

1 EXERCISE OF SUPERVISORY FUNCTIONS

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This chapter is structured as follows. The first section describes the supervisory activity during 2012, 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 powers of the Banco de España which supplement its supervisory responsibilities. The last section of this chapter sets out the recommendations relating to the so-called “density” of credit institutions’ assets.

1.1 Supervisory activity

At end-2012, a total of 452 institutions were subject to prudential supervision by the Banco de España, of which 312 were credit institutions. 25 of these credit institutions were savings banks pursuing their activity indirectly in accordance with the provisions of Article 5 of Royal Decree-Law 11/2010.

The Banco de España engages in a process of ongoing supervision whose ultimate aim is to determine and keep up-to-date the supervisory risk profile of each institution (in accordance with its Supervisory Model)¹ and to take the necessary measures to help improve it, including, where appropriate, the adoption of corrective measures.

In order to be able to perform this function adequately, the Directorate General of Banking Supervision is organised into three departments which carry out supervision through 22 operational divisions. Each of these divisions is assigned a number of institutions and they are supported by cross-departmental groups specialised in the performance of more specific tasks.²

A total of 306 supervisory actions were carried out in 2012, compared with 209 in 2011. Of them, 86 were in progress or outstanding as at 31 December. These supervisory actions can be divided into traditional on-site inspection visits to institutions and continuous monitoring, in many cases with a permanent presence at the institution.

To these should be added another 353 actions relating to CIs. These comprise the work described below on the compliance plans envisaged in Royal Decrees 2/2012 and 18/2012, participation in the independent valuation of the Spanish banking system’s balance sheets and other jobs, including most notably:

- Examination of the internal capital adequacy assessment reports prepared by institutions and of the supervisory process derived from the review.
- The most important actions arising from relations with national and international supervisors and bodies in the case of groups of CIs with a presence in Spain and other countries.
- Specific monitoring actions other than those listed above.

¹ Available at http://www.bde.es/f/webbde/COM/Supervision/funciones/Ficheros/en/Banco_de_Espana_supervisory_model_clean.pdf.

² On 2 April 2013 the Executive Commission of the Banco de España approved the restructuring of the Directorate General Banking Supervision and the revision of its organisation chart. The changes can be found at http://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/InformacionInteres/ReestructuracionSectorFinanciero/Arc/Fic/presbe2013_17e.pdf.

Number

	On-site supervisory actions							
	Completed				Under way			
	2009	2010	2011	2012	2009	2010	2011	2012
Credit Institutions	114	136	133	216	21	39	68	82
Banks	82	79	110	180	7	28	53	70
Savings banks	16	51	12	4	10	5	1	5
Credit cooperatives	1	2	10	28	1	6	13	6
Foreign branches	4	2	—	2	1	—	—	—
EU credit institutions	2	1	—	2	1	—	—	—
Specialised credit institutions	11	2	1	2	2	—	1	1
Other institutions	15	4	5	4	3	0	3	4
Appraisal companies	8	1	3	—	1	—	—	1
Mutual guarantee companies	—	—	—	2	—	—	2	1
Payment institutions and other	7	3	2	2	2	—	1	2
TOTAL	129	140	138	220	24	39	71	86

SOURCE: Banco de España.

In addition, the Banco de España conducted the various administrative procedures subject to prior authorisation relating to supervised institutions: loans to senior officers, the taking of qualifying holdings in Spanish institutions, acquisitions of qualifying holdings or of control abroad, etc.

The requirements made of institutions following supervisory actions numbered 111, contained in 41 letters. The recommendations and requirements related mainly to credit risk and internal management and control policies, which accounted for 73 % of the total.

2012 saw significant specific supervisory actions relating to the restructuring of the Spanish financial system,³ including most notably the following:

- Review and approval of the compliance plans envisaged in Royal Decree-Laws 2/2012 and 18/2012, which set additional provisioning and capital requirements for real estate-related assets; and monitoring of formation of the asset management companies regulated in the latter royal decree-law.
- Participation in the independent valuation of the balance sheets of the Spanish banking system. This project, which covered loans to the private sector accounting for about 90 % of the Spanish banking system, consisted of two parts: first, a top-down analysis of Spanish bank balance sheets and of their resilience to an adverse scenario (performed by Roland Berger and Oliver Wyman) and, second, an assessment of the quality of bank assets based on the work carried out by four independent auditors (Deloitte, PwC, Ernst & Young and KPMG) and on a stress test to determine capital needs on a bank-by-bank basis (bottom-up analysis).

³ For more information on the restructuring of the Spanish financial system, see the Banco de España website (<http://www.bde.es/bde/en/secciones/prensa/infointeres/reestructuracion/>).

Number

	Letters sent to institutions			
	2009	2010	2011	2012
Credit institutions	47	38	19	37
Banks	23	16	10	14
Savings banks	9	14	—	5
Credit cooperatives	—	4	8	13
Foreign branches	3	2	—	5
EU credit institutions	1	1	—	2
Non-EU credit institutions	2	1	—	3
Specialised credit institutions	12	2	1	—
Other institutions	11	4	1	4
Appraisal companies	—	1	—	—
Mutual guarantee companies	7	—	1	2
Payment institutions and other	4	3	—	2
TOTAL	58	42	20	41

SOURCE: Banco de España.

