

4

SUPERVISION OF INSTITUTIONS' CONDUCT



CONDUCT CULTURE

Governance and oversight of retail banking products.



RESPONSIBLE LOAN

Revolving cards, consumer credit, real estate credit.



CROSS-INSTITUTIONAL ACTIONS

Analysis of various institutions' conduct on a given matter to ascertain the degree of compliance with the organisational and disciplinary rules and to identify best practices. Noteworthy is that relating to remote marketing of current and savings accounts.



SUPERVISORY TOOLS

Supervision guides.
Suptech tools.
Regular reporting, including the new confidential returns on conduct. Visits to bank branches (supervision at the point of sale).



2021 SUPERVISORY ACTIVITIES

175 supervisory actions.
Monitoring of supervisory measures.
Monitoring of institutions.
Special monitoring (advertising, CSDs, claims and consultations).



2021 SUPERVISORY MEASURES

Initiation of 5 sanctioning proceedings.
44 requirements.
23 recommendations.
146 advertising requirements.

SUPERVISION OF INSTITUTIONS' CONDUCT

Supervision of effective compliance with the banking organisational and disciplinary rules establishing conduct and reporting obligations, as bank customer protection measures, is essential to preserve public confidence in the banking system and to promote the stability of the financial system.

In 2021, supervision was marked by the expectation of recovery to the pre-pandemic situation. There was a gradual normalisation in the performance of supervisory activities to a certain degree, refocusing efforts to ensure appropriate conduct of institutions, in particular with regard to the way in which they relate to customers in the context of taking out banking products and services.

Special attention was paid to the process of digitalisation of institutions and its potential impact on the marketing of banking products and services and on customer relations. Since the start of the pandemic, there has been very substantial growth in banking products and services being taken out digitally. In this respect, there is a constant evolution of institutions' business models and the entry of new operators that provide their services, especially in a digital environment. In view of these new developments, supervision of conduct gains greater significance with the objective of ensuring, at an early stage, that customers receive adequate information that is tailored to the manner in which the service is provided.

4.1 Conduct-related supervisory activity

Following the line of work of previous years, the planned supervisory activity continued in 2021, including both supervisory actions and ongoing monitoring work. Unplanned supervisory needs that arose in the course of the year were also addressed.

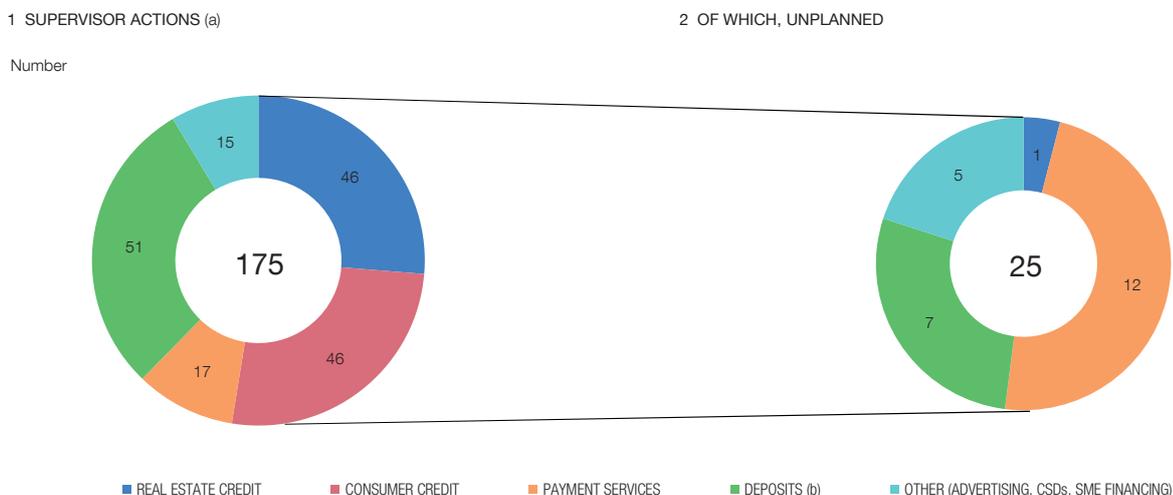
A large part of the supervisory actions, shown in Chart 4.1, have been cross-institutional in scope. This type of action analyses the conduct of various institutions in relation to a specific matter, to ascertain the degree of compliance with organisational and disciplinary rules, identify best banking practices and provide a uniform response to ensure transparency in the sector.

