. With regard to the priority of claims, equity loans shall be ranked behind unsecured creditors, and shall be deemed to be own funds, as defined in commercial law. Finally, the interest accrued shall be deductible from the borrower's corporate income tax base.

As regards investment policy, the line followed by Royal Legislative Decree 7/1996 is extended. Thus, they shall hold at least 60 % of their assets in the shares and other equity of firms that come within the scope of their corporate objects. Of this percentage they may assign up to 30 % of their assets to equity loans to firms that come within the scope of their corporate objects. The rest of their assets may be held in other assets, such as fixed-income securities traded on organised secondary markets, holdings in the capital of other firms, in cash, to satisfy the liquidity ratio, according to the terms that may be determined regulations, etc. In the case of SCRs, they shall hold 20 % of their assets in fixed assets necessary for carrying on their activity.

With respect to the investment limits, venture-capital entities may not invest more than 25 % of their assets in a single firm, nor more than 35 % in firms belonging to the same group of companies.

Other important sections of the law refer to significant holdings, as well as the supervision, inspection and sanctioning regime for these entities.

Finally, the Law takes the opportunity to boost and favour the financial activity known as "factoring", in particular, reinforcing the protection of certain assigned loans against the insolvency of the assignor or ultimate debtor.

13. NATIONAL ELECTRONIC CLEARING SYSTEM: GENERAL SUBSYSTEM OF CHEQUES TO PAY FOR FUEL AND TRAVEL

Among the numerous exchange subsystems provided for by the National Electronic Clearing System (SNCE) Regulation, the Banco de España, by means of *Banco de España Circular 8/1998 of 30 October 1998* (BOE of 19 November 1998), has published the rules of operation for the new general subsystem of fuel and travel cheques (implemented by Regulation SNCE-06).

The purpose of this subsystem is to process certain documents (55) by extracting the representative data from the original documents and exchanging it by electronic transmission, for the purposes of collection from the paying and issuing entity, as well as the clearing of the relevant amount, reconciliation and the establishment of the respective resulting positions for notification to the Banco de España Settlement Service (SLBE).

As in the other subsystems, the original documents are not exchanged in this one either,

(54) See "Regulación financiera: segundo trimestre de 1996", in *Boletín económico,* Banco de España, July-August 1996, pp. 68-72.

(55) Being cheques to pay for fuel and travel.

but rather the representative data, which are transmitted electronically. The subsystem operations are performed on the basis of these data.

The participating entities are those entered in the SNCE Register of member entities which have submitted an application to the Banco de España in the manner laid down in the Circular. In addition, the payee must correspond to the entity holding the documents and the addressee must be the entity paying and issuing the same.

Finally, the Circular specifies the commitments and obligations of entities participating in the subsystem.

14. PRIVATE INSURANCE: NEW REGULATION

14.1. Introduction

Insurance activity and activity relating to pension schemes and funds have evolved apace in Spain. This has made it necessary to make parallel amendments to the law governing and the public supervision of such activities. Likewise, Spain's commitment to fully adapt its legislation to Community law has required it to do so with respect to private insurance. These two factors – primarily – prompted the publication of Private Insurance Law 30/1995 of 8 November 1995 (56), which repealed Private Insurance Law 33/1984 of 2 August 1984. Law 30/1995 incorporated essential and necessary aspects of Community legislation, but by no means completed the harmonisation of Spanish law in relation to private insurance with the body of existing Community law. Moreover, the Law made constant references to the necessary subsequent implementing regulation.

This regulation has now been published as *Royal Decree 2486/1998 of 20 November 1998* (BOE of 25 November 1998). At the same time as it adapts Spanish law to the Community law pending incorporation (57), it clarifies and specifies the content of Law 30/1095 whenever necessary. Also, it repeals, as from 1 January (the effective date) the current Private Insurance Regulation, approved by Royal Decree 1348/1985 of 1 August 1985.

As regards the content of the Regulation, like the Law it can be divided into two major parts: regulation of the activity of insurance undertakings domiciled in Spain subject to supervision by the Ministry of Economy and Finance; and the regulation of the activity of foreign insurers when they operate in Spain, distinguishing between those domiciled in the European Economic Area (EEA) and those domiciled in third countries.

