

LOANS GRANTED IN THE FORM OF OVERDRAFTS (TACIT OVERDRAFTS)

In tacit overdrafts, institutions make available to a consumer funds which exceed the balance in the consumer's account, allowing authorised payments to be made against their customers' accounts in excess of the account balance. In other words, institutions are not obliged to accept overdrafts on demand accounts opened with their customers, but if they decide to do so, they have the legitimate right to demand payment of the interest and fees and commissions stipulated in the agreement, subject to the limitations established by law.

In 2022, a cross-institutional supervisory action was completed at 22 institutions, verifying compliance with the obligations established in respect of tacit overdrafts granted to individuals in Law 16/2011 of 24 June on consumer credit agreements; in Ministerial Order EHA/2899/2011 of 28 October on transparency and customer protection in banking services; and in Banco de España Circular 5/2012 of 27 June to credit institutions and payment service providers on the transparency of banking services and responsible lending.

The action was focused on verifying the regulatory compliance of the way in which institutions grant, settle and communicate tacit overdrafts to the customer. In particular, special attention was paid to whether:

- Demand account contracts providing for this service include the minimum content established by the regulations.
- The interest rates, commissions or surcharges applied to the customer are in line with what was agreed and do not exceed the amounts advertised, in accordance with the breakdown provided in Annex 2 of Circular 5/2012 between the annual interest rate and the commissions envisaged for the granting of the overdraft.
- The amounts passed on to customers do not exceed, in any case, an annual percentage rate of more than 2.5 times the legal interest rate.
- The information provided to the consumer on a regular basis complies with the regulations.
- The overdraft settlement document contains all the data necessary for the customer to check the settlement made and calculate the cost of the service.

The supervisory action made it possible to convey to institutions the need to: (i) duly inform the customer of the overdraft regime applied in the event of a change in purpose of the account to a business account, and (ii) reinforce the communication that must be made to customers regarding the conditions applicable to overdrafts, the treatment in tacit overdrafts of certain charges for the provision of the institution's services, and the specification, where applicable, of the charge for the cost of claiming debit positions in the supposed tacit overdraft, thus completing the treatment initially given to these costs in the *2020 Complaints Report*.