The topics of these cross-institutional supervisory actions have been varied. Noteworthy among these actions, due to their importance, are those related to consumer credit, where the issues analysed included responsible lending practices and policies, loans granted in the form of overdrafts on demand deposits or financing for car purchase (the latter action is described in detail in Box 4.1). Also in relation to

Chart 4.1

CONDUCT-RELATED SUPERVISORY ACTIONS IN 2021 BY SUBJECT MATTER

Supervisory actions were focussed mainly on the areas of activity relating to consumer credit, real estate credit, deposits and payment services.



SOURCE: Banco de España.

- a Of these supervisory actions, 98 were initiated before the beginning of 2021.
- b Deposits include, inter alia, current and savings accounts.

consumer credit, the review work continued on the measures adopted by institutions following the cross-institutional action on the marketing of revolving cards, which is detailed in Box 4.2, and two inspections of two credit institutions were completed, giving rise to the adoption of the supervisory measures described in section 4.3.

In the area of real estate credit, cross-institutional actions were also carried out. Their objective was to verify the correct application of “floor clauses”, i.e. clauses that set a lower limit on interest rates, the information provided on the interest rates applied and the transparency of new mortgage transactions arranged following the implementation of supervisory measures in previous years.

Similarly, the remote marketing of current and savings accounts and the transfer of payment accounts were verified by means of cross-institutional actions. Institutions’ adequate governance in terms of conduct requires that, regardless of the channel used for marketing products and services, customer relations should always be responsible and transparent. To ensure that this is the case, once the main health restrictions arising from COVID-19 had been overcome, a supervisory action was carried out in bank branches during 2021 to verify compliance with certain obligations on transparency and customer protection in banking services, in particular with respect to payment accounts. Box 4.3 contains information on this matter.

SUPERVISION OF FINANCING FOR CAR PURCHASE

In 2021, a cross-institutional supervisory action was completed, assessing compliance with regulations on transparency and bank customer protection in the area of consumer credit for car purchase, on a representative sample of 14 institutions.

It is common practice that, together with this type of financing, financial institutions offer, either directly or through a network of intermediaries (such as car dealers), other financial products or ancillary services relating to the credit agreement, such as, for example, insurance securing the credit. Institutions also tend to offer discounts on the purchase price of the vehicle for taking out such financing.

The action was focused on examining institutions' common practices, procedures and internal controls in relation to this activity, and it involved an assessment of the degree of compliance with the obligations contained in Law 16/2011 of 24 June on consumer credit agreements, mainly. In particular, special attention was paid to the following matters:

- The content of pre-contractual information and the manner in which this information is provided to customers in accordance with transparency and bank customer protection regulations.

- The adequacy of pre-contractual information in cases in which ancillary products or services are marketed or discounts are offered on the vehicle purchase price.
- Contractual information and customer rights in relation to credit agreements.
- The contractual information being in line with the pre-contractual information.
- Responsible lending.
- Regular information provided to the customer on the products and services taken out.
- Governance of the financing products offered, assessing in particular the suitability of: (i) the design and marketing of these products; and (ii) the functions performed by intermediaries.

The supervisory action was resolved by sending mandatory requirements and recommendations letters to the institutions, and transferring the good practice criteria that guide regulatory action in this area.

Also, the marketing of various types of banking products through digital channels has also been reviewed. The aim is to ensure that the lack of physical interaction does not undermine compliance with transparency and customer protection regulations. Figure 4.1 contains the basic requirements to be fulfilled in the area of remote marketing.

