

2 EXERCISE OF SUPERVISORY FUNCTIONS

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This chapter is structured as follows. The first section describes the supervisory activity during 2011, indicating the supervised institutions, the main supervisory actions in the year and the details of the requirements and recommendations letters sent to institutions as a result of such actions. The second section summarises the main actions in the exercise of sanctioning powers. The third section refers to the exercise of other supervisory actions. The last section of this chapter sets out the recommendations made for the remuneration of senior officers of credit institutions.

2.1 Supervisory activity

At end-2011, a total of 477 institutions were subject to prudential supervision by the Banco de España, of which 336 were credit institutions. It should be noted that 29 of these credit institutions are savings banks that carry on their activity indirectly, in accordance with the provisions of Article 5 of Royal Decree-Law 11/2010. The Banco de España carries out a process of ongoing supervision of all these institutions, in line with its supervisory model.

The ultimate aim of this process is to establish and update the individual supervisory risk profile of each institution and banking group, as well as to anticipate the need for corrective measures. The Banco de España therefore receives a large amount of information, both quantitative and qualitative, that enables it to obtain an in-depth knowledge of the individual situation of each institution.

In order to be able to perform this function adequately, the Directorate General of Supervision is organised into three departments which carry out the supervision of institutions, through 22 operational inspection divisions. Each of these divisions is assigned a number of institutions, which it supervises by means of on-site inspections, off-site analysis and, increasingly importantly, continuous monitoring, on a permanent basis. These divisions also have the support of seven cross-sectional divisions, which specialise in the performance of more specific tasks.

A total of 209 supervisory actions were carried out in 2011, of which 71 were in progress or outstanding as at 31 December. These actions can be divided up into traditional on-site inspection visits to institutions and actions carried out at institutions subject to permanent continuous monitoring, in many cases with a physical presence at the institution.

Currently, the number of groups of credit institutions at which permanent continuous monitoring is carried out is 16, virtually all large and medium-sized banks and savings banks.

Also relevant here are another 340 tasks relating to the supervision of credit institutions. The following should be mentioned, on account of their importance:

- Specific monitoring actions, not included in previous actions.
- Actions relating to Spain's participation in international fora and to the Banco de España's relationship with the supervisory authorities of other countries.
- Actions relating to the analysis and evaluation of processes of integration of credit institutions.

Number

	On-site supervisory actions							
	Completed				Under way			
	2008	2009	2010	2011	2008	2009	2010	2011
Credit Institutions	98	114	136	133	37	21	39	68
Banks	52	82	79	110	20	7	28	53
Savings banks	19	16	51	12	10	10	5	1
Credit cooperatives	8	1	2	10	—	1	6	13
Foreign branches	7	4	2	—	1	1	—	—
EU credit institutions	2	2	1	—	1	1	—	—
Specialised credit institutions	12	11	2	1	6	2	—	1
Other institutions	20	15	4	5	11	3	0	3
Appraisal companies	8	8	1	3	8	1	—	—
Mutual guarantee companies	1	—	—	—	—	—	—	2
Payment institutions and other	11	7	3	2	3	2	—	1
TOTAL	118	129	140	138	48	24	39	71

SOURCE: Banco de España.

In addition, the Banco de España carries out various functions through the conduct, on a regular basis throughout the year, of certain administrative procedures for authorisation (e.g. for taking qualifying holdings in Spanish institutions).

In 2011 20 requirement letters were sent to institutions following supervisory actions, containing a total of 66 requirements for various types of measures. The letters sent to institutions are detailed in Table 2.2.

The reduction in the number of requirement letters stems from the intense bank concentration process taking place in Spain (for example, the savings bank transformation process has led to a fall in the number of institutions, from 45 at the beginning of the crisis to 11 institutions or groups, including integration processes pending completion that have already been approved by the relevant boards of directors) and from the change towards a supervisory model based more on permanent on-site monitoring, which favours more intense communication, on a day-to-day basis, with the institution, and consequently less need for formal requirements.

The most frequent requirements relate to credit risk and to management and internal control policies (79 % of all requirements). The details of the types of requirements are set out in Table 2.3.

In 2011, the processes for validating and monitoring the internal models of institutions authorised to use internal ratings based approaches were continued in accordance with the timetables established in the roll-out plans. When this extension of the scope of models reaches institutions located in third countries, channels for communication and cooperation with the local supervisory authorities are established for their approval. The merger processes carried out during the year involving institutions with models have entailed the drawing up of new roll-out plans for extending their use to the new group. It should also be noted that the internal model of a new credit institution (a subsidiary of a foreign parent) was approved. As regards processes for validating internal models

Number

	Letters sent to institutions			
	2008	2009	2010	2011
Credit institutions	63	47	38	19
Banks	21	23	16	10
Savings banks	19	9	14	—
Credit cooperatives	8	—	4	8
Foreign branches	2	3	2	—
EU credit institutions	1	1	1	—
Non-EU credit institutions	1	2	1	—
Specialised credit institutions	13	12	2	1
Other institutions	14	11	4	1
Appraisal companies	5	—	1	—
Mutual guarantee companies	1	7	—	1
Currency-exchange bureaux and money transfer agencies	8	4	3	—
TOTAL	77	58	42	20

SOURCE: Banco de España.

for operational risk, approved models were monitored and no new models were approved.

2011 was marked by the implementation of the new core capital ratio, introduced by Royal Decree-Law 2/2011. This new ratio involves an increase in solvency requirements, by requiring core capital of 8 %, and 10 % in the case of institutions that are highly dependent on the wholesale markets for more than 20 % of their funding and less of 20 % of its capital is held by outside investors. During 2011, institutions with a shortfall notified their various strategies for compliance and have executed them before the deadline set, in a process reviewed by the Banco de España.

As a first necessary step to introduce this regulation, the Banco de España proceeded to calculate the initial core capital requirements, identifying 13 institutions with a shortfall, which were required to present recapitalisation plans. The strategies implemented by the institutions can be grouped into the following:

- Raising private capital from outside investors, preferably by means of an IPO.
- Recapitalising the institution through the provision of additional funds by the foreign parent.
- Participating in integration processes with other institutions with surplus capital, cancelling out the shortfall initially calculated.
- Obtaining contributions of public funds through the Fund for the Orderly Restructuring of the Banking Sector. As a result of these contributions the FROB took control of three institutions (Catalunya Caixa, Unnim, Nova Caixa Galicia).

