

## 5 THE EXERCISE OF SANCTIONING POWERS

**First proceedings in which the substantive rules applicable are those of Law 10/2014, which provides for much harsher penalties**

From the standpoint of the applicable legislation, the first proceedings dealing with events entirely subsequent to 28 June 2014, when Law 10/2014 came into effect, were initiated in 2016. This is significant because this law generally provides for much harsher penalties than those in the previous legislation.

**Central role of sanctioning in institutional conduct, transparency and customer protection**

Part of the sanctioning activity in 2016 resulted from the exercise of the supervisory competences conferred upon the Banco de España in relation to institutions' conduct, transparency and customer protection. As mentioned in the preceding chapter, in 2016 seven proceedings were initiated in 2016 in this area (against four banks, one credit cooperative, one bureau de change and its managers and directors, and one specialised lending institution), and proceedings begun in 2015 against a specialised lending institution culminated in the imposition of penalties.

Additionally, in relation to the supervisory authority outside the scope of the SSM and therefore conferred upon the Banco de España, sanctioning activity concerning non-credit financial institutions stands out, in particular, in relation to payment institutions and the breach of the obligations upon them primarily as regards own funds coverage, book-keeping and safeguarding funds deposited by customers. In this regard, proceedings were brought in which the institution concerned's activity was temporarily suspended to safeguard the public interest, and two more sets of proceedings concluded with the imposing of penalties.

**In the framework of the SSM, sanctioning powers are shared with the ECB**

In relation to sanctioning activity aimed at significant credit institutions in the SSM framework, it should be recalled that as supervisory powers have been assumed by the ECB, Regulation (EU) No 1024/2013 of 15 October 2013 sets out a division of competences between the ECB and national competent authorities (NCAs) such as the Banco de España in order to maximise the system's coordination and consistency. Apart from the direct sanctioning powers of the ECB in certain cases envisaged in Article 18(1) of the Regulation, it is the ECB that, in general, in view of the facts coming to light during the inspection, instructs NCAs to initiate sanction proceedings, whether against the senior managers and directors of significant credit institutions, against credit institutions themselves in response to breaches of national legislation transposing directives, or finally, in those cases in which it sees fit to impose a non-financial penalty (Article 18(5) of the Regulation).

In this context, no specific proceedings were begun at the ECB's behest in 2016, but routine work has continued with the ECB aimed at achieving coordinated action and consensus on uniform criteria for action.