SUBJECT MATTER OF LETTERS SENT TO SUPERVISED INSTITUTIONS

TABLE 1.3

Number

	2009	2010	2011	2012
Credit risk	127	108	31	54
Accounting for credit risk, borrower weakness and higher coverage requirements	95	79	14	27
Quality of credit risk controls (origination, monitoring and other procedures)	32	29	17	27
Management and internal control	52	36	21	27
Management and internal control in general	44	25	16	22
Capital market activities	8	11	5	5
Capital and solvency	15	8	5	7
Solvency ratio	15	8	5	7
Other regulations	84	40	9	23
Failure to comply with rules on transparency and customer relations	16	3	—	2
Deficiencies in information reported to the CCR	12	7	1	—
Requirements for authorisation of non-credit institutions	11	4	—	—
Other	45	26	8	21
TOTAL	278	192	66	111

SOURCE: Banco de España.

The valuation was included as a key component of the Memorandum of Understanding on Financial-Sector Policy Conditionality (MoU)⁴ approved by the Eurogroup on 20 July, which entailed external financial assistance to the banking sector of up to €100 billion, of €41.33 billion have been used [€38.83 billion to

4 The full text is available at http://www.google.es/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0C DUQFjAB&url=http%3A%2F%2Fwww.mineco.gob.es%2Fstfls%2Fmineco%2Fprensa%2Fficheros%2Fnoticias%2F2012%2F120709_MOU_final_rev2_cln2VVV.pdf&ei=Uk0XUsdYq5_sBonNglAC&usg=AFQjCNFQQ31RTmKt3FHifgYbgHGzde25Vw&bvm=bv.51156542,d.bGE.

capitalise credit institutions and €2.5 billion to enable the FROB to capitalise the Asset Management Company for Assets Arising from Bank Restructuring (“Sareb” by its Spanish abbreviation)].⁵ This assistance allowed capital requirements to be met without further heightening the possible negative feedback effects between sovereign risk and banking risk. Additionally, the MoU included specific conditions for the credit institutions needing public-sector support and horizontal requirements for the banking sector as a whole and the regulatory and supervisory framework, such as, for example, the commitment of the Banco de España to carry out an internal review of its supervisory procedures, which gave rise to the drafting and publication of the document “Analysis of the supervisory procedures of the Banco de España and recommendations for their reform”.⁶

- Review and approval (prior to that of the European Commission) of the plans for recapitalisation, restructuring and, where applicable, resolution of the banks found to have additional capital requirements in the stress tests conducted in the independent valuation process. As a result of these plans, in December 2012 the so-called “Group 1” institutions (BFA-Bankia, NCG Banco, Catalunya Banc and Banco de Valencia) received €36,968 million and, in 2013, the injections of public funds were completed with the contribution of €1,865 million to four institutions in the so-called “Group 2” (Caja3, Banco Mare Nostrum, Banco CEISS and Liberbank).

As envisaged, these capital needs were lower than those identified in the aforementioned stress tests, basically due to the effect of the transfer of problem assets to Sareb and as a result of burden sharing by hybrid capital holders, in accordance with the MoU and with Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution,⁷ under the State aid rules applied by the European Commission.

- The actions associated with the creation of Sareb under the aforementioned Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution and the consequent transfer of assets to it.

The aforementioned processes were carried out in close coordination by the Spanish authorities (Ministry of Economic Affairs and Competitiveness, Fund for the Orderly Restructuring of the Banking Sector and the Banco de España), the European authorities (the European Commission, the European Central Bank and the European Banking Authority) and the relevant international authority (International Monetary Fund).

Also, the recommendation by the European Banking Authority that the main institutions hold core capital of at least 9% plus a buffer for sovereign risk from 30 June 2012 gave rise to the related actions by the Banco de España.

The number of Spanish groups of credit institutions authorised to use internal ratings based (IRB) approaches to calculate regulatory capital for credit risk was unchanged in the

⁵ For more information, see the notices and announcements published regularly by the FROB (http://www.frob.es/notas/notas_en.html) and by Sareb (<http://www.sareb.es/cms/estatico/srb/sareb/web/es/portal/index.html>).

⁶ The recommendations of this report are available at http://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/ComunicadosBCE/DecisionesPoliticaMonetaria/13/Arc/Fic/Informe_de_la_Comision_Interna_en.pdf.

⁷ This Law repealed Royal Decree-Law 24/2012 of 31 August 2012 on credit institution restructuring and resolution after Parliament passed it as a law under the expedited procedure.

year, remaining at eight domestic banking groups and six subsidiaries of foreign groups. However, the share represented by these groups continued to grow, basically because of the concentration derived from the Spanish financial system restructuring process, and at end-2012 accounted for nearly 80 % of the total assets of credit institutions. Also, the scope of application of the models within each group continued to be extended in accordance with the timetables set in their roll-out plans. The supervisory tasks (apart from those relating to the validation of new models) entailed by the cooperation with local supervisors in the case of subsidiaries in third countries focused on the monitoring of those models and, in particular, on reviewing the changes made by institutions.

The institutions with internal models for operational risk consist of one domestic banking group and three subsidiaries of foreign groups, and supervisory work focused on monitoring them.

As regards international cooperation with other supervisory authorities, the Banco de España continued participating during 2012 in the same supervisory colleges in which it participated in 2011, so that it organised meetings for three supervisory colleges as the supervisory authority of the parent institution and participated as the host supervisory authority in seven colleges of banking groups with foreign parents. All this was accompanied by the usual bilateral contacts with the supervisory authorities of other countries.

Furthermore, within the Financial Stability Board (FSB) framework for the resolution of systematically important financial institutions (G-SIFIs), the Banco de España participated actively in the Crisis Management Groups of which it forms part both as authority responsible for the consolidated group and as host authority. In 2012 it organised two meetings and various bilateral teleconferences of the Group of which it is consolidated authority, and it participated in two meetings of Groups which it attends as host authority.