With regard to extraordinary prudential measures, in July 2011 the directors of Caja de Ahorros del Mediterráneo (CAM) were replaced and the FROB became the administrator of

Number	2008	2009	2010	2011
Credit risk	177	127	108	31
Accounting for credit risk, borrower weakness and higher coverage requirements	130	95	79	14
Quality of credit risk controls (origination, monitoring and other procedures)	47	32	29	17
Management and internal control	79	52	36	21
Management and internal control in general	59	44	25	16
Capital market activities	20	8	11	5
Capital and solvency	23	15	8	5
Solvency ratio	23	15	8	5
Other regulations	78	84	40	9
Failure to comply with rules on transparency and customer relations	19	16	3	—
Deficiencies in information reported to the CCR	13	12	7	1
Requirements for authorisation of non-credit institutions	15	11	4	—
Other	31	45	26	8
TOTAL	357	278	192	66

SOURCE: Banco de España.

the institution. Banco Sabadell was awarded the institution in a competitive bidding process in December, which had the benefit of assistance in the form of capital and through an asset protection scheme. This financial support was eventually granted by the Deposit Guarantee Fund (DGF). Subsequently, in November, the Banco de España decided to replace the directors of Banco de Valencia and the FROB provided temporary assistance in the form of capital and funding to enable the institution to continue its activity. It is planned that this institution will be awarded in a competitive bidding process in 2012.

The situation of Unnim should also be mentioned. This savings bank, originating in an integration process in 2010, did not manage to achieve the level of core capital required by Royal Decree-Law 2/2011 and had to resort to the FROB as a recapitalisation mechanism. As a consequence of this process, the FROB converted the preference shares subscribed for in 2010, taking control of 100 % of the capital of Unnim, injected new additional capital and decided to initiate a process of sale of the institution, which was competed in the 2012 Q1 with its award to BBVA. As in the case of Banco CAM, the necessary financial support to undertake this restructuring process was eventually granted by the DGF.

At international level, in 2011, as in the previous year, practically the entire Spanish banking sector participated in the stress tests organised by the European Banking Authority. The structure of this exercise was similar to the 2010 one, but with more highly stressed adverse scenario hypotheses and with a higher approval threshold. All of the five Spanish institutions initially identified as having capital shortfalls are now involved in restructuring or integration processes that will be satisfactorily concluded in the near future.

A specific characteristic of this new exercise has been the inclusion in the published results of new information breakdowns of the sovereign debt exposure of the participating institutions. Despite being well received by investors, the doubts arising during the summer of 2011 in relation to the solvency of the European financial system, associated with sovereign risk, led the European Banking Authority to undertake a new extraordinary recapitalisation exercise.

This new exercise requires institutions to have, as at 30 June 2012, 9% core Tier 1 capital as well as further capital for sovereign risk exposures. In accordance with the methodology approved by the European Banking Authority, the five main Spanish institutions participated in this exercise.

The results of this exercise have involved a further capital requirement for the participating Spanish institutions of €26,170 million, principally due to the rise in the minimum threshold for core capital to 9% (€19,610 million). The institutions are responding to this new requirement by implementing various recapitalisation strategies (issuing instruments eligible as core capital, sale of assets, exchange of preference shares, etc.), in order to comply by the deadline of 30 June 2012.

As regards international cooperation with other supervisory authorities, the role played by the supervisory colleges is becoming increasingly important: the number in which the Banco de España participated during 2011 increased, so that it has organised meetings for three supervisory colleges as the supervisory authority of the parent institution and has participated as the host supervisory authority in seven colleges of banking groups with foreign parents. All this is without prejudice to the continued importance of bilateral contacts between supervisory authorities, both at the European level and in other geographic spheres.

Finally, four cooperation agreements were signed in 2011 in relation to the supervision of European groups of credit institutions with subsidiaries in Spain or of subsidiary banking groups of Spanish institutions, of the kind envisaged in Article 131 of Directive 2006/48/EC. In addition, a cooperation agreement was signed at the beginning of 2011 with the supervisory authority of Andorra.

2.2 Exercise of the sanctioning power in 2011

The sanctioning power exercised over the financial institutions whose control and inspection are the responsibility of the Banco de España is the final step in its supervisory function. It is intended to act as a means of ensuring compliance with the organisational and disciplinary regulations applicable to institutions operating in the financial sector. And indeed, as established in the preamble to the Law on Discipline and Intervention of Credit Institutions, the effectiveness of these regulations depends on whether the supervisory authorities of financial institutions have sufficient coercive powers.

The exercise of this sanctioning power is directed at all institutions and markets subject to supervision by the Banco de España, which includes not only credit institutions and any other financial institutions subject to its control and inspection, but also their directors and managers, who can be sanctioned for very serious or serious infringements when these are attributable to wilful misconduct or negligence. Also, sanctions can be imposed on the owners of significant holdings in credit institutions and on Spanish nationals that control a credit institution of another EC Member State.

Finally, the Banco de España's sanctioning powers extend also to the individuals and entities not included among the aforementioned supervised parties that seek to enter the financial market without meeting the conditions of access, whether it be through the exercise of activities legally restricted to duly registered credit institutions or currency-exchange and money-transfer bureaux or through the use of generic names restricted to credit institutions or of any other that may be confused with them.

In this regard, the Banco de España has competence to bring and conduct disciplinary proceedings against the aforementioned parties, the imposition of sanctions being gov-

erned by the rules set forth in Article 18 of the Law on Discipline and Intervention of Credit Institutions. Under this law, the Banco de España has competence to impose sanctions for serious and minor offences, and the Minister for Economic Affairs and Finance, upon the proposal of the Banco de España, has competence to impose sanctions for very serious offences, except for that of withdrawal of authorisation to operate as a credit institution, in respect of which competence lies with the Council of Ministers. Exceptionally, in the cases of currency-exchange and money-transfer bureaux and of intruders in the financial sector, competence for the imposition of sanctions, whatever their seriousness, lies with the Banco de España.

2.2.1 PROCEEDINGS INITIATED IN 2011

Prior to the description of the disciplinary proceedings initiated in 2011, it should be noted that the intense process of restructuring of the Spanish banking system initiated in recent years has meant that the Banco de España's supervision activity has been focused on completion of all the planned steps to consolidate and accelerate the sector's restructuring. Notable in this respect is the special boost given by the Banco de España in 2011 to conclusion of the process of strengthening the solvency of the Spanish financial system in the terms and by the deadlines established by Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the Spanish financial system.

In 2011, in view of the matters revealed by supervisory actions, the governing bodies of the Banco de España decided to initiate two disciplinary proceedings.

More specifically, the Executive Commission decided to initiate a proceeding against a company that was engaging, without the necessary authorisation and without being duly registered, in the activity of accepting repayable funds from the public. Also, it was decided to open a disciplinary proceeding against two parties (an individual and a foundation) for allegedly failing to comply with the rules on qualifying holdings, thereby joining these parties to a proceeding opened (in 2010) against a foreign foundation and its directors for the same alleged non-compliance.