14.2. Scope

This regulation applies to private insurance and, in particular:

a) Direct life assurance, direct insurance other than life assurance and reinsurance.

b) Capitalisation operations based on actuarial techniques consisting of obtaining commitments with a specified duration and amount in exchange for single or periodic payments fixed in advance.

c) Operations that are preparatory or supplementary to those of insurance or capitalisation performed by insurance undertakings in their function of channelling saving and investment.

d) Loss prevention activities connected with insurance activity using own resources, which tend to reduce the risk, reduce and/or cancel out the consequences of the loss or stimulate loss prevention.

14.3. Legal regime for Spanish insurance undertakings

14.3.1. Administrative authorisation to engage in the activity

Prior administrative authorisation is needed from the Ministry of Economy and Finance to engage in insurance activity. Authorisation permits insurance undertakings to perform operations only in those branches for which they have been given specific authorisation and in respect of any of their ancillary or complementary risks, where appropriate. They shall adjust their rules of action to the programme of activities, articles of association and other requirements determined in the authorisation.

(56) See "Regulación financiera: cuarto trimestre de 1995", in *Boletín económico,* Banco de España, January 1996, pp. 86-91.

(57) The new regulation, in a way which is hardly usual for this kind of implementing legislation incorporates into Spanish law Coucil Directive 92/49/EEC of 18 June 1992, on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance; Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance; and certain aspects pending incorporation of Council Directive 91/674/EEC of 19 December 1991, and of Council Directive 91/371/EEC of 20 June 1991.

14.3.2. Conditions for engaging in the activity

The regulation, like the Law, specifies a number of financial guarantees that insurance undertakings must comply with in their activities. The following are worth highlighting:

a) *Technical reserves.* Insurance undertakings shall be obliged to establish and maintain technical reserves of a sufficient amount to guarantee, applying prudent and reasonable criteria, all the obligations arising under their insurance and reinsurance contracts, as well as to maintain the necessary stability of the undertaking in the face of random fluctuations in or cycles of claims and possible special risks. The regulation specifies the different technical reserves, which shall be calculated and established in accordance with the criteria laid down in said Regulation.

As regards the cover of these reserves, insurance and reinsurance undertakings shall be obliged to cover all the technical reserves that are a consequence of direct insurance and accepted reinsurance operations, without any deduction being permitted for reinsurance. Composite undertakings shall manage the investments earmarked to cover the technical reserves corresponding to each activity separately, identifying those assigned to each of them.

The regulation specifies suitable assets, the maximum percentages which may be invested in each and the criteria for valuing such investments, in accordance with principles of consistency, return, safety, liquidity, dispersion and diversification, taking into account the type of operations performed and the obligations assumed by the undertaking.

b) *Solvency margin and guarantee fund.* Individual insurance undertakings and, where applicable, the consolidable groups to which they belong must maintain, at all times, with respect to all their activities in and outside Spain, sufficient unobligated assets as a solvency margin. As regards consolidable groups, the consolidated unobligated assets shall cover the legal solvency requirements applicable to the group, which will take into account the insurance and reinsurance operations performed between the undertakings belonging to it. The legal solvency requirements shall be calculated in accordance with the legislation applicable in each country in which the undertakings belonging to the group are domiciled.

In the case of composite insurance undertakings, calculation of the solvency margin and compliance with the legal minimum shall be done separately for the life and non-life activities.

The regulation, after setting out the items making up the unobligated assets, both of insurance undertakings and the consolidable groups to which they belong, establishes the minimum solvency margin for life assurance and also for non-life businesses. Finally, mention is made of the items making up the guarantee fund which must be evidenced in order to engage in each activity.

14.3.3. Other specific requirements

The regulation also stipulates some other more specific requirements which must be satisfied when insurance activity is performed. For example, the accounts for the operations must be adapted to the Chart of Accounts for Insurance undertakings, approved by Royal Decree 2014/1997 of 26 December 1997 (58), and its implementing provisions. Consolidable groups must keep consolidated accounts, the Directorate General of Insurance *(Dirección General de Seguros,* DGS) being responsible for their supervision, on a consolidated basis.