In 2012 three cooperation agreements were concluded 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. A total of 16 cooperation agreements have now been concluded pursuant to this article.

Finally, it should be noted that, following the European Council of 29 June 2012, the Banco de España is working at European level on the design and implementation of the Single Supervisory Mechanism (SSM), which constitutes one of the three elements of a so-called “banking union” (the other two elements are an integrated deposit guarantee system and a common crisis resolution scheme). The new mechanism will represent a sea change in current supervisory responsibilities and procedures in all euro area countries (for more information, see Box 3.1).

1.2 Exercise of the sanctioning power in 2012

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 Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions, the effectiveness of these organisational and disciplinary 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 include 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 qualifying holdings in Spanish credit institutions and on Spanish nationals that control a credit institution of another EU 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 credit institutions, payment service providers or other types of supervised institutions, or through the use of generic names restricted to such 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 governed by the rules set forth in Article 18 of Law 26/1988 of 29 July on discipline and intervention of credit institutions. Under this law – until the recent amendment introduced by Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions – the Banco de España has competence to impose sanctions for serious and minor offences, and the Minister for Economic Affairs and Finance (currently the Minister for Economic Affairs and Competitiveness), 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. Following the amendment introduced by Law 9/2012 which, in relation to this question of competence, comes into force on 1 January 2013, competence for imposing sanctions on supervised institutions, whatever their seriousness, lies with the Banco de España.

Likewise, in the case of proceedings against individuals and entities that operate in the financial sector without authorisation, the competence to impose sanctions lies with the Banco de España.

1.2.1 PROCEEDINGS INITIATED IN 2012

Prior to the description of the disciplinary proceedings initiated in 2012, 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.

Nonetheless, in 2012, in view of the matters revealed by supervisory actions, the governing bodies of the Banco de España decided to initiate four disciplinary proceedings against five institutions and 51 individuals.

Specifically, the Executive Commission decided to initiate a proceeding against a credit institution (a savings bank) and members of its board of directors and general managers. It should be noted, in relation to this proceeding, that it was also decided to proceed against the members of the control committee, for alleged serious negligence in the exercise of the duties legally conferred upon them. In accordance with the provisions of Article 21 of Law 26/1988 of 29 July 1988 on discipline and intervention of credit institutions, referred to by Article 40.6 of the same Law, the proceeding was initiated as a single action

Number	Institutions	2009	2010	2011	2012
Banks		—	—	—	—
Savings banks		1	1	—	1
SCIs		1	—	—	—
Branches of EU foreign credit institutions		—	—	—	—
Payment institutions		—	—	—	2
Unauthorised payment institutions		—	—	—	1
Owners of significant holdings in credit institutions		—	1	1(a)	1(b)
Appraisal companies		2	—	—	—
Currency-exchange bureaux and money transfer agencies		3	1	—	1(b)
Use of names or pursuit of activities reserved for credit institutions		2	1	1	—
Unauthorised currency-exchange bureaux		—	3	—	—
Appraisal company revocations		—	—	—	—
Currency-exchange bureaux revocations		1	2	2	—
Non-compliance with ECB minimum reserve requirements		—	1	1	—
TOTAL		10	10	5	6

SOURCE: Banco de España.

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

b Proceedings recommenced following a stay to avoid prejudicing criminal proceedings.

against the credit institution, its directors and managers and the members of its control committee.

The proceeding related to allegations of: failure to correct deficiencies in risk management and control mechanisms; irregular accounting practices intended to alter the entity's financial and net worth reality; breach of administrative authorisations; the remuneration of management bodies, of members of the control committee and managers of the entity; and the impossibility of complying with the recapitalisation plan that had been submitted under the provisions of Article 9.1 of Royal Decree-Law 9/2009 of 26 June 2009 on bank restructuring and strengthening of the capital of credit institutions, as worded by Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the Spanish financial system. In June 2012, the proceeding had to be stayed, in accordance with the provisions of Article 2 of Law 26/1988 and Article 7 of the regulations for the exercise of the sanctioning power, approved by Royal Decree 1398/1993 of 4 August 1993, so as not to prejudice criminal proceedings.

Second, the Executive Commission of the Banco de España decided to commence two proceedings against two payment institutions, for alleged breach of the law regulating their activity, especially the provisions of Law 16/2009 of 13 November 2009 on payment services and of Royal Decree 712/2010 of 28 May 2010 on the legal regime governing payment services and payment institutions. Both proceedings were also brought against the sole directors of these institutions.

Likewise, it was decided to commence proceedings against two companies that had been carrying out activities restricted to payment institutions, without having the necessary authorisation or being registered as such in the relevant official register kept by the Banco de España.

PROCEEDINGS RESOLVED, BY TYPE OF INFRINGEMENT

TABLE 1.5

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 Curr. Exch. Bureaux	Minimum reserve requirements	Appraisal companies	Curr. Exch. Bureaux	
	Very serious	Serious	Minor							
Against institutions										
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
2012	1	—	1	—	—	—	—	—	—	—
Against particular directors of institutions or owners of qualifying holdings										
2009	45	25	85	—	1	—	—	—	—	—
2010	25	38	28	—	11	—	—	—	—	—
2011	52	66	28	—	—	—	—	—	—	—
2012	1	—	1	—	—	—	—	—	—	—

SOURCE: Banco de España.