At the same time, although they are not strictly sanctioning proceedings, mention may be made, as seen in Table 2.4, of the initiation and conduct of two proceedings in 2011 to withdraw the authorisations granted to two currency-exchange bureaux. The reasons for withdrawal of authorisation were, in one case, the desire expressed by the bureau itself to be deregistered and, in the other, the failure of the bureau to engage in the activity of currency exchange during a period of more than 12 months. This type of proceeding, which does not strictly involve the exercise of the Banco de España's sanctioning power, represents a form of control over the supervised institutions, since institutions can be removed from the register which, for the reasons established by law, are liable to have their authorisation revoked.

To the foregoing it should be added that, under Article 19 of the Statute of the European System of Central Banks, the Governing Council of the European Central Bank is empowered to impose on credit institutions a certain level of minimum reserves. Failure to meet this obligation is punishable within the framework of a proceeding conducted by the Banco de España. One of the proceedings initiated in 2011 was of this nature.

2.2.2 PROCEEDINGS RESOLVED IN 2011

As regards the resolution of proceedings in 2011, it should be noted that the competent bodies resolved a total of two (2) revocation proceedings, one for the failure to meet minimum reserve requirements, six (6) disciplinary proceedings conducted against two different types of institutions and a total of 52 proceedings against members of their boards of directors and management.

Number	Institutions	2008	2009	2010	2011
Banks		—	—	—	—
Savings banks		—	1	1	—
SCIs		—	1	—	—
Branches of EU foreign credit institutions		—	—	—	—
Owners of significant holdings in credit institutions		1	—	1	1 (a)
Appraisal companies		3	2	—	—
Currency-exchange bureaux and money transfer agencies		6	3	1	—
Use of names or pursuit of activities reserved for credit institutions		1	2	1	1
Unauthorised currency-exchange bureaux		1	—	3	—
Appraisal company revocations		—	—	—	—
Currency-exchange bureaux revocations		3	1	2	2
Non-compliance with ECB minimum reserve requirements		2	—	1	1
TOTAL		17	10	10	5

SOURCE: Banco de España.

a Extension to 2 parties of a proceeding initiated in 2010.

The institutions sanctioned in 2011 were a savings bank, a specialised credit institution, a currency-exchange and money-transfer bureau, an institution that engaged in the activity of accepting repayable funds from the public without the necessary authorisation and two institutions that, also without the necessary authorisation, engaged with the public on a professional basis in the activity of purchase and sale of foreign banknotes and the management of cross-border transfers.

The following sanctions were imposed in these proceedings: (i) *for the commission of very serious infringements*: 4 sanctions on institutions and 66 sanctions on directors and managers; (ii) *for the commission of serious infringements*: 3 sanctions on institutions and 28 sanctions on directors and managers; and, finally, (iii) *for the commission of minor infringements*: 4 sanctions imposed on institutions only, since Spanish law does not provide for the imposition of sanctions on directors or managers for the commission of minor infringements.

Also, in the sphere of the related disciplinary proceedings, three legal entities that engaged in certain restricted activities without the necessary authorisation were sanctioned. Two of them engaged on a professional basis in the activity of arranging cross-border money transfers without having obtained authorisation from the Banco de España, or being duly registered; and another (1) institution was sanctioned for engaging without authorisation in activities legally restricted to credit institutions.

The sanctioning activity of the Banco de España in 2011 also involved the conduct of a proceeding for an alleged failure to comply with the rules on the qualifying holdings of supervised institutions, against a foreign foundation; its sole director; three members of the board of directors of that sole legal-person director; and two persons (one natural and the other legal) who were joined to the proceeding on account of their alleged ownership of qualifying holdings without having previously informed the Banco de España. This proceeding had to be stayed in July 2011 so as not to prejudice criminal proceedings.

PROCEEDINGS RESOLVED, BY TYPE OF INFRINGEMENT

TABLE 2.5

Number

Numbers of proceedings	Sanctioning procedures								Non-sanctioning proceedings	
	Against supervised institutions					Intruders		ECB	Revocation	
	Infringement			Proceeding dismissed	Name / Activity reserved for credit institutions	Unauthorised Exch. Bureaux	Minimum reserve requirements	Appraisal companies	Curr. Exch. Bureaux	
	Very serious	Serious	Minor							
Against institutions										
2008	16	12	26	6	1	1	—	3	—	3
2009	13	9	24	18	1	—	1	—	—	1
2010	9	4	6	2	—	3	1	1	—	1
2011	9	4	3	4	—	1	2	1	—	2
Against particular directors of institutions or owners of qualifying holdings										
2008	43	26	87	—	8	1	—	—	—	—
2009	45	25	85	—	1	—	—	—	—	—
2010	25	38	28	—	11	—	—	—	—	—
2011	52	66	28	—	—	—	—	—	—	—

SOURCE: Banco de España.

Finally the Banco de España conducted a proceeding for failure to comply with the minimum reserve requirements established by the European Central Bank.

Along with the information on sanctioning activity in the strict sense, we also report here the resolution in 2011 of two proceedings to withdraw authorisation to carry on the professional activity of foreign currency exchange in establishments open to the public, as a consequence of the application by the bureau itself for deregistration from the official register, in one case, and of failure to engage in the activity during a period of more than twelve months.

2.2.3 INFRINGEMENTS
BY TYPE OF OFFENDING
INSTITUTION

The analysis, by type of institution, of the various infringements warranting the imposition of sanctions during the year is of particular interest.

a. Credit institutions

Notable among the proceedings resolved is one against a savings bank and 40 persons who had served as directors or managers thereof, in which this credit institution was found to have committed four infringements, three of which were classified as very serious and the fourth as serious. As regards the very serious infringements, (i) deficiencies were found in its organisational structure, in its internal control mechanisms and in its administrative and accounting procedures, and such deficiencies were found to have jeopardised the viability and solvency of the institution, for which reason sanctions were imposed on the savings bank and on 38 of the directors and managers subject to the proceedings, since they were considered responsible for this situation; (ii) the savings bank was found to have failed, during the period and on the terms set for the purpose, to carry out the policies specifically required by the Banco de España in the area of provisions, treatment of assets and reduction of the risk inherent in its activities, products or systems, thus jeopardising the solvency or viability of the institution, so that the relevant sanctions were imposed on the institution, and on 11 directors and managers for such failure; and, finally, (iii) the institution was found to have failed for at least six months

to meet 80 % of the capital requirements made, in accordance with the risks assumed, so that the relevant sanction was imposed on the institution, and on 11 directors and managers subject to the proceedings who were found to be responsible for this infringement.