14.3.4. Portfolio transfer

One important aspect of insurance activity is portfolio transfer, which requires authorisation from the Ministry of Economy and Finance. Certain documentation – specified in the regulation – must be submitted to the DGS. Subsequently, the Ministry of Economy and Finance shall resolve the opening of a one-month period of public information for policyholders to notify the DGS of any reasons they may have to oppose the transfer. When this period has expired and any statement of disagreement has been examined, the appropriate ministerial order shall be issued. Pursuant thereto, the portfolio shall be transferred and the administrative authorisation of the transferor declared revoked.

14.3.5. Revocation of the administrative authorisation

The administrative authorisation to engage in insurance activity shall be revoked by the Ministry of Economy and Finance in certain cases, including the following:

a) When the insurance undertaking specifically renounces it.

(58) See "Financial regulation: fourth quarter of 1997", in *Economic bulletin,* Banco de España, January 1998, pp. 89-90.

b) When the undertaking has not commenced its activity within one year or has ceased to perform it for a period of more than six months.

c) When the insurance undertaking makes a general transfer of its portfolio in one or more businesses.

d) When the insurance undertaking ceases to comply with any of the requirements established for the grant of the authorisation, becomes liable to be wound up, or has had the administrative sanction of revocation of the authorisation imposed on it.

Likewise, the regulation envisages the winding up of insurance undertakings, as well as their administration which, in certain cases, may be resolved by the DGS in order to safeguard the interests of policyholders and insureds or other insurance undertakings.

14.4. Cross-border activity of insurance undertakings

14.4.1. Cross-Border activity of Spanish insurance undertakings within the EEA

Spanish insurance undertakings which have obtained an authorisation valid for the performance of their activity in the EEA may pursue their activities both under the right of establishment – by means of the opening of branches – and under the freedom to provide services throughout its territory, with the exception of insurance operations whose risks are covered by the Insurance Compensation Consortium *(Consorcio de Compensación de Seguros)* and certain life and non-life operations.

Spanish insurance undertakings operating under the right of establishment must annually submit to the DGS statistical and accounting information on the activity performed in each EEA member state. As regards the establishment of branches, insurance undertakings shall submit to the DGS the documentation referred to in the regulation and the latter, if it raises no objections, shall send it to the supervisory authority of the Member State of the branch.

Spanish insurance undertakings proposing to operate in one or more EEA member states under the freedom to provide services must first notify the DGS of their business project, as well as the nature of the risks or commitments they intend to guarantee. In turn, if the DGS is not opposed to this activity, it will send the documentation to the supervisory authorities of the Member States in which the undertaking wishes to perform the activities.

14.4.2. Cross-Border activity of foreign insurance undertakings in Spain

A) Domiciled in other EEA member countries

Insurance undertakings domiciled in EEA member countries which operate in Spain under the right of establishment – by opening branches – or under the freedom to provide services must present, on the same terms as Spanish insurance undertakings, all the documents required of them by the DGS, in order to verify that they are observing in Spain the legal rules and regulations applicable to them.

As regards the establishment of branches, foreign insurance undertakings shall present to the DGS the same documentation as the regulation stipulates for Spanish undertakings, as well as a certificate evidencing that the undertaking satisfies the minimum solvency margin legally required for the businesses or risks in which it is authorised to operate. The branch may be established and its activity in Spain commenced when the supervisory authority of the home Member State notifies it that the DGS has given its approval or has specified the conditions on which, for reasons of general interest, such activities must be performed in Spain.

Insurance undertakings domiciled in other EEA member states may commence activity in Spain under the freedom to provide services from when they receive notice that the supervisory authority of the home Member State has sent the DGS the relevant communication. They shall be obliged to designate a representative – an individual normally resident or an entity established in Spain – to represent them for tax purposes.

B) Domiciled in countries that are not members of the EEA

Insurance undertakings domiciled in countries that are not members of the EEA require the prior administrative authorisation of the Ministry of Economy and Finance to be able to establish branches in Spain. To obtain this, the undertakings must send to the DGS the documentation specified in the regulations. When authorisation has been granted, the branch may perform its insurance activity in Spain provided that its risks are situated and its commitments assumed in Spain, with the exception of the assets which correspond to that part of the solvency margin which exceeds the amount of the guarantee fund, which may be domiciled in any EEA country.