Finally, two proceedings should be mentioned, against a money exchange bureau and its directors and against certain natural and legal persons who owned qualifying holdings in credit institutions, for breach of the rules relating to such holdings. These proceedings, which had been commenced in 2008 and 2010, respectively, had to be stayed, in accordance with the provisions of Article 2 of Law 26/1988 and Article 7 of Royal Decree 1398/1993, so as not to prejudice a criminal proceeding relating to facts closely connected to those that were being examined. Final judgment having been entered in the criminal proceedings in 2012, the administrative proceedings were resumed that year.

1.2.2 PROCEEDINGS RESOLVED IN 2012

With regard to the resolution of proceedings in 2012, it should be noted that the Governing Council of the Banco de España resolved a proceeding brought against a payment institution and its sole director, for merging with another payment institution, without the necessary ministerial authorisation.

This action was considered to amount to a serious infringement, for which the payment institution and its sole director were both fined.

1.3 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 2012.

1.3.1 TRANSPARENCY AND INFORMATION FOR BANK CUSTOMERS

On 29 April 2012 Order EHA/2899/2011 of 28 October 2011 on transparency and protection of customers of banking services came into force. This Order repealed the Order of 12 December 1989 which established the obligation for institutions to prepare a brochure setting out the maximum fee and commission charges (the price of banking services) and chargeable expenses and to make it available to the public after registering it with the Banco de España.

The new regulations replace this obligation with a twofold one: first, to make available to customers a document setting out the interest rates and fees and commissions usually

charged for the services that institutions provide most frequently (this obligation entered into force in January 2013), and second, in line with the provisions on transparency of payment services, to advise the customer of the cost of the services (in addition to other aspects of the service to be provided) before the contract for their provision is executed.

Until the entry into force of Order EHA/2899/2011, the Banco de España continued to check and register the brochure that institutions had to prepare on their maximum fee and commission charges and chargeable expenses. By law, this checking was limited to verifying that the brochure reflected the maximum prices and the terms of their application in an orderly and clear fashion.

The activity of checking and registering the brochures of fee and commission charges up to 29 April 2012, involved the processing of 152 proposals.

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,⁸ 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 2012 consisted in checking the rules of newly registered institutions, basically those of payment institutions, and the changes proposed by institutions with rules in force.

1.3.2 THE BANK CUSTOMER PORTAL

With the aim of providing information and guidance to the non-business customers of credit institutions, in 2005 the Banco de España created a new portal on its website, called "Portal del Cliente Bancario" (bank customer portal).

In 2012, the number of viewings of the portal was 3,049,879, up 21.4% from 2011 (2,513,130). There was also a significant increase, of 15.3%, in the number of visitors, from 639,153 in 2011 to 736,617 in 2012.

The most visited sections were almost the same and in the same order of importance as in 2011: those relating to simulators, banking products, interest rates, the glossary, frequently asked questions and bank charges.

The number of queries received and dealt with through the portal's "contact us" facility was 3,591, up 27.3% from 2011 (2,821), while the number of telephone enquiries was 3,937, up 52.1% from 2011 (2,589).

1.3.3 OFFICIAL REGISTERS AND INSTITUTIONAL INFORMATION

Under Spanish law the Banco de España is responsible for keeping various public registers. Not only credit institutions 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:

⁸ The requirements of which were laid down by Order ECO/734/2004 of 11 March 2004.

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: 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.⁹

Table 2.6 shows the number of institutions included in this Register,¹⁰ both Spanish and foreign, including those operating in Spain under the freedom to provide services.

Of the developments that took place in 2012 in relation to the Register of Institutions, basically two can be highlighted. First, there was a decline in the number of registered credit institutions, which had fallen to 312 (24 fewer institutions) by the end of the year. This decline was almost uniform across the various categories of credit institutions (see Table A.2.1). Thus, at the end of the year there were four fewer banks registered, essentially due to various corporate transactions in the Popular, Sabadell and CaixaBank groups (acquisition and merger of existing institutions and, in the odd case, creation of new institutions). The registration of Cecabank merits special mention here. This is the bank through which the Spanish Confederation of Savings Banks (CECA) will now pursue its objects as a credit institution.

The decline in the number of registered savings banks was eight, as a consequence of the change of status of the savings banks belonging to the Bankia and Catalunya Bank groups to that of a special foundation. As a result of this change of status, in the final part of the year, the savings banks concerned definitively lost their credit institution status and their licence to act as such.

The number of registered credit cooperatives fell by six. This decline was a consequence of three mergers, including most notably the one involving Cajamar and Ruralcaja, the parent institutions of the cooperative groups Cajamar and Cajas Rurales del Mediterráneo, which were organised as institutional protection schemes, made up of 22 institutions. These institutions will form part of the new Grupo Cooperativo Cajas Rurales Unidas. The other two mergers involved cooperatives from Castile and the Basque Country, respectively.

Specialised credit institutions also saw a reduction in their number, by seven, reflecting the complicated situation of a sector particularly hard hit by the economic and financial crisis of recent years. However, there were not only deregistrations in this category of institutions, since two new specialised credit institutions were registered, albeit each linked to a financial group.

The second notable development in 2012 in relation to the Register of Institutions is the increase in the number of institutions operating without an establishment, which rose by 12% to stand at 719. This increase is a consequence of the growing internalisation of the provision of financial services and, in particular, of payment institutions, as a result not only

9 This register and the register of agents described below are available to the public and can be consulted by either traditional means or through the Banco de España's website (by clicking on "Services" in the navigation menu). 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.