Finally, the savings bank was considered to have committed a serious infringement by failing to comply with the rules in force on risk limits. As a result, the relevant sanctions were imposed on the institution and on 21 of its directors and managers.

b. Specialised credit institutions

In 2011, a specialised financial institution, along with six persons who served as directors or managers thereof, was sanctioned for the commission of a serious infringement in the area of transparency and customer protection. In particular, the conduct sanctioned consisted in charging customers expenses for services that they had not requested or firmly accepted. Such conduct, defined in the applicable regulations as a serious infringement, was eventually considered to be a very serious one since the institution had already been sanctioned for the same type of infringement within the preceding five years.

c. Currency-exchange and money-transfer bureaux

In the case of currency-exchange and money-transfer bureaux, one proceeding was conducted and resolved in 2011 against a bureau and its four directors.

In this proceeding the bureau was found to have committed two serious infringements, consisting of (i) failure to comply with the rules in force on accounting for transactions and preparing balance sheets, income statements and the financial statements that are required to be notified to the competent administrative body; and (ii) having a level of capitalisation below the minimum level required by sectoral regulations. Four directors of the bureau were also considered responsible for the infringement relating to the level of capitalisation and three for the accounting infringements.

Finally, four sanctions were also imposed on the bureau for the commission of four minor infringements in relation to agents, the recording of transactions and transparency towards customers; in relation to insurance of the civil liability the bureau may incur in its money transfer business, and, finally, in relation to the reporting of information to the Banco de España.

d. Pursuit of activities restricted to supervised institutions

In 2011, two (2) proceedings were resolved. These were conducted, respectively, against two legal entities engaged, on a professional basis, in the activity of arranging cross-border money transfers for the public, without having obtained the required authorisation from the Banco de España or having been duly registered. Both proceedings concluded with the imposition of the relevant sanctions on the legal entities concerned. Also, both legal entities were requested to cease engaging in such activity immediately, being advised that if they failed to do so, an additional financial sanction would be imposed, which could be re-imposed in the event of subsequent requests.

e. Pursuit of activities restricted to credit institutions

Finally, the Banco de España's sanctioning activity also covers those individuals or legal entities which, without having obtained the required authorisation or having been duly registered, pursue activities restricted to credit institutions. One such proceeding was resolved in 2011, against a legal entity for engaging in the activity of accepting repayable funds from the public – an activity restricted to credit institutions – without having obtained the relevant authorisation. This proceeding concluded with the imposition of the relevant sanction and with an express request to cease engaging in this restricted activity immediately, in the aforementioned terms.

2.2.4 SANCTIONS
AND CONCLUSION

Within the range of sanctions available under the sectoral regulations, those imposed consisted mainly of fines. Thus, a total of 8 fines of various amounts were imposed on the institutions sanctioned in 2011 and a total of 94 fines on those who served as directors and managers thereof.

However, in certain cases, depending on the conduct of the institution, non-financial sanctions were imposed. These consisted of two (2) private reprimands, given the minor nature of the infringements being sanctioned, and five (5) public reprimands, published in the Official State Gazette. Also notable were the sanctions of disqualification from serving as directors or managers of any credit institution or in the financial sector that were imposed on certain directors and managers, in addition to the fines.

As a conclusion to the foregoing, it can be said that in 2011 the Banco de España continued to exercise its sanctioning power broadly within the parameters and trends of previous years, as regards the persons against whom the proceedings were conducted and resolved and their subject-matter. Also, as in previous years, in the cases in which very serious or serious infringements were found to have been committed, not only the institutions were sanctioned, but also the directors and managers whenever their guilt or negligence in the commission of those infringements was proven.

2.3 Other supervisory
activities of the
Banco de España

The Banco de España is also entrusted with overseeing other aspects of the activity of CIs. The following is a brief review of those functions along with comments on the most notable aspects of their performance in 2011.

2.3.1 TRANSPARENCY
AND INFORMATION
FOR BANK CUSTOMERS

The Banco de España, in accordance with the provisions of the Order of 12 December 1989 on interest rates and fees, rules of behaviour, information to customers and advertising of credit institutions, is responsible for checking and registering the brochure to be drawn up by institutions setting out their fee and commission charges (prices of bank services), chargeable expenses and valuation conditions, as well as the maximum charges applicable, the item to which they relate and the terms of their application. By law, such verification activity consists in checking that the brochure expresses, clearly and in an orderly fashion, maximum prices and the terms of their application.

Such checking does not include either securities transactions, since these are the competence of the CNMV, or payment services, since the transparency of the latter is not regulated by the Order of 12 December 1989, but by Order EHA/1608/2010 of 14 June 2010 on transparency of conditions and information requirements applicable to payment services, which is inspired by a different principle: the obligation to provide prior personalised information to the customer.

In the case of payment service transactions, although institutions are under no obligation to include payment service fees in their charges brochures, the Banco de España has offered them the possibility of continuing to publish them on its website, provided that it is explained that they are not verified by the Banco de España. Most institutions have accepted the Banco de España's offer, so that practically all the charges brochures that may be consulted on the Banco de España's website include payment service fees.

In relation to this area of competence, it should be noted that Order EHA/2899/2011 of 28 October 2011 on transparency and protection of customers of banking services enters into force on 29 April 2012 (see Box 2.1). This Order repeals the Order of 12 December 1989, which established the obligation for institutions to draw up and make available to

Order EHA/2899/2011 of 28 October 2011 on transparency and protection of customers of banking services was published on 29 October 2011 in the Official State Gazette and will come into force, with certain exceptions, on 29 April 2012.

This Order specifically repeals both the Order of 5 May 1994 on the transparency of the financial conditions of mortgage loans and the Order PRE/1019/2003 of 24 April 2003 on price transparency in banking services provided through ATMs. It also repeals and replaces the Order of 12 December 1989 on the interest rates and fees, rules of behaviour, customer information and advertising of credit institutions which, together with the Banco de España Circular 8/1990 that implements it, have constituted the general transparency rules in force to date in Spain.

The regulatory framework of credit institutions' relationships with their customers has gradually become obsolete which, in conjunction with the experience acquired over time, raised the issue of the suitability of an in-depth reform. The purpose of such a reform would be to organise the content of the regulatory framework in a systematic and orderly fashion, following the numerous amendments and partial repeals since it was enacted. It was also necessary to adapt the rules to the new payment services regulation and to the vast transformation in the marketing of banking services in the last 20 years.

In this setting, Sustainable Economy Law 2/2011 of 4 March 2011 was not only a significant step forward in banking transparency but, furthermore, it provided a clearly innovative approach. On one hand, it has written into law the concept of responsibility in the granting of loans to consumers by credit institutions, establishing that the latter must adequately assess customer creditworthiness in accordance with a list of criteria and practices. On the other, it has specifically empowered the Minister of Economic Affairs and Finance, within six months from when the Law comes into force, to "approve the necessary rules to guarantee the appropriate level of protection for users of financial services in their relationships with credit institutions, including, in any case, the measures related to the transparency of the financial conditions of mortgage and consumer loans".