14.5. Other matters

Other aspects addressed by the regulation relate to the alteration of status, merger and demerger of insurance undertakings. In all cases, authorisation from the Ministry of Economy and Finance is necessary, for which purpose the relevant documentation set out in the regulation must be submitted to the DGS. As for the economic interest groupings and joint ventures that may be formed, information on the constituent undertakings and the shareholders or persons responsible for their management should be submitted to the DGS along with a certified copy of the deed of formation and their statutes.

Finally, the sanctioning regime provides for the possibility of special intervention measures or, where applicable, administration, pursuant to Law 30/1995.

15. REFORM OF PERSONAL INCOME TAX

The 1977 tax reform, contained in Law 44/1978 of 8 September 1978, involved a far-reaching overhaul of personal income tax (IRPF). Subsequently, experience showed the desirability of changes to some aspects of this tax, which were enacted in Law 48/1985 of 27 December 1985. Later, the regulation of the tax entered a provisional period following the Constitutional Court judgment of 20 February 1989, which declared certain articles on the taxation of households unconstitutional. This led to its urgent amendment by Law 20/1989 of 28 July 1989, and subsequently Law 18/1991 of 6 June 1991 (59), which included a number of changes to adapt the Spanish tax system to that existing in other Community countries.

Since 1991 the problems with the above-mentioned regulation have worsened. On one hand, this has been due to the excessive complexity of the tax and the dispersion and lack of organisation of its provisions, as a consequence of the successive adjustments and amendments made to it over these years. On the other hand, the need to adapt the tax to the model existing in other industrial countries, against a background of economic globalisation, has made radical revision necessary. This has been effected through the publication of *Personal Income Tax Law 40/1998 of 9 December 1998* (BOE of 10 December 1998), which shall come into force in fiscal year 1999. Implementation of this Law has commenced with *Royal Decree 1717/1998 of 18 December 1998* (BOE of 19 December 1998). This regulates payments on account of IRPF and the tax on the income of non-residents (discussed below), and amends the regulation of corporate income tax in relation to withholdings and payments on account.

The core of the reform, in line with the model of other European countries, is the establishment of a personal and family tax-free allowance *(mínimo vital)* which depends on the taxpayer's personal and family circumstances. The tax is thus charged on the taxpayer's disposable income, i.e. after deducting an amount to cover his own and his dependants needs. This allowance shall be applied, first, to reduce the general portion of the taxpayer's taxable income, which cannot become negative as a result of the reduction. The remainder, if any, shall be used to reduce the special portion of the taxpayer's taxable income, which cannot become negative either. As for the amount, the personal allowance shall generally be PTA 550,000 per annum, although there are higher amounts for the over-65s and the disabled, depending in the latter case on the degree of disablement. As regards the family allowance, it shall be PTA 100,000 per annum for each ascendant over the age of 65 who depends on and cohabits with the taxpayer and whose income, including tax-exempt income does not exceed the national minimum wage. Likewise, the family allowances shall include a minimum amount of PTA 200,000 for each unmarried descendant below the age of 25. This amount shall be higher for descendants below the age of three, to cover school materials between the ages of 3 and 16, and for disabled descendants.

In addition to the family allowance, the Law includes other fiscal measures aiming to protect and favour the family, such as the joint return, the food exemption for pensions, the deduction for investment in one's habitual residence, and favourable taxation of pensions with child beneficiaries, etc.

As regards *earned income,* its taxation is lowered through the application of a specific reduction for this type of income, so reducing the weight of its contribution with respect to other sources of income. Thus, certain reductions are established for earnings received more than two years after they accrued; for pensions and public-sector supplementary pensions, as well as most of the benefits received from general mutual societies, pension schemes and other insurance contracts. As regards the specific reduction, it affects all taxpayers who receive such earnings, an amount of PTA 500,000 be-

(59) See "Regulación financiera: segundo trimestre de 1991", in *Boletín económico,* Banco de España, July-August 1991, pp. 63-64.

ing established for income of less than or equal to PTA 1,350,000, and PTA 375,000 for income of more than PTA 2,000,000. Between these two limits an intermediate amount is established, which is obtained by multiplying the difference by a coefficient. Also higher specific amounts are established for the economically active disabled, which depend on the degree of disablement.