10 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.

Number. Year-end data (a)

	2009	2010	2011	2012
Institutions with an establishment	550	538	534	508
Credit institutions (b)	353	339	336	312
Controlling companies of credit institutions	1	1	1	1
Representative offices	55	54	55	46
Mutual guarantee companies	23	24	24	24
Reguarantee companies	1	1	1	1
Appraisal companies	54	55	58	57
Currency-exchange bureaux and money transfer agencies (c)	63	61	14	10
Payment institutions	—	2	41	46
Branches of EU payment institutions	—	—	2	7
Agent networks of EU payment institutions	—	1	1	2
Electronic money institutions (d)	—	—	1	2
Institutions operating without establishment	517	556	640	719
Of which: EU CIs operating without an establishment	492	506	520	533
Of which: financial subsidiaries of EU CIs	2	2	1	1
Of which: electronic money institutions	—	—	14	29
Of which: payment institutions (e)	20	45	105	152

SOURCE: Banco de España. Data available at 31 December 2012.

- a** The number of institutions also includes those that are non-operational and in the process of deregistering.
- b** Includes ICO and branches of EU and non-EU credit institutions. For the period 2009-2010 also includes one electronic money institution; in 2011, the promulgation of Law 21/2011, which amended the regulatory framework of ELMs, meant that they lost their credit institution status.
- c** Not including establishments only authorised to purchase foreign currency with payment in euro. From 2011, after the transformation of money transfer agencies into payment institutions, only includes currency-exchange bureaux (buying and selling of currencies).
- d** In the period 2009-2010, the existence of an electronic money institution was registered under the "credit institutions" heading.
- e** In application of Directive 2007/64/EC and of Law 16/2009 on payment services.

of the improvement in on-line means of communication, but also the greater regulatory harmonisation at EU level.

As regards the other financial intermediaries and auxiliaries that need to be entered in this Register, the developments in their numbers during 2012 were mixed. While those related to credit institutions (basically representative offices) followed the same downward trend as credit institutions themselves, those linked to the provision of payment services saw a moderate increase. This rise stemmed not so much from the appearance of new institutions (which largely arose from the transformation into payment entities of former currency-exchange bureaux licensed to make cross-border money transfers), as from the registration of new branches of EU payment institutions. Mention should also be made here of the registration of the second electronic money institution, set up as part of the CaixaBank group.

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.

At the end of 2012, the number of senior officers in this register¹¹ was 3,996, 11.5 % fewer than in 2011. This reduction is in line with the smaller number of registered credit institutions, which, compared with other types of institution, is one of the largest employers of directors.

As regards the profile of the senior officers, the above-mentioned decline was more significant among senior officers who are natural persons (12 %) than among those who are legal persons (5.5 %). It was also more marked among men (13 % fewer) than among women (7.2 % fewer), which increased the proportion of female senior officers to 14 %.

c. Information on shareholders

The Banco de España also receives confidential information on the shareholders of banks and specialised credit institutions and on the members of credit cooperatives.¹² This information is vital for the supervisory tasks of the Banco de España, in which it is essential to know the shareholder 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 significant development that can be observed in this Register in 2012 is the reduction in the number of significant shareholders in all categories of institutions: almost 7 % at commercial banks, 8.5 % at credit cooperatives and almost 19 % at specialised credit institutions. This reduction stemmed, first, from the decline in the number of registered institutions, and second, from the concentration process generally taking place in the credit sector, which is reflected in the fact that the reduction in significant shareholders was greater among those who are legal persons.

d. Reporting of agents

Credit institutions operating in Spain 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.¹³ In addition, they must report to the Banco de España the list of foreign credit institutions with which they have entered into agency agreements or agreements to provide financial services to customers.

Currency-exchange bureaux licensed to make cross-border money transfers were also obliged, from the beginning of 2002 until they were wound up or changed their status to

11 All the statistical information in this Register and the others reported in this section, other than that relating to the number of registered institutions, is included in Annex 3.2 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 the identity thereof, without regard to the number of posts that each of them may hold, i.e. the stated figure is the total number of senior officers registered and not the total number of posts in the institution supervised by the Banco de España.

12 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.

13 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.

that of payment institutions in 2011, to report this information. Maintaining this requirement, it has also been compulsory to enter in this Register, since 2010 and in accordance with the specific regulations thereon, the agents of Spanish payment institutions and their branches, and those of the branches of foreign payment institutions and those belonging to the agent networks of EU payment institutions, when they are located and provide their services in Spain.¹⁴

There were two particularly significant changes in this Register in 2012. First, upon the expiry of the period in which currency-exchange bureaux licensed to make cross-border money transfers were required to change their status to that referred to in the previous paragraph, such bureaux were no longer included among the entities required to report this information.¹⁵ Second, the large number of agents reported by payment institutions, which increased by more than 30 %, to stand at 30,286, exceeding those reported by currency-exchange bureaux licensed to make cross-border money transfers by two thirds.

This large number, seven times higher than that recorded for credit institutions, is partly explained by the business model followed by payment institutions, which carry on their cross-border activity basically through agents (the number of agents reported by Spanish payments institutions resident abroad was more than 600 in 2012). However, the main reason for this high number is that there is no requirement for the agents of payment institutions or of electronic money institutions to be exclusive (unlike money transfer agencies prior to Law 16/2009, which were subject to that requirement). This means that, on more than just a few occasions, one single agent is reported as such by more than one payment institution.

The changes in the number of agents of the various credit institutions, which ended the year at 5,056 after falling by 1.4 % overall, is shown in Table A.2.2.