This power was used to enact the above-mentioned Order EHA/2899/2011 of 28 October 2011 on transparency and protection of customers of banking services. As indicated in its preamble, this Order has a three-fold objective: (i) to gather together systematically in a single text the basic transparency rules in order to improve their clarity and make them more readily accessible to the public; (ii) to update the set of provisions on protection of banking customers in order to rationalise and tighten obligations with respect to the transparency and the behaviour of credit institutions, and (iii) to implement the main principles en-

visaged in the Sustainable Economy Law as regards responsible lending.

Additionally, among the essential aspects addressed by the Order, three are worth noting: (i) the specific implementation of transparency regulations for residential mortgages, replacing the 1994 regulations which have been in force to date; (ii) the application of these transparency rules to reverse mortgages, with the logical amendments required by their specific nature, and (iii) the updating of official interest rates by eliminating the least representative rates and the inclusion of longer-term benchmarks tied to increasingly integrated European markets.

In line with current trends, the new Order focuses primarily on the area of protection of individuals to whom banking services are provided, although it also permits that when individuals act in the scope of their professional or business activity (i.e. when they do not act as consumers) the parties may agree not to apply this new regulatory framework. In general, the characteristics of the new regulation are the imposition of greater information obligations, both as regards the pre-contractual phase and the content of the contract as well as in respect of the notifications that credit institutions must send to their customer throughout the term of a contract for the provision of banking services.

The fees and, where applicable, the interest rates charged for banking services will continue to be set freely by credit institutions and their customers. Noteworthy, however, is the elimination of maximum fees, since credit institutions will henceforth make available to customers the fees and interest rates that they normally charge for the services they most frequently provide, as well as the expenses they pass on to the customer in respect of such services; all the foregoing will be presented in a standard format established by the Banco de España.

As with the Order of 12 December 1989, which has now been repealed, the new Order EHA/2899/2011 specifically empowers the Banco de España to issue the necessary rules for the implementation and application thereof. However, in addition to this general empowerment, the articles of the Order contain several particular empowerments and, on other occasions, impose certain specific obligations on the Banco de España, which will be implemented in a new Circular replacing Banco de España Circular 8/1990, in force to date.

Thus, the combination of the two regulations – the Order and the new Circular implementing it – aims to create a new general code of transparency equipped with a permanent and stable systematic structure that is clearly oriented at the protection of customers of banking services. This new code will henceforth govern the relationships between customers and the credit institutions.

the public a brochure setting out the maximum fee and commission charges and chargeable expenses, replacing this obligation with a twofold one: first, to make available to customers a document setting out the interest rates and fees usually charged for the services that the institutions most frequently provide, as well as the chargeable expenses of such services, and second, in line with the provisions on transparency of payment services, relating to the need to advise the customer of the cost of the services (in addition to other aspects of the service to be provided) before they are contracted.

With regard to the verification of brochures of fee and commission charges, the number of proposals processed during the year was 460, against 833 in the previous year, so that the downward trend of recent years continued.

Another function relating to transparency is that of verifying the customer protection rules regulating the activity of the customer service departments and ombudsmen of CIs,¹ except for those of savings banks and local or regional credit cooperatives, in which case the verification is carried out by the competent body of the autonomous region in which the institution's registered office is located. In any case, the Banco de España must be notified of the appointment of the head of the department and, where applicable, of the ombudsman.

As mentioned in previous reports, the task of initial verification of the rules was practically completed in 2006. Hence, as in recent years, the work in 2011 consisted in checking the rules of newly registered institutions, basically those of payment institutions, and the changes proposed by institutions to existing rules.

Finally, in relation to the information specifically aimed at the customers of CIs, the Banco de España, in 2005, created a new portal on its website, called "Portal del Cliente Bancario", to provide information and guidance to the non-business customers of credit institutions.

In 2011, the number of viewings of the portal was 2,513,130, up 7.9% from 2010 (2,329,523). However, there was a significant increase, of 25.2%, in the number of visitors, from 510,679 in 2010 to 639,153 in 2011.

The most visited sections were the same and in the same order of importance as in 2010: those relating to simulators, banking products, interest rates, the glossary, the Central Credit Register and frequently asked questions.

The number of queries received and dealt with through the portal's "contact us" facility was 2,821, up 16.5% from 2010 (2,421), while the number of telephone enquiries was 2,589, practically the same number as in 2010 (2,570).

2.3.2 OFFICIAL REGISTERS AND INSTITUTIONAL INFORMATION

Under Spanish law the Banco de España is responsible for keeping various public registers. Not only CIs and other financial intermediaries and auxiliaries subject to supervision must be recorded in these registers, for various purposes, but also certain elements of their corporate governance and organisational structure. These registers are as follows:

a. Register of Institutions

Diverse institutions operating on Spain's financial markets must be recorded in the Register of Institutions before they commence activities. The purpose of this register is twofold:

¹ The requirements of which were laid down by Order ECO/734/2004 of 11 March 2004.

Year-end data (a)

Number	2008	2009	2010	2011
Institutions with an establishment	561	550	538	534
Credit institutions (b)	361	353	339	336
Electronic money institutions (c)	—	—	—	1
Representative offices	55	55	54	55
Mutual guarantee companies	24	23	24	24
Reguarantee companies	1	1	1	1
Currency-exchange bureaux and money transfer agencies (d)	62	63	61	14
Payment institutions	—	—	2	41
Branches of EU payment institutions	—	—	—	2
Agent networks of EU payment institutions	—	—	1	1
Appraisal companies	56	54	55	58
Controlling companies of credit institutions	2	1	1	1
Institutions operating without establishment	480	517	556	640
Of which: EU CIs operating without an establishment	475	492	506	520
Of which: financial subsidiaries of EU CIs	2	2	2	1
Of which: electronic money institutions	—	—	—	14
Of which: payment institutions (e)	—	20	45	105

SOURCE: Banco de España. Data available at 31 December 2011.

- a The number of institutions also includes those that are non-operational and in the process of deregistering.
b Includes ICO and, for the period 2008-2010, one electronic money institution. In 2011, the promulgation of Law 21/2011, which amended the regulatory framework of ELMIs, meant that they lost their credit institution status.
c In the period 2008-2010, the existence of an electronic money institution was registered under the “credit institutions” heading.
d Not including foreign currency purchasing establishments.
e In application of Directive 2007/64/EC and of Law 16/2009 on payment services.

first, it seeks to implement the “vetted access” principle governing the presence of those institutions in the market; and second, it aims to publicise adequately the fact that those institutions are subject to supervision by the Banco de España or by the competent authority in their respective home countries.²

Table 2.6 shows the number of institutions registered in this Register,³ both Spanish and foreign, including those operating in Spain under the freedom to provide services.