With the aim of releasing a large number of taxpayers from the obligation to submit a tax return, the provisions thereon of Law 18/1991 has been amended for recipients of earned income. The total annual earnings exempt from the obligation to submit returns and settle tax has been raised significantly, to stand, generally, at PTA 3,500,000 as against the previous amount of PTA 1,250,000. Consequently, taxpayers below this threshold who satisfy the other requirements laid down in the Law, and who, due to their economic capacity, must pay tax, shall do so through withholdings and payments on account.

To quantify the withholding rate, the Law uses a method similar to that used to determine the taxable income and the tax payable: first, total earned income is reduced by the amount of certain deductible expenses, as well as the personal and family allowance for descendants, producing a base for calculating the withholding rate similar to the taxable income. Subsequently the tax scale is applied to this base, producing a withholding amount (which should correspond to the tax payable in the return). Finally the withholding rate is obtained by dividing this amount by the total amount of earned income. A maximum withholding rate of 48 % is established against the 56 % of the previous legislation.

With regard to *property income* the estimated income from a habitual residence and the interest on borrowed capital used to acquire or improve such a residence are no longer relevant. In the case of rented property, the amount of deductible expenses – including the interest on borrowed capital – may not exceed the amount of the total income obtained.

With regard to *income from capital* an important change has been made to the taxation of saving, in an attempt to achieve a neutral treatment of the various forms of saving: the tax on income from capital at more than two years, like bank deposits, is reduced, various exemptions available in relation to so-called capital gains/losses are abolished, the taxation of alternative systems to pension funds is clarified, and a more favourable treatment is given to long-term saving and income from insurance contracts. Significant changes have also been made to the system of withholdings on income from capital, the rate being reduced from 25 % to 18 % for income deriving from the transfer of capital to third persons, i.e. the financial products most used by small savers, such as current and fixed-term deposits. This reduction does not apply to other income from capital which, generally, remains subject to a 25 % withholding rate. The base for the withholding shall be calculated taking into account the reductions provided for in the Law which depend on the period between the accrual and receipt of the income.

It should be noted that income from securities issued by the Banco de España which constitute an instrument for intervening in the money market and income from Treasury bills remain free from withholdings. Nonetheless, credit institutions and other financial institutions which enter into contracts with their clients for accounts for Treasury bill transactions shall be obliged to make withholdings on the income obtained by the holders of such accounts.

Income deriving from the transfer of financial assets with an explicit yield and, in the case of corporate income tax payers, the income from marketable fixed-income securities traded on Spanish official secondary securities markets shall also be free from withholdings on account of IRPF, on the condition, in both cases, that they are represented by book entries, the purpose being to improve the efficiency of organised fixed-income markets and the financing of Spanish firms and general government.

Turning to other matters, the terminology for capital gains and losses has been changed. They shall now be known as *ganancias y pérdidas patrimoniales* instead of *incrementos y disminuciones de patrimonio.* Both terms refer to changes in the value of the assets of the taxpayer revealed at the time of any alteration in their composition, except where the law classifies them as income. It should be stressed that the new Law abolishes the threshold of PTA 500,000, beyond which net capital gains were deemed to be made as a consequence of transfers for consideration made during the calendar year. It should be pointed out here that the capital gains generated by the transfer or redemption of shares or other equity representing the capital or assets of CIUs have been incorporated into the withholding system, and are subject to a 20 % rate. This is applied to gains deriving from CIUs domiciled both in and outside Spain obtained by their shareholders resident in Spain. Income from life assurance contracts is also subject to a 25 % withholding, although reductions are applicable depending on the period between the accrual and receipt of the income.

As for the tax rates, there have been two changes worth stressing. The tax burden has been reduced, with a general reduction in rates, including the lowest and highest rates, and the brackets have been reduced in number and re-defined. As regards the deductions from tax payable, that for the acquisition of a habitual residence is retained and those for payments which coincide with the public interest, such as donations, are favoured.