For their part, the agency agreements entered into by Spanish credit institutions with foreign credit institutions have maintained their characteristic stability, although for the first time in recent years there has been a minimal reduction in their number.

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 in relation to such institutions and to monitor the changes in their articles of association, which are sometimes subject to administrative authorisation by the Ministry for Economic Affairs and Competitiveness or the corresponding body of the relevant regional government, following a report from the Banco de España.¹⁶

In 2012, the total number of analysed applications to amend articles of association continued to rise, although the growth rate fell from 76 % to 6.8 %. Most of the applications related to commercial banks (36) and credit cooperatives (38). The amendments of the articles of association of commercial banks had many different aspects, although in most cases they related to the objects of the bank and its governing bodies, including their remuneration. As regards credit cooperatives, most of the amendment applications were

¹⁴ In Table A.3.2, they are all included under the heading "Agency agreements - Payment institutions".

¹⁵ Nonetheless, these entities are still shown in Table A.4.2 of Annex 4.2 for the purposes of comparison.

¹⁶ All these powers have been transferred to the Banco de España pursuant to Law 9/2012 and its implementing regulations.

connected with the integration process in Grupo Cooperativo Cajas Rurales Unidas, referred to in section a) above.

Although the number of amendments recorded remained relatively high (250), it fell by almost 30%. This was related to the end of the initial stages of the process to change the status of savings banks.

1.3.4 OTHER AUTHORISED ELIGIBLE CAPITAL FOR SOLVENCY PURPOSES

The items that are eligible as own funds of credit institutions may include certain subordinated debt, preference shares and mandatorily convertible debt instruments.¹⁷ These instruments may be considered eligible on account of their having certain specific capital features such as an indefinite presence on the institution's balance sheet, the capacity to absorb losses (e.g. through their conversion into ordinary shares in certain circumstances) and flexibility of payments to holders (remuneration depending on the solvency of the issuer, the existence of sufficient profits and even the issuer's discretion).

The Banco de España verifies whether these financial instruments, issued by credit institutions, by their special purpose vehicles or by other subsidiaries, meet the requirements established to be eligible as own funds of credit institutions, in accordance with the law applicable at the time.¹⁸

The total amount subscribed in 2012 of the 13 issues of instruments whose eligibility as own funds was verified by the Banco de España was €13,411 million. The number of issues was in line with the two previous years and below the activity recorded in 2009, reflecting a period marked by difficulty accessing capital markets linked to the financial crisis, compounded by regulatory uncertainty over the future requirements for instruments to be eligible, given the forthcoming entry into force of a European Regulation incorporating Basel III. That said, the amount subscribed was 49% higher than in the previous year and twice as high as in 2010.

Against this background, Spanish credit institutions focused their efforts on strengthening their highest quality capital to meet regulatory demands. As a result, the main features of the issuance of eligible instruments have continued to be, on one hand, the issuance of convertible instruments eligible as core capital or intended to meet the requirements of the European Banking Authority's recapitalisation plan¹⁹ and, on the other, the exchange of old instruments whose eligibility was compromised within a changing regulatory framework.

Consequently, eight of the 13 issues made in 2012 were of instruments mandatorily convertible into shares, accounting for a third of the total volume of issuance. Practically the entire amount of these issues arise from exchanges of previous issues of convertible debt, preference shares and subordinated debt qualifying as upper Tier 2 capital (indefinite duration, capacity to absorb losses and deferral of interest). The only issue not deriving from a swap was directed at wholesale investors. With regard to their convertibility, all these

¹⁷ Mandatorily convertible debt instruments may be mandatorily convertible either on a set date or when certain trigger events occur (contingent conversion), or in both cases.

¹⁸ Law 13/1985 of 25 May 1985 on investment ratios, own funds and reporting requirements of financial intermediaries and implementing legislation; as well as Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the Spanish financial system, as worded by Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution, and implementing legislation, in relation to core capital.

¹⁹ Recommendation of the European Banking Authority of 8 December 2011 addressed to the five largest Spanish institutions at that date, to maintain a 9% Core Tier 1 capital ratio. EBA recommendation on the creation and supervisory oversight of temporary capital buffers to restore market confidence (EBA/REC/2011/1).

Yearly data (€m)

	Number				Amount			
	2009	2010	2011	2012	2009	2010	2011	2012
TOTAL	75	14	16	13	26,314	6,465	9,012	13,411
Subordinated debt	42	12	9	5	7,938	5,497	2,984	9,011
Standard fixed-term	39	11	9	4	7,865	5,477	2,984	4,511
Commercial banks and savings banks	33	10	9	4	7,633	5,475	2,984	4,511
Credit co-operatives	1	1	—	—	3	2	—	—
SCIs	5	—	—	—	229	—	—	—
<i>Of which: loans</i>	11	1	3	—	409	1	21	—
Standard with no agreed maturity	—	—	—	—	—	—	—	—
Undated	3	1	—	1	73	20	—	4,500
Commercial banks and saving banks	3	—	—	1	73	—	—	4,500
SCIs	—	1	—	—	—	20	—	—
Preference shares	33	—	1	—	18,376	—	200	—
Commercial banks and saving banks	33	—	1	—	18,376	—	200	—
Mandatory convertible debt	—	2	6	8	—	968	5,828	4,400
Commercial banks and saving banks	—	2	6	8	—	968	5,828	4,400

SOURCE: Banco de España.

a Does not include issues subscribed by the FROB since, in accordance with Article 33.1.c. of Law 9/2012 of 14 November 2012 on credit institution restructuring and resolution, when the FROB subscribes or acquires capital or convertible instruments, the limits established in law for eligibility as Tier 1 and as core capital or, in general, the limits set from time to time relating to solvency requirements will not apply to it.

issues also obtained eligibility as core capital. Their remuneration is fixed and ranges from 4.5 % to 9.5 % per annum.