Notable, first, are the changes that have occurred as a consequence of the restructuring process taking place in the Spanish financial sector and, especially, among savings banks, which have practically all transferred their financial activity to a commercial bank in order to pursue it indirectly. Sometimes this transfer of activity has been carried out on an individual basis, but in most cases it has taken place within the framework of an institutional protection scheme, which has led, moreover, to a significant concentration of the savings banks. This concentration is evident in the fact that, although of the 36 savings banks

² This register and the register of agents described below are available to the public and can be consulted by either traditional means or on the Banco de España’s website (banking supervision section). The register of institutions is available not only as it currently stands, but as it stood at past dates, and selective searches can be made using different criteria.

³ For more details of the institutions that have to be entered in this register, see Section 2.3.6. of the 2006 *Report on Banking Supervision in Spain*.

registered in January 2011 only two continued to perform their financial activity directly at end-2011 (Caja de Ahorros y Monte de Piedad de Ontinyent and Colonya-Caixa d'Estalvis de Pollença), only nine commercial banks were launched by savings banks in 2011.

It should be noted, however, that the transfer of financial activity to commercial banks has taken place without the savings banks losing their status as credit institutions and being transformed into special foundations. Thus, as at end-2011, 35 savings banks were registered in this Register, with the only deregistration being Caja de Ahorros y Monte de Piedad de Córdoba, which transferred its entire assets and liabilities to BBK Bank Cajasur.

The Register of Institutions has attempted to record this process by assigning a new code to savings banks that have separated their financial activity while maintaining their status as credit institutions. Likewise, the commercial bank through which they indirectly engage in such activity has been assigned the original code of the savings bank. When, as part of an institutional protection scheme, the activity of more than one savings bank has been transferred to the same commercial bank, the latter has been assigned the code of the largest savings bank.

In step with this process, the number of banks increased by eight (the takeover of Finanzia, Banco de Crédito by its parent, BBVA, reduced by one the nine launched by savings banks), to 79, up 11 % from 2010.

For their part, a total of 76 credit cooperatives were registered in the Register of Institutions as at end-2011, down 7 % from a year earlier. This is a consequence of the stepping up of the process of integration between credit cooperatives, which is taking place not only through the incorporation of these institutions into institutional protection schemes, whose central institution is generally one of the participating cooperatives, but also through mergers.

Paradoxically, the net result of this intense activity is apparent stability in the Register of Credit Institutions, since the number of those registered has fallen overall by only three institutions (two if one takes into account the loss of credit institution status by electronic money institutions).⁴

The second phenomenon that should be stressed is the deregistration of currency-exchange bureaux and money transfer agencies as a consequence of their transformation into payment institutions. Under the new legal framework for the provision of payment services, the latter have succeeded the former in carrying out on a professional basis the activity of money remittance, which is now considered a payment service.

However, the reduction in currency-exchange bureaux and money transfer agencies exceeds the number of payment institutions set up, which shows that not all these bureaux have had their previous authorisation validated, whether for purely commercial reasons or on account of difficulties in adapting to the requirements that must be met by payment institutions. In this respect, it should be noted that some of these bureaux have decided to change their corporate objects or to limit them to the performance of foreign currency purchase and sale transactions (which does not require the status of payment institution),

⁴ The loss of credit institution status by electronic money institutions is a consequence of the new legal regime established for these institutions by Law 21/2011 of 26 July 2011 on electronic money. See section 3.2.3 of Chapter 3.

while others, integrated into international financial groups, now carry out their activity merely as agents in Spain of payment institutions established in other EU Member States, so that they have not required such validation.

In parallel with this transformation process, the first four payment institutions incorporated in accordance with the new regulation were registered in 2011 (Law 16/2009 on payment services and implementing provisions).

Finally, the notable increase in the number of institutions operating under the freedom to provide services without an establishment merits at least a brief comment. These totalled 640 as at end-2011, having increased by 84 units. This increase is not surprising, however, since it is in line with the tendency observed in previous years, mainly as a consequence of the development of telematic means of communication and the growing harmonisation of EU law.

b. Register of Senior Officers

The reason for this register, in which information is entered on the directors and senior managers of the institutions supervised by the Banco de España, is to manage and supply up-to-date personal and professional information on the main officers responsible for the activity of such institutions. This is done with the dual purpose of, firstly, acting as an ancillary tool for the Banco de España and other agencies in checking the requirements that have to be accredited by the senior officers of financial institutions; and, secondly, providing a means of monitoring the restrictions and incompatibilities applicable to such officers in banks and credit cooperatives, which have to be verified by the Banco de España.

As at end-2011, the number of senior officers in this register⁵ was 4,517, 2 % fewer than in 2010. This reduction is in line with the smaller number of registered institutions and a slight simplification of their boards of directors as a result of the above-mentioned processes of integration of savings banks and credit cooperatives. Note that, despite the decrease in the total number of senior officers, the number of registered women remained practically unchanged (in fact, it increased by 3 to 541), which has meant their presence has risen in relative terms.

This rise has been higher in percentage terms at institutions which have decreased in number (credit cooperatives), and at institutions whose boards of directors have been simplified due to the joint ownership resulting from the integration processes (specialised credit institutions, in particular). It should be underlined, however, that this relative increase has also occurred among the senior officers of banks which seems to indicate that there are more women on the boards of directors and in the management bodies of newly-created institutions.

c. Information on shareholders

The Banco de España also receives confidential information on the shareholders of banks and SCIs and on the members of credit cooperatives.⁶ This information is vital for the supervisory tasks of the Banco de España, in which it is essential to know the shareholder

5 All the statistical information in this section other than that relating to the number of registered institutions is included in Annex 4.2 of the digital edition published on the Banco de España's website. In that annex, the information relating to the Register of Senior Officers is based on identity without regard to the number of posts that each may hold, i.e. the stated figure is the total number of senior officers registered and not the total number of senior posts in the institutions supervised by the Banco de España.

6 These institutions are required to report data quarterly on all their shareholders or holders of contributions that are deemed to be financial institutions, and on those who, while not deemed to be such, hold shares or contributions representing a percentage of the share capital of the institutions equal to or more than 0.25 % in the case of commercial banks, 1 % in credit cooperatives and 2.5 % in SCIs.

structure of the institutions under its supervision, and for checking compliance with the law on qualifying holdings, a task entrusted to the Banco de España.

The most important change in this Register in 2011 was the reduction in the number of significant shareholders at specialised credit institutions which was down 22% to 123. This reduction affected almost exclusively shareholders with the status of credit institutions and, in most cases, is also a result of the savings bank integration process.