Finally, the rules on special regimes, mostly regulated until now outside the law of the tax, such as those for attributing income and collective investment undertakings are incorporated into the Law. The regulations governing the administration of the tax are modified, introducing the necessary measures to improve and make it more flexible, significantly reducing the number of persons submitting returns and avoiding payments on account in excess of the net tax payable.

16. INCOME OF NON-RESIDENTS AND OTHER TAXATION PROVISIONS

The growing internationalisation of economic relations and the role played by Spain in the process of European integration, all the greater since its admission to Stage Three of EMU, have shown the need for a law to regulate the taxation of non-residents in the area of income tax in a unified manner. This has been achieved with the publication of *Law 41/1998 of 9 De - cember 1998* (BOE of 10 December 1998), on the income of non-residents and tax provisions.

The tax on the income of non-residents is a direct tax charged on the income obtained in Spain (60) by non-resident natural and legal persons. In this respect, inter alia, the following shall be considered income obtained in Spain:

a) Income from economic activities and operations carried out by a permanent establishments situated in Spain.

b) Income from economic activities and operations obtained without a permanent establishment when the economic activities or operations are carried out in Spain, or when services are provided that are used in Spain.

c) Earned income, inter alia, when it derives directly or indirectly from work performed in Spain.

d) Dividends and other income, interest, fees and other income from capital, capital gains, etc.

The Law also establishes certain cases in which income shall be considered free of tax, among which it is worth stressing: income obtained from government debt without a permanent establishment and income from securities issued in Spain by non-resident natural or legal persons without a permanent establishment

As regards *income obtained through a per - manent establishment,* the Law specifies its component items, as well as the way in which the tax base is determined. The rate applicable to the tax base is 35 %, except when the activity of the permanent establishment is oil exploration and production, when the rate shall be 40 %.

Permanent establishments are obliged to keep separate accounts of their operations and the assets deployed therein. They are also subject to the system of withholding of corporate income tax on the income they receive, they are obliged to make advance payments on the same terms as entities subject to corporate income tax and to make withholdings and payments on account on the same terms as entities resident in Spain.

As regards *income obtained without a per - manent establishment,* the rate of 25 % shall generally be applied to the tax base determined in accordance with the Law in order to obtain the tax payable. Pensions and public-sector supplementary pensions received by individuals not resident in Spain shall be taxed in accordance with the scale reproduced in the Law, the rates of which range from 8 % for the lowest pensions to 40 % for the highest. In general, the earned income of non-resident individuals will be taxed at 8 %, provided that other specific legal provisions are not applicable. Other income worth mentioning is that derived way from reinsurance operations, taxed at 1.5 %, and that derived from capital gains at 35 %.

In addition taxpayers operating in Spain without a permanent establishment shall be obliged to make withholdings and payments on account with respect to the earned income they pay, as well as in respect of other income subject to withholding which constitutes a deductible expense for the obtaining of income.

After determining the persons obliged to make the withholdings end payments on account with respect to the income subject of this tax, the Law specifies the limits or, if there exists a convention for the avoidance of double taxation, the rules applicable.

(60) All this without prejudice to the regional tax regimes of the Basque country and the region of Navarra. In the Canaries, Ceuta and Melilla the special features resulting from the application of their specific legislation shall be taken into account.

Book-entry government debt market registered dealers shall be obliged to withhold and pay to the Treasury, on behalf of the taxpayer, the amount of this tax corresponding to in income from the Treasury bills and other securities representing the government debt as established by a sheet Ministry of Economy and Finance obtained by investors are not resident in Spain without a permanent establishment, provided that the exemptions for income from their respective instruments provided for in the Law are not applicable.

Another section of the Law relates to the *special tax on the property of non-resident enti - ties,* charged on property or the right to the use and enjoyment thereof. The tax base is the officially assessed value of the property *(valor catastral)* or, where applicable, the value determined in accordance with the provisions applicable for the purposes of wealth tax *(impuesto sobre el patrimonio).* The special rate shall be 3 %. The Law establishes certain cases in which this tax shall not be payable, including, for example, by foreign States and public institutions and international agencies, entities with the right to the benefit of an international convention for the avoidance of double taxation, when the applicable convention contains a clause for the exchange of information, by companies listed on officially recognised secondary securities markets and entities which continuously or habitually carry on economic operations in Spain that amount to more than merely holding or leasing the property.