The digital transformation of the banking sector, which is essential for maintaining a viable and sustainable banking business model in the medium and long term, must be carried out respecting best banking practices and ensuring compliance with conduct regulations, in order to avoid impacting trust, which is key to the banking business.

In addition, in 2021 monitoring continued on customer claims and the activity of institutions' customer service departments (CSDs)¹, both of which are important aspects for ensuring the correct conduct of the institutions. It is

¹ For further details, see Banco de España (2021), "Supervision of customer service departments", Box 4.2, 2020 Supervision Report.

IMPLEMENTATION OF SUPERVISORY MEASURES IN THE MARKETING OF REVOLVING CARDS AND NEW REQUIREMENTS

The review of adequate compliance with the transparency and customer protection regulations in the marketing of revolving cards, which was completed in 2020, disclosed the presence of certain incidents relating mainly to compliance with certain obligations of Law 16/2011 of 24 June on consumer credit agreements and Ministerial Order EHA/2899/2011 of 28 October on transparency and customer protection in banking services.

The Banco de España addressed these institutions so that they remedy the deficiencies and weaknesses detected, mainly in relation to:

- The product, the minimum instalments allowed and the omission of the term “revolving” in its marketing.
- The representative example to be included in the advertising information.
- The assistance to be given to the customer, prior to the contract, for its comprehension.
- The content, format and date of delivery of the pre-contractual information document.
- Adequate assessment of the customer’s creditworthiness.

The assessment of compliance with the measures requested by the Banco de España has shown that these institutions have carried out a thorough review of their product and marketing procedures. They have also implemented various initiatives to improve the information

provided to customers, such as explanatory documents or videos, loan repayment examples and scenarios or simulators to draw up repayment tables, training courses for employees and prescribers, and the development of new marketing and contracting processes in online banking, among others.

In the same vein, the amendments introduced in the regulations by Ministerial Order ETD/699/2020 of 24 July on the regulation of revolving credit established new requirements for these credits, including, inter alia: i) the inclusion of certain parameters in the representative example of advertising; (ii) the reinforcement of prior assistance on the streets and other places open to the public; (iii) the provision of a document with information additional to the Standard European Consumer Credit Information and new regular information, including the instalment that allows the total amount of credit to be repaid in a year; or (iv) the calculation, in the assessment of the customer’s creditworthiness, of instalments that aim to repay annually 25% of the limit of the credit granted.

Lastly, with the imminent amendment of Circular 5/2012 on the transparency of banking services and responsible lending, the Banco de España will establish the criteria and elements to be taken into account for the preparation of: i) the representative example to be provided to the customer together with the Standard European Consumer Credit Information, based on the minimum instalment; and ii) the examples of savings scenarios to be provided to the customer, on a quarterly basis, where the repayment instalment is less than 25% of the limit granted.

precisely the ongoing supervision of the proper functioning of CSDs that made it possible to publish in 2021 the first conduct supervision guidelines on the organisational and operational criteria of the CSDs. It contains the supervisory criteria derived from the experience accumulated in this area since 2015.

Similarly, the supervision of advertising of banking products and services played an important role in 2021². Thus, in the course of the year, particular

² For further details, see Banco de España (2021), “Supervision of advertising activity”, Figure 4.2, 2020 Supervision Report.

MARKETING OF PAYMENT ACCOUNTS AT BANK BRANCHES

Following the transposition of the new EU regulation into Spanish law in the area of payment services, a new environment for payment accounts, inter alia, has been established. In addition, it is necessary to take into account the statistics on enquiries, complaints and claims received by the Banco de España on this product, which are included in the latest Complaints Report, and the incidents detected in the opening and operation of these accounts.

In the marketing of banking products, and in particular payment accounts, it is especially important that the explanations and clarifications that are given the moment the product is taken out are provided by the staff who deal with customers in the marketing of this product.