The number of shareholders reported by the other institutions has continued the smoothly declining trend of previous years.

d. Reporting of agents

CIs operating in Spain and, since the beginning of 2002, also currency-exchange bureaux licensed to make cross-border money transfers are obliged to report to the Banco de España those agents whom they have authorised to operate habitually with their customers, in the name of and on behalf of the principal, in negotiating or entering into transactions typical of their activity.⁷ In addition, they must report to the Banco de España the list of foreign CIs with which they have entered into agency agreements or agreements to provide financial services to customers.

From 2010, in accordance with their specific regulations, the agents of Spanish PIs and of their branches, as well as those of branches of foreign PIs and those included in networks of Community PIs established in Spain must also be registered in this Register.⁸

In fact, the most important change in this Register in 2011 was the sharp decrease in the number of agents of currency-exchange bureaux licensed to make cross-border money transfers from 18,734 to 434. This reduction, almost solely attributable to the transformation of these bureaux into payment institutions, was amply offset by the number of agents registered for the latter, which stood at 22,783 at year-end. The higher number of PIs' agents compared with that of currency-exchange bureaux licensed to make cross-border money transfers is justified because of the loss of exclusivity in the agent relationship for PIs' agents, although it is required for the agents of these bureaux. For this reason, a good number of agents have been reported as such by more than one PI.

It should also be underlined that the drop in the number of savings banks' registered agents from 180 to only one is a result of the above-mentioned transformation process of savings banks. Nevertheless, the number of banks' agents has increased by only twelve to a total of 4,842, which is likely to be accounted for by the aforementioned concentration of savings banks.

e. Special Register of Articles of Association

The Banco de España also keeps an up-to-date register of the articles of association of supervised institutions to ensure continuity in the exercise of prudential supervision of them and to monitor the changes in those articles of association, which are sometimes subject to administrative authorisation by the Ministry for Economic Affairs and Finance or the corresponding body of the regional (autonomous) government, following a report from the Banco de España.

⁷ From 2011, as a result of the entry into force of Banco de España Circular 4/2010 of 30 July 2010, CIs must also report those natural or legal persons whom they have appointed to perform regularly, on a professional basis and in the name of and on behalf of the institution, activities to promote and market transactions or services typical of the activity of a credit institution, including the investment and ancillary services referred to by Article 63 of the Securities Market Law.

⁸ In Table A.4.2 in Annex 4.2, they are all included under the heading "Agency agreements - Payment institutions".

As in 2010, in 2011 there was a highly significant rise in the applications analysed and reported on, which increased by 76 %, and numbered 88 in total at year-end. Most of this increase is also linked to the savings bank transformation process (flotation of the commercial bank which pursues the financial activity, reorganisation of the institutional protection scheme, changes in its members, etc.) and has unavoidably had a greater impact on banks whose applications for the amendment of articles of association, which have been reported on, climbed 140 %. The increase in the number of amendments to articles of association recorded which rose to 357, up 125 %, was equally substantial.

Finally, noteworthy in 2011 were the first amendments to the articles of association of payment institutions, mainly with a view to extending their corporate purpose which was initially limited to the transfer of money given their previous status, in most cases, of currency-exchange bureaux authorised to make cross-border money transfers.

2.3.3 OTHER AUTHORISED ELIGIBLE CAPITAL FOR SOLVENCY PURPOSES

In order to ensure that CIs comply with the solvency requirements to which they are subject, the Banco de España verifies the eligibility as own funds of certain financial instruments issued by CIs, by their special purpose vehicles or by other subsidiaries, in accordance with applicable law.⁹

The items eligible as own funds include subordinated debt, preference shares and mandatorily convertible debt instruments, which have features of equity instruments, in that they will remain on the institution's balance sheet for an indefinite period of time, the returns on them depend on the issuer's solvency and on the existence of sufficient profits or their conversion into ordinary shares under certain circumstances.

The total amount subscribed in the issues verified by the Banco de España for eligibility as own funds during 2011 stood at €9,012 million, which is almost 40 % higher than in 2010 when, following the notable recovery in 2009, there was a sharp decline in this type of issues.

However, the most significant event in 2011 was that subordinated debt mandatorily convertible into shares accounted for most of the issuance of these instruments as a result of tighter core tier 1 capital requirements introduced by Royal Decree-Law 2/2011. These requirements, furthermore, centre on the concept of core capital,¹⁰ which has led institutions to increase the volume of instruments eligible as core capital. The exchange of previous issues has played a particularly important role in this increase, with the result that almost 66 % of the amount issued comes from the replacement of previously issued preference shares.

The issues of subordinated debt instruments mandatorily convertible into shares accounted for almost 67 % of the total amount issued (97 % of the amount eligible as Tier 1 capital). In terms of the nature of the issuer and, partly as a result of the savings bank restructuring process, all these instruments have been issued by banks (two of them, which represent 30 % of the total amount issued, are linked to savings banks). The annual fixed rate of return on these securities ranged from 7 % to 8.25 %. Two of the issues not related to the exchange of existing securities, limited their possible investors to the institution's existing shareholders or professional investors, and only one issue amount-

⁹ Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements of financial intermediaries, and implementing legislation.

¹⁰ See section 3.1.1 of Chapter 3 for greater detail of these requirements.

Yearly data

€m

	Number				Amount			
	2008	2009	2010	2011	2008	2009	2010	2011
TOTAL	36	75	14	16	3,747	26,314	6,465	9,012
Subordinated debt	32	42	12	9	2,597	7,938	5,497	2,984
Fixed-term	27	39	11	9	2,497	7,865	5,477	2,984
Banks	14	15	6	8	1,259	2,541	1,492	1,479
Savings banks	9	18	4	1	1,233	5,092	3,983	1,505
Credit cooperatives	1	1	1	—	2	3	2	—
SCIs	3	5	—	—	3	229	—	—
<i>Of which: loans</i>	7	11	1	3	678	409	1	21
No agreed maturity	3	—	—	—	19	—	—	—
Credit cooperatives	1	—	—	—	3	—	—	—
SCIs	2	—	—	—	16	—	—	—
<i>Of which: loans</i>	2	—	—	—	16	—	—	—
Undated	2	3	1	—	81	73	20	—
Banks	—	3	—	—	—	73	—	—
Savings banks	—	—	—	—	—	—	—	—
SCIs	2	—	1	—	81	—	20	—
Preference shares	4	33	2	7 (a)	1,150	18,376	968	6,028 (a)
Banks	1	15	2	7	1,000	9,426	968	6,028
Savings banks	3	18	—	—	150	8,950	—	—

SOURCE: Banco de España.

a Including 6 issues for €5,828 m of mandatory convertible instruments. In previous years the amount of instruments of this type was not significant.

ing to €1,500 million (representing 26 % of the total issued) targeted all types of investors.

