

1 THE SINGLE SUPERVISORY MECHANISM (SSM): A NEW EUROPEAN SUPERVISORY SYSTEM

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1.1 The Banking Union project

The Banking Union has been key in the response to the recent financial crisis, which highlighted the need for far-reaching reforms of the European institutional framework for supervision and crisis management in the banking sector. Banking Union is a key complement to Economic and Monetary Union (EMU) and the internal market, as it will contribute to creating an integrated financial framework to safeguard financial stability and minimise the cost of banking crises.

In order to build the Banking Union, in addition to the creation of the Single Supervisory Mechanism (SSM), the following elements are required:

- A single rulebook, based on the capital requirements framework set up by Regulation (EU) No 575/2013 and Directive 2013/36/EU. The European Banking Authority (EBA) is responsible for further developing the rulebook and has received the mandate to prepare a series of technical standards which will be legally binding once they have been approved by the European Commission.
- A Single Resolution Mechanism (SRM), whose legal framework is the Bank Recovery and Resolution Directive 2014/59/EU (BRRD). This resolution framework came into operation in January 2015 and has a similar scope to that of the SSM. The SRM comprises:
 - A Resolution Board which will be responsible for applying the common BRRD rules, including bail-in measures for the distribution of losses among shareholders and creditors of credit institutions (CIs) under resolution so as to reduce the need for public funds.
 - A Single Resolution Fund, which will give credibility to the mechanism by providing financial support in orderly resolution processes. The fund will start to receive contributions as from 2016 and its capital will be gradually mutualised over a transitional eight-year period during which national compartments will exist.
 - A system of national resolution authorities.
- A system of deposit guarantee schemes. After ruling out the creation of European deposit insurance, an agreement was reached to make progress in the harmonisation of the current deposit insurance schemes. Thus, Directive 2014/49/EU sets as a target for national guarantee schemes net assets equivalent to 0.8% of the deposits covered (with a harmonised level of coverage of €100,000) and envisages a reduction in payment periods from 20 working days at present to seven working days by 2024.

In June 2012 the EU Heads of State and Government called for the creation of a single supervisor as the first step towards the aforementioned Banking Union with the immediate aim of improving the quality of supervision in the euro area, encouraging market integration and breaking the negative link between confidence in banks and doubts over the sustainability of public debt.

1.2 Preparatory phase: legal framework and comprehensive assessment of the banking system

LEGAL FRAMEWORK

Council Regulation (EU) No 1024/2013 of 15 October 2013 confers specific tasks on the European Central Bank (ECB) concerning policies relating to the prudential supervision of the CIs of the participating Member States, which are those of the euro area and other Member States that have established close cooperation with the ECB, in keeping with the provisions laid down in the Regulation. Excluded from the supervisory functions conferred on the ECB are those institutions envisaged in Article 2(5) of Directive 2013/36/EU on access to the activity of CIs and the prudential supervision of CIs and investment firms, namely: investment firms, central banks and, in the case of Spain, the ICO (Instituto de Crédito Oficial). The purpose of the SSM is to carry out thorough and effective banking supervision and to contribute to the safety and soundness of the banking system and to the stability of the financial system, guaranteeing equal treatment and conditions throughout the EU.

In parallel with the publication of the SSM Regulation, and so that the conferral on the ECB of supervisory functions concerning the CIs of some Member States would not hamper the role and functions of the EBA, Regulation (EU) No 1022/2013 confirmed the functions, powers and duties of the EBA and adapted certain aspects of its governance and voting systems.

Article 6(7) of the SSM Regulation provides for the creation of a cooperation framework between the ECB and the National Competent Authorities (NCAs). The SSM Framework Regulation was approved on 16 April 2014 and entered into force on 15 May 2014. The Framework Regulation expands on the aspects expressly referred to in Article 6(7), such as the methodology for assessment of the significance of institutions and the cooperation procedures for the supervision of significant and less significant institutions. It also deals with aspects relating to the so-called “common procedures” (granting or withdrawal of licences and acquisition of qualifying holdings), macro-prudential supervision and close cooperation with non-euro area Member States.