In relation to this work, in the last quarter of 2021 a supervisory action was carried out consisting of visits to

bank branches in order to verify that the staff carrying out this work have adequate knowledge and skills. A total of 152 bank branches of 12 institutions were visited throughout Spain, which had been selected in order to obtain as heterogeneous as possible a combination of cities and towns. The aspects reviewed (through interviews with staff who deal with customers) include, inter alia, explanations and documents offered to customers requesting the opening of an account, the transfer of an account, information on basic payment accounts, or explanations on electronic banking.

The visits to branch networks are a tool available to the Banco de España to boost the effectiveness of supervisory work and to reinforce institutions' appropriate culture of conduct, which could be resumed in 2021, following on from the supervisory actions carried out in 2019¹.

¹ For further details, see Banco de España (2020), "Monitoring compliance with transparency obligations at bank branches", Box 4.2, *Report on Banking Supervision in Spain, 2019*.

attention was paid to the way in which institutions have adapted to Banco de España Circular 4/2020 of 26 June on the advertising of banking products and services. To this end, as well as reviewing the advertising of banking products and services disseminated by supervised institutions, the commercial communication policies of various institutions were analysed to verify the implementation of adequate controls to manage risks arising from the advertising activity, all with the aim of ensuring that the advertising received by customers is sufficient, objective and not misleading.

As can be seen, in recent years the conduct-related supervisory activity has become increasingly important and the aspects analysed have broadened. This requires the provision of specific new tools and information by the supervisor.

To this end, Banco de España Circular 4/2021 of 25 November to credit institutions and other supervised institutions on confidential return models relating to market conduct, transparency and customer protection and on the complaints register was published. This Circular incorporates new reporting specially designed to improve knowledge of institutions' business models, their sources of income and the origin of incidents with customers in the course of their activities. The objective is to obtain information to assess institutions' conduct

Figure 4.1

TRANSPARENCY AND DIGITALISATION

TRANSPARENCY IN REMOTE MARKETING		
APPROPRIATE EXPLANATIONS	PRE-CONTRACTUAL INFORMATION	CONTRACTS
<ul style="list-style-type: none"> – Appropriate explanations must be provided regarding the products offered and the process of taking out products remotely. – By means of clear, comprehensive and sufficient information – The information needs to be adapted to the product's marketing channel. Therefore, the availability to customers of data transfer tools must be assessed. 	<ul style="list-style-type: none"> – It must be provided in good time. – Using a durable medium. – With clear and concise language and paying attention to style, to facilitate its reading and comprehension depending on the marketing channel. – And in line with regulatory requirements 	<ul style="list-style-type: none"> – Their content must be consistent with the pre-contractual information and in line with regulations. – Each and every product that is taken out and their specific conditions must be specified in a simple, clear and transparent manner. – The contracts entered into by electronic signature must contain the date, reference and certifying authority.

SOURCE: Banco de España.

profile, which will allow a more precise identification of supervisory priorities in this area. Figure 4.2 outlines the main aspects of this new reporting model.

4.2 Other actions

In addition to the above-mentioned actions, in 2021 twelve inspection actions were also carried out to verify the information reported to the Banco de España by the supervised institutions in the “Interest rates on lending transactions in Spain with the resident private sector” reporting included in Annex 9 of Circular 5/2012, with the objective of contributing to the preparation of benchmark indices, and various supervisory measures were adopted.