Only Banca Cívica issued preference shares, for an amount of €200 million. This issue, which is the first of its kind performed by an institution that heads an institutional protection scheme, was targeted at all types of investors, provided that at least 10 % thereof was subscribed by professional investors.

Most subordinated debt was issued in the form of bonds, both in terms of the number of issues (more than 50 %) and in terms of the amount issued (more than 99 %). All the issues were undertaken by banks, except for one, which was issued by a savings bank and amounted to approximately €1,500 million. As for rates of return, fixed rates were more prevalent and ranged from 6.5 % to 8.25 %. The only two variable rate issues were based on the EURIBOR with spreads of between 0.4 % and 4 %. As for target investors, only one issue was offered exclusively to qualified investors, the other issues were aimed at all types of investors.

The subordinated bond issues include an issue undertaken by an operational subsidiary of a credit institution, subject to specific requirements in relation to own funds in its country of origin, with an equivalent value of €966 million which the Banco de España recognised as eligible for the consolidable group.

The amount of subordinated debt in the form of loan agreements was residual in comparison with the total subordinated debt issued and hardly reached 1 %. The three loans formalised were entered into with the majority shareholders of the borrower banks.

2.4 Supervisory policies

In 2011, there were important legislative developments in Spain in credit institutions' remuneration policies.

2.4.1 CREDIT INSTITUTIONS' REMUNERATION POLICIES AND PRACTICES

Before analysing the content of such developments, a general reflection should be made as to their main objective. This objective is to subject credit institutions' remuneration policies to rules and monitoring that ensure sound and effective risk management which reconciles the interests of the institutions' owners with the general interest of maintaining the stability of the financial system. Consequently, it should be underlined that, in general, this legislation does not attempt to remove shareholders' rights to determine the remuneration policies and levels they deem suitable.¹¹

Unavoidably, given the complexity of the subject, the new legislation goes hand in hand with various international developments in the same area since the beginning of the recent international financial crisis. In April 2008, the Financial Stability Board (FSB) identified the remuneration policies and practices of certain institutions as one of the causes which contributed to the crisis and requested that regulators and supervisors work together with market participants to mitigate the risks arising from such policies and practices.

As a result of the foregoing, this body published two documents in 2009 – one in April on Principles and another in September on Implementation Standards. These documents developed a series of principles on compensation to foster sound and effective risk management, by aligning risk taking with long-term results.¹²

Unlike other jurisdictions, where the implementation of the FSB's Principles and Standards has followed a supervisory approach based on guidance and principles, in Europe the latter have been incorporated into the *acquis communautaire* through a provision of positive law, Directive 2010/76/EU of 24 November 2010 (known as CRD III). This provision was included in the general regulation on the solvency ratio, as part of the items inherent to adequate risk management.

In Spain the CRD III was initially transposed through Sustainable Economy Law 2/2011 of 4 March 2011 which established the foundations for the subsequent regulatory developments, carried out mostly through the entry into force on 5 June 2011 of the amendments introduced by Royal Decree 771/2011 into Royal Decree 216/2008 (the "Royal Decree"). The approval of Banco de España Circular 4/2011 of 30 November 2011 amending Circular 3/2008 on own funds completed this transposition process.

To sum up, these regulations affect the following aspects of credit institutions' remuneration policies: the governance of remuneration by placing particular emphasis on the existence of a Remuneration Committee, its members and functions; the measurement of performance; ex ante and ex post risk adjustments; the design of variable remuneration payment schemes; and, finally, severance payments and discretionary pension benefit.

¹¹ Institutions which have received public support are another matter and the authorities have to be convinced that, furthermore, the public funds are being used properly.

¹² See the 2009 *Report on Banking Supervision in Spain*.

Furthermore, Article 76.f (*artículo 76 septies*) of the Royal Decree envisages a series of provisions for the remuneration schemes of credit institutions which have received public support for their restructuring and reorganisation. These provisions have been implemented subsequently in Royal Decree-Law 2/2012 and in Royal Decree-Law 3/2012.

As mentioned above, in November 2011, the Banco de España published Circular 4/2011 amending Circular 3/2008 on own funds, which implements certain aspects of the Royal Decree. More specifically the Circular stipulates that:

- In general, all institutions whose total assets exceed €10,000 million must have a Remuneration Committee.
- Institutions' remuneration policies must envisage the existence of agreements or clauses which permit the reduction of variable remuneration when the institution's financial results are mediocre or negative.
- Institutions receiving public support must send a letter of justification to the Banco de España with sufficient information about the proposed accrual and settlement of variable remuneration.
- Additional transparency requirements, both public and confidential, for credit institutions in general. Furthermore, it required that institutions receiving public support publish an itemised breakdown of the remuneration of the directors and other senior management by 31 December 2011.

Once the legislative process had ended, on 5 December 2011, the Banco de España adopted in their entirety the "Guidelines on remuneration policies and practices" approved by the Committee of European Banking Supervisors, the predecessor of the European Banking Authority, and to which it had contributed actively as a member of these bodies.¹³

In the announcement of this agreement, it was stated that: "adhering to these guidelines is without prejudice to the content of our positive law, which already incorporates a large share of the elements contained in the guidelines. Notwithstanding, the Banco de España may publish a supplementary document in which it specifies any further supervisory criteria"; making public the possibility that the Banco de España might implement supplementary criteria.

Also noteworthy is certain supervisory action taken by the Banco de España in the last two years in relation to remuneration policies:

- Prior to the approval of the CRD III and as part of its commitments to the FSB, the Banco de España has been continuously monitoring on site large banks' remuneration policies.
- Among the other institutions, once the CRD III had been approved and before the entry into force of Royal Decree 771/2011, the Banco de España gathered information on variable remuneration for 2010 and left for a subsequent phase with on-site reviews, the in-depth study of aspects such as golden parachute clauses and pension fund contributions.

¹³ The agreement is available at: Banco de España - Legislation - Guidelines.

- Finally, following the entry into force of the above-mentioned Royal Decree, on 27 October 2011 the Banco de España sent to institutions with assets of more than €10,000 million, a letter which required the adaptation of their remuneration policies to Royal Decree 711/2011, a report from an independent expert on their degree of adaptation at the aforementioned date and certain quantitative information about the remuneration of the so-called “identified staff”.

Also note that the Banco de España Supervisory Model (the explanatory document as of June 2009 is also available on the website) covers the review of credit institutions’ remuneration policies as part of the aspects to be assessed in the framework of the analysis of credit institutions’ internal governance. The entry into force of the new regulations strengthens this aspect and in the future the Banco de España will also verify the degree of compliance of credit institutions’ remuneration policies with the new regulations as another part of its general action at institutions.