The SSM Regulation establishes the principle of separation between supervisory and monetary policy functions at the ECB, requiring it to adopt and publish internal rules to ensure effective separation between those two functions in matters such as professional secrecy and information exchanges. On 17 September 2014 the ECB adopted a decision on the implementation of separation between the monetary policy and supervisory functions.

The accountability requirements of the ECB, set out in the SSM Regulation, were fleshed out in an interinstitutional agreement between the European Parliament and the ECB, adopted on 6 November 2013 within the framework of the SSM. The agreement requires the ECB to publish quarterly reports on progress in the practical implementation in the initial preparatory phase, and to submit an annual report to Parliament on the execution of the tasks conferred on it by the Regulation.¹ The agreement establishes that the aforementioned annual report shall cover, inter alia: the execution of supervisory tasks, the sharing of tasks with the national supervisory authorities, cooperation with other national or EU competent authorities, separation between supervisory tasks and monetary policy functions, implementation of the code of conduct, the method of calculation and amounts of the supervisory fees and the budget for supervisory tasks.

¹ See: <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssmar2014.en.pdf?7c1e3783c43f86ef4722a3da42ce202e>.

Given their particular relevance, two areas of the SSM legal framework are discussed in greater depth in this report: the supervisory powers that become exclusive to the ECB, and the decision-making process within the SSM framework.

EXCLUSIVE SUPERVISORY POWERS OF THE ECB

The SSM Regulation clearly states that the ECB will be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all CIs established in participating Member States:

- 1 To authorise and, where appropriate, withdraw the authorisation of CIs and to assess notifications of acquisition or disposal of qualifying holdings in CIs, with certain caveats in the case of bank resolutions.
- 2 To act as the home competent authority for CIs established in a participating Member State which wish to establish a branch or provide cross-border services in a non-participating Member State.
- 3 To ensure compliance with EU law on prudential requirements (Pillar 1), supervisory review procedures (Pillar 2) and market disclosure (Pillar 3), comprising, among other matters, the analysis of: own funds requirements, large exposure limits, liquidity, leverage, governance arrangements, the fit and proper requirements for senior management, internal control mechanisms, remuneration policies and capital adequacy, including the assessment of internal risk models and the performance of stress tests.
- 4 To carry out supervision on a consolidated basis over CIs' parents established in a participating Member State, including over financial holding companies and mixed financial holding companies. Where the parents are not established in a participating Member State, the ECB will participate in colleges of supervisors, without prejudice to the participation of NCAs as observers.
- 5 To participate in supplementary supervision of financial conglomerates in relation to the CIs included in them, assuming, where appropriate, the task of coordinator of the financial conglomerate.
- 6 To supervise recovery plans and early intervention measures and, where appropriate, request that the measures needed to resolve problems be adopted, excluding any resolution powers.
- 7 To impose more stringent requirements, in close coordination with the national authorities of participating Member States in respect of own funds requirements, additional capital buffers and systemic or macro-prudential measures.

For the exercise of the prudential supervision tasks defined in the SSM Regulation, the ECB shall apply the relevant EU legislation, and where this legislation is composed of Directives, the ECB shall apply the national legislation transposing those Directives. Where the relevant EU legislation grants several options for Member States, the ECB shall apply the national legislation exercising those options. The ECB is subject to the technical standards developed by the EBA and approved by the European Commission, and to the EBA's European Supervisory Handbook. Furthermore, as regards any aspects not covered by those standards, or in the event of new harmonisation requirements arising during the

course of day-to-day supervision, the SSM shall develop its own standards and methodologies, taking into account national options and the discretion of Member States within the framework of EU legislation.

The Banco de España, in its capacity as an NCA of a participating Member State, will cooperate with the ECB in the exercise of the tasks conferred on the latter by the SSM Regulation, in accordance with Article 6(8) of the Regulation. To this end, both the ECB and the national authorities will be subject to a duty of cooperation in good faith and to an obligation to exchange information in the exercise of their respective supervisory and investigatory powers.

DECISION-MAKING WITHIN THE SSM

The main decision-making bodies of the ECB, namely the Supervisory Board, the Steering Committee, the Mediation Panel and the Administrative Board