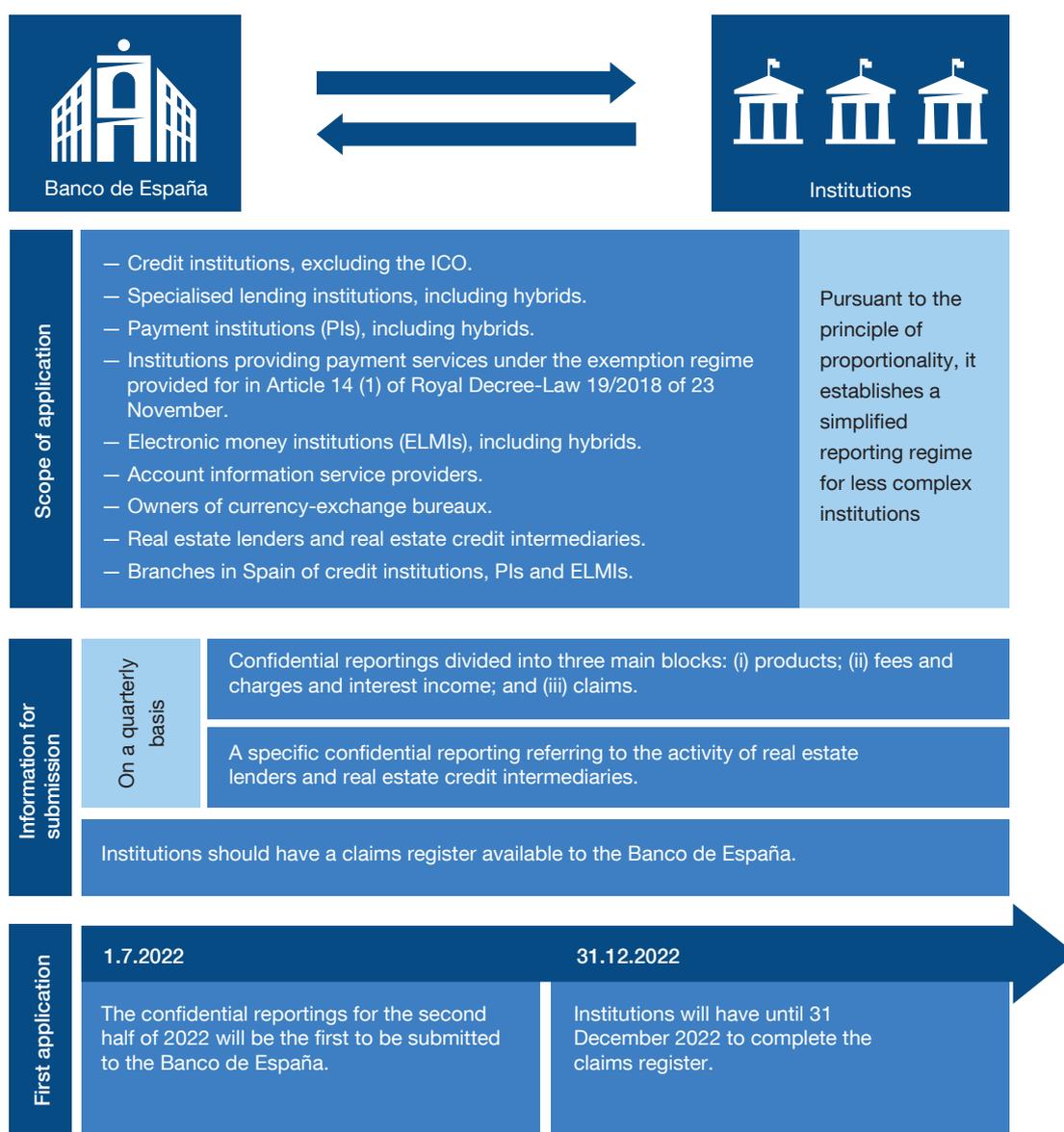
Also, a further supervisory action was carried out to gather information on consumer exposures affected by the elimination of certain benchmarks (for more information on the elimination of benchmark rates, see Box 2.4). Figure 4.3 contains information on this action.

4.3 Adoption of supervisory measures

Noteworthy among the supervisory measures adopted in 2021 were the initiation of 5 sanctioning proceedings and the issue of 44 requirements. It

Figure 4.2

CONFIDENTIAL REPORTINGS ON MARKET CONDUCT, TRANSPARENCY AND CUSTOMER PROTECTION AND ON THE CLAIMS REGISTER



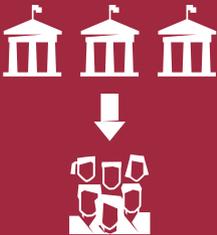
SOURCE: Banco de España.

should be noted that the two inspections on consumer credit culminated in two requirements letters being sent to resolve the incidents detected and in the initiation of the corresponding sanctioning proceedings due to, among other reasons, the deficiencies found in the marketing of loans and consumer credit and in the information provided to customers relating to the settlement of interest, fees and expenses.