The rising weight of convertible instruments is consistent with the regulatory tendency to give capital instruments more transparent loss absorption mechanisms. This tendency was first manifest in the amendments that Law 6/2011 and CBE 4/2011 introduced into the treatment of preference shares in Law 13/1985 and CBE 3/2008. It continued in the definition of instruments eligible as core capital, in the first version of RDL 2/2011, and especially in the updated version introduced by Law 9/2012 and its detailed specification in CBE 7/2012. The latter definition of core capital incorporates the standards of the European Banking Authority's recapitalisation plan and anticipates Basel III and the forthcoming European capital requirements regulation.²⁰

Following the amendment of the second additional provision of Law 13/1985 by Law 6/2011 of 11 April 2011, preference shares, in order to be eligible, must include elements that guarantee their loss-absorbing capacity. This requirement is articulated in the amendment of CBE 3/2008 by CBE 4/2011, when it requires their conversion into shares in particular circumstances. Accordingly, neither in 2012 nor in subsequent years can eligibility be granted to instruments with comparable characteristics to those of the 33 issues of preference shares made in 2009. To be eligible, preference shares will have to incorporate conversion into ordinary shares so that they will appear in Table 2.7 as mandatorily convertible debt.

²⁰ See legal references in Section 2.1 on legal changes in relation to the solvency of credit institutions.

The amount of subordinated debt, despite the number of transactions falling with respect to 2011, tripled. Two of the issues were offered by a credit institution in exchange for previous issues of preference shares, for a total amount of €3,374 million. With fixed nominal annual yields of 4 % and 5 %, respectively, they were both issued with a 10-year maturity.

The other two issues of fixed-maturity subordinated debt were made by an operational subsidiary of a credit institution subject to own funds requirements in its home country, with an equivalent value of €1,137 million, which the Banco de España recognised as eligible for the consolidable group. They were distributed among professional investors.

Finally, another of the subordinated debt issues was made through a loan agreement, its amount representing almost 50 % of the total subordinated debt issued. The loan was entered into with the majority shareholder of the borrower bank and it is classified as upper Tier 2 capital.

1.4 Supervisory policies

1.4.1 CONSISTENCY OF RISK-WEIGHTED ASSETS

In the last few years, in which the solvency framework applied has been based on Basel II, there has been growing concern among institutions and supervisors over how consistently risk-weighted assets (RWA) are calculated across institutions and countries. As is well-known, RWA are the denominator of the capital ratios that have been established in solvency regulation, and are therefore the yardstick for determining the sufficiency of institutions' eligible own funds. Consequently, any unwarranted differences in the calculation of RWA will lead to distortions in the measurement of solvency, which would undermine the "level playing field" and the competitiveness of institutions.

In order to analyse the consistency of RWA in the context of the solvency framework, certain agents, principally international banks and analysts, have been using the so-called "RWA density ratio", which compares the total regulatory weighted assets of institutions with their total assets. This may be interpreted as a measure of the average relative risk (according to regulatory criteria) of the institution's entire operations. The existence of notable differences in the value of this ratio across institutions and countries, especially across institutions that apply internal-model-based approaches, has led some to conclude that RWA are not being calculated consistently, and that there must be significant unwarranted differences between institutions' calculation methodologies and supervisors' criteria.

With regard to these criticisms, first of all there are good reasons why RWA density should differ across institutions. One should not forget that regulatory RWA originate in a solvency framework that seeks to be risk sensitive, and that institutions have different "risk profiles", arising from various factors, such as the relative weight of their various portfolios, the quality of the assets that make up each portfolio, the geographic areas in which they operate, the types of business they conduct (commercial banking, investment banking, bankassurance, etc.). Institutions that focus on activities considered low risk or that have higher quality investments should have lower ratios.

At the same time, it should be noted that the RWA density ratio is not a good measure of the risk assumed by institutions per unit of exposure, for various reasons:

- The numerator (RWA) is the result of weighting exposures solely on the basis of the risk of unexpected losses, without taking into account the risk of suffering expected losses.

On 6 July 2012, Banco de España Circular 5/2012 of 27 June 2012, addressed to credit institutions and payment service providers, on the transparency of banking services and the responsible granting of loans was published in the Official State Gazette (BOE). The new Circular, which replaced Circular 8/1990 of 7 September 1990, addressed to credit institutions, on transaction transparency and customer protection, attempts to implement in an orderly manner, consistent with best market practice, the mandates contained in Order EHA/2899/2011 of 28 October 2011 on transparency and protection of customers of banking services.

Order EHA/2899/2011 and Circular 5/2012 make up the new general transparency code that will henceforth govern relations between customers and credit institutions. It has a systematic structure, is designed to provide continuity and stability, and is clearly intended to protect banking service customers. In general terms, the new regulation is characterised by imposing greater information obligations, in relation to the pre-contractual stage, the content of the contract itself and notifications that institutions are required to send to customers while the contract for the provision of banking services remains in force.

In line with the Order from which it derives, and following current trends, the scope of the protection which is the primary concern of the Circular is individuals to whom banking services are provided. However, when such individuals are acting within the scope of their professional or business activity, the parties may agree not to be subject to this new regulatory framework.