Taxpayers who are individuals resident in an EU Member State, who have obtained during the year at least 75 % of all their income in Spain, either as earned income or through economic activities, may opt to be taxed as Spanish IRPF taxpayers. The relevant tax regime shall be developed in regulations.

Finally, this Law, which entered into force on 1 January, makes the necessary references to the IRPF and the corporate income tax to avoid potential legal loopholes which could arise from the replacement of the provisions referring to the obligation to pay tax on property contained in that Law.

17. NEW OBLIGATIONS TO SUPPLY INFORMATION TO THE TAX AUTHORITIES

In recent years the obligations to provide information to the tax authorities on economic, professional and financial relations with third persons have been increased. Thus, in an additional provision to Law 13/1996 of 30 December 1996, the obligation was established for credit institutions and all natural and legal persons engaged in banking or credit business to supply to the tax authorities the full identity of persons authorised by the holder to use and dispose of bank accounts (current, time or credit) open at their establishments in Spain.

Corporate income tax law 43/1995 of 27 December 1995 (61) regulated and reformulated certain information obligations in relation to operations with financial assets, in response to changes in the financial markets. Likewise, by virtue of Securities Market Law 24/1988 of 28 July 1988, entities issuing securities, securities-dealer companies and securities agencies and other financial intermediaries must notify the tax authorities of any operation for the issuance, subscription and transfer of securities in which they are involved.

The recently published *Royal Decree 2281/1998, of 23 October 1998* (BOE of 14 November), establishes regulations implementing the above-mentioned provisions. It also modifies the information obligations relating to pensions schemes and funds, regulated by Royal Decree 1307/1988 of 30 September 1988, and to social welfare mutual societies.

As regards the information on persons authorised to use bank *accounts, credit institu - tions and other entities engaged in banking business* shall notify the tax authorities of the identity of all persons authorised by the holder to use and dispose of any type of account, irrespective of their form or denomination, even when the holder or, as the case may be, the authorised person, is not resident in Spain.

Second, *government certifying officers (fe - datarios públicos)* involved or mediating in the issuance, subscription, transfer, exchange, conversion, cancellation and redemption of government bills, securities or any other financial assets or certificates, shall be obliged to notify such operations to the tax authorities. The operations on which information must be supplied include, in particular: operations relating to property rights, including security rights and other kinds of charges over such securities; operations involving the lending of securities and shares in private limited companies.

Credit institutions, securities-dealer compa - nies and securities agencies and those financial intermediaries which habitually engage in the

(61) See "Regulación financiera: cuarto trimestre de 1995", in the *Boletín económico,* Banco de España, January 1996, pp. 91-92.

intermediation and placement of securities and other financial assets shall also be subject to this obligation, as shall entities issuing registered securities not listed on an organised market, with respect to the operations for issuance of the same, and the *regulatory companies* of futures and options markets, with respect to the operations carried out on such markets.

For their part, CIU *management companies* shall be obliged to inform the tax authorities of the operations involving shares in such institutions.

In the case of securities issued abroad or derivative instruments created abroad, the information must be notified by the entities selling such securities in Spain or, in default thereof, by the relevant custodians in Spain.

The information must include the full identity of the persons involved in the operations, indicating the status in which they acted, their forename and surname or company name, their address and tax identification number, as well as the class and number of the securities, and the amount and date of each operation.

In the area of pensions schemes and funds, management entities must submit an annual return listing all the members of the schemes to which the funds are assigned and the amount of the contributions made to them, whether directly by the members or by the promoters of the schemes. For their part, the promoters who make contributions to the schemes must submit an annual return listing all the members on whose behalf they made contributions and the amount contributed for each member.

Finally, social welfare mutual societies must submit an annual return listing all their members and the amounts paid by them to cover contingencies, which it may be possible to deduct from the IRPF tax base.

18. 1999 STATE BUDGET

As usual in December each year, the 1999 State Budget was approved by means of *Law 49/1998 of 30 December 1998* (BOE of 31 December 1998).

The keynote of this budget, the first prepared in Stage Three of EMU, is the reflection of the stability requirements that are going to apply under the single currency. These will involve greater budgetary discipline, fiscal policy being the main instrument for pursuing the objectives of macroeconomic stability.