The supervisory work also includes checking effective compliance with the requirements and recommendations issued by the Banco de España in previous

Figure 4.3

ELIMINATION OF LIBOR AND ITS IMPACT ON MULTI-CURRENCY MORTGAGE CONTRACTS INDEXED TO LIBOR

<p>31.12.2021</p>	<p>As from this date, all LIBOR benchmarks in GBP, CHF, EUR and JPY and some in USD (1 week and 2 months) are eliminated. In June 2023 the remaining USD benchmarks will cease to be published.</p>
	<p>In view of the elimination of the GBP, CHF, EUR, JPY and USD LIBOR benchmarks, the supervised institutions must guarantee the continuity of contracts and the protection of customer interests (especially with regard to renegotiating current contracts). To this end, they must:</p> <ul style="list-style-type: none"> – Correctly identify and assess the risks and potential impacts arising from their exposure to LIBOR. – Assess the adoption of any measures that may be appropriate to manage a correct and global transition of their exposures, and make their best efforts to reach agreements with customers to replace LIBOR, especially in cases where the contract does not have an adequate fallback provision.
<p>SUPERVISORY ACTIVITY</p>	<p>The Banco de España carried out a supervisory activity with the aim of gathering information on exposures to consumers affected by the various LIBOR benchmarks.</p> <p>In particular, it has requested that institutions provide information on: i) the volume of exposure of individual consumer customers to the various benchmarks; ii) the applicable replacement provisions; and iii) the strategies or procedures planned for its replacement.</p>

SOURCE: Banco de España.

years. This monitoring work is key to verifying that institutions remedy the shortcomings detected in the supervisory work, thus achieving effective customer protection.

As a result of the supervision of advertising activity, 146 requirements were issued to withdraw or rectify advertising that did not comply with regulatory requirements.

Chart 4.2 provides a breakdown of all the above-mentioned supervisory measures.

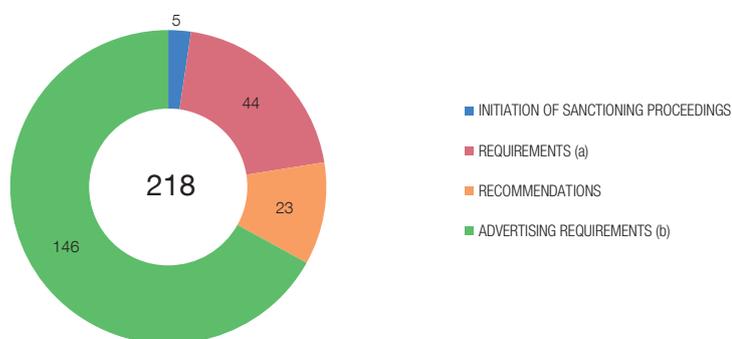
Lastly, in addition to the adoption of the above-mentioned supervisory measures, the supervision of CSDs gave rise to letters being sent to institutions. Specifically, 459 letters were sent in the course of 2021 as a result of the verification of the operating rules of CSDs and suitability assessments of their head officers.

Chart 4.2

SUPERVISORY MEASURES ADOPTED AND ADVERTISING REQUIREMENTS IN 2021

In 2021, as a result of the supervisory actions carried out, 5 sanctioning proceedings were initiated, and 44 requirements and 23 recommendations were issued mainly on matters relating to, inter alia, consumer credit, remote marketing of current accounts and transparency in arranged real estate credit transactions. Additionally, within the framework of the supervisory activity relating to advertising, 146 requirements were issued.

Number



SOURCE: Banco de España.

a The 44 requirements letters contain 416 specific requirements for institutions.

b Of the 146 advertising requirements issued in 2021, at year-end 57 had resulted in the removal of advertising and 77 in the rectification of advertising.