Notable among the various issues addressed by the Circular, and one of the most novel aspects of the new regulation, is the information that institutions must make available to the public on the interest rates and fees and commissions usually applied to those banking services most frequently provided to customers. For this purpose a document is created, which presents this information homogeneously for various transactions considered to be the most common ones. This document replaces the current declarations of the prime rate and indicative lending rates, as well as the brochure of maximum fee and commission charges.

The Circular also fleshes out the obligation of credit institutions to provide certain pre-contractual information to customers, free of charge, so that they can take an informed decision on a banking service and can compare similar offers. This minimum information, which for the first time extends to deposit transactions, must be

clear, sufficient and objective, and must be delivered sufficiently in advance, or at least before the customer is bound by a contract or offer. The Circular also establishes rules to ensure that certain elements of transactions are uniformly highlighted and sets the minimum size of the print used in any information document, whether pre-contractual or contractual.

The Circular also specifies the appropriate and adequate explanations that institutions are required to supply to customers before they initiate any contractual relationship with them, so that they can understand the essential terms of the banking service offered and take an informed decision, on the basis of their needs, their financial situation and the consequences of purchasing the service.

With regard to settlement documents, the Circular envisages certain standardised forms both for the most common transactions, and for the new notification that institutions must send to their customers every year in January, indicating, in full detail, the fees and charges and interest rates actually applied to each banking service provided to the customer during the previous year.

With regard to the responsible granting of loans, the Circular sets out the requirements and principles that must be met by credit institutions' policies, methods and procedures for analysing and granting loans or credits, in order to improve the assessment and consideration of the debtors' creditworthiness. The aim is to minimise the risks that such activity may involve for credit institutions and the financial system as a whole, as well as for the customers themselves.

As regards calculation of the annual percentage rate (APR) on products and banking services, the Circular establishes, inter alia, the rules that must be observed when calculating the APR on tacit overdrafts and on deposits with remuneration in kind. It also includes, for the first time, the principles and elements to be taken into account when calculating the APR on hybrid instruments with guaranteed principal.

At the same time, the Circular specifies the procedure for determining official interest rates, in particular that for the two new ones introduced by the Order: the one linked to one to five-year mortgage loans for house purchase in the euro area, and the five-year interest rate swap (IRS) rate. It also specifies the reference indices and rates used to calculate the market value of mortgage loans repaid early, in order to determine whether or not the institution should receive compensation for interest rate risk.

- The denominator (total assets) does not capture all transactions giving rise to risk-weighted assets. For example, it excludes guarantees, credit account facilities, short positions in financial instruments, financial derivatives, etc. Accordingly, the ratio is inconsistent by definition.
- Also, there are risks, such as market or operational risk, whose RWA (included in the numerator) are calculated with methodologies that bear little relation to balance sheet assets, so that a ratio of this type is hardly appropriate.

In short, the RWA density ratio can be said to be an incomplete and inconsistent measure.²¹ In order to be able to make valid comparisons across institutions, it is essential to use appropriate measures that mitigate these defects as far as possible.

In 2012, various initiatives were undertaken in the Basel Committee on Banking Supervision and the European Banking Authority (EBA) in order to verify if RWA are actually calculated inconsistently across institutions and jurisdictions and, if so, to identify the reasons and to propose solutions. These included the Basel Committee's SIG Banking Book and SIG Trading Book working groups, and the Task force on the consistency of outcome in risk-weighted assets (TCOR) at the European level.

On the basis of the initial analysis performed by the TCOR, the EBA has recently published a report²² analysing those risk-weighted assets not included in the trading book, using regulatory data from an extensive sample of European institutions. Instead of the RWA density ratio, this study used a ratio that attempts to resolve the problems mentioned, called the "global charge". This ratio, which includes expected losses in the numerator and uses exposure at default (EAD, the variable used as the basis for calculating credit risk requirements) as a measure of activity, is as follows:

$$\frac{RWA + 12.5 * EL}{EAD}$$

These preliminary analyses imply that half the differences in "global charge" between institutions are due to the use of different regulatory approaches to calculate credit risk requirements (standardised versus IRB approach), as well as the balance sheet structure of institutions. The other half may be attributable to the IRB parameters applied, although further studies, which have already been commenced, are needed to know if the risk profile of institutions justifies these differences, or if they are due to different interpretations of the regulations, in which case the necessary corrective measures would be proposed.

The EBA concludes that the first type of differences mentioned would be readily explainable, and their effects quantifiable, if the relevant information were provided to the public, so that a first recommendation that naturally arises is to expand and standardise the information published by institutions in the context of Pillar 3 of the solvency framework. Work is being carried out in various spheres for this purpose.

As a final point, the need to use adequate indicators when making comparisons between institutions should be stressed once more, bearing in mind the inevitable limitations of any measure that seeks to summarise in a single figure something as complex and multifaceted as the risk profile of an institution or the risks it has assumed. In this respect, it would be desirable for institutions to focus their efforts on appropriately measuring, as objectively as possible, the risk they incur in their operations, so that their managers have the best information available when they take their decisions.

21 For a more extensive discussion of this subject and further analysis, see "Comparing risk-weighted assets: the importance of supervisory validation processes", by J. M. Arroyo, I. Colomer, R. García Baena and L. González Mosquera, in *Estabilidad Financiera*, No. 22, page 8, Banco de España.

22 "Interim results of the EBA review of the consistency of risk-weighted assets. Top-down assessment of the banking book", European Banking Authority, 26 February 2013.