In this respect, the budget attempts to maintain a policy of stringency in reducing the government deficit and discipline in spending compatible with sustained growth and control of the basic imbalances of the economy, in order to achieve a high rate of employment creation.

In accordance with this legislative spirit, the following aspects are worth highlighting, due to their importance or novelty:

In the field of financial regulation, the legal interest rate and the interest rate payable on tax debts have been reduced from 5.5 % to 4.25 % and from 7.5 % to 5.5 %, respectively. Also, the ceiling on the increase in the outstanding stock of State debt during the year is set at PTA 2,340 billion. This limit which may be revised if certain circumstances envisaged in the Law arise, shall apply to the increase as at the end of the year, and may be exceeded with the prior authorisation of the Ministry of Economy and Finance, in certain limited cases.

In the fiscal sphere, the keynote is the desire to support and implement the reform of the IRPF, contained in Law 40/1998 of 9 December 1998, and of the taxation of non-residents. Specifically, in relation to the IRPF, the coefficients exclusively used to update the acquisition values of property are regulated. In relation to corporate income tax, the inflation-adjustment coefficients applicable to property conveyances are updated, and the amount of the advance payments that the entities subject to this tax must pay is determined. With regard to the wealth tax, the exempt amount and the rates applicable in the event that the Regional (Autonomous) Governments do not approve of specific amounts or have not assumed responsibilities in this area are updated.

As for public spending, the suspension of the possibility of making further appropriations, except in certain specific cases, and the prohibition on transferring appropriations from capital to current operations have both been maintained for 1999, with the same provisos as last year.

In relation to the Regional (Autonomous) Governments, their percentage shares in State receipts are fixed for the five-year period 1997-2001. A distinction is made between the final percentage shares in the territorial receipts of the State from the IRPF and those in general State receipts. Likewise, a distinction is drawn in the financing through shares in State receipts for 1999, between the Regional (Autonomous) Governments to which the model of the financing system for the said five-year period is applicable and those which have not adopted the agreement on the financing system.

19. FISCAL, ADMINISTRATIVE AND SOCIAL MEASURES

As usual in recent years, to facilitate the achievement of the economic policy objectives set out in the 1999 State Budget Law, a number of fiscal, administrative and social measures have been adopted. These are contained in Law 50/1998 of 30 December 1998 (BOE of 31 December 1998). They have been included in a different law due to their specific content, so enabling the large number of matters which budget laws normally contain to be reduced.

The Law introduces certain amendments in the areas of taxation and social security and to the rules regulating general government employees, and responds to specific needs both in relation to the organisation and management and the activities of government.

In the financial area, the regulation of State debt is amended to enable marketable State securities acquired by the State in the secondary market not only to be cancelled but also held in a special Treasury securities account and traded. Also, the special reasons for opening Treasury accounts outside the Banco de España are abolished, with prior notice from the Treasury being required in all cases stating the purpose of the account and the conditions of use. In the securities market, changes have been made to the sanctioning regime and the circumstances in which serious faults occur have been widened.

In the fiscal area, in view of the reform of the IRPF contained in Law 40/1998, this Law merely makes some very specific adjustments to the rules in force. In relation to corporate income tax, FGIs (regulated by Law 37/1998 of 16 November 1998, on reform of the securities market) are included as taxpayers, although like the Banco de España and deposit guarantee funds they are exempt from the tax.

In relation to the wealth tax, the valuation criteria for shares in CIUs are altered. They shall now be valued at their net asset value as at 31 December. As regards VAT, its regulations have been adapted to the judgment of the European Court of Justice of 5 May 1998, resulting in a widening of the scope of application of the exemption for sports services provided by non-commercial entities.

In relation to insurance undertakings the Law has also been used to adapt the legal regime of the Insurance Undertakings Settlement Commission (CLEA) to Law 6/1997 of 14 April 1997, on the Organisation and Operations of Central Government. In particular, its legal status has been changed from that of a public-law entity to an autonomous government agency.

Finally, a number of extraordinary measures are included to adjust the scope of the activities of the National Mint to the requirements arising from the introduction of the euro.

25.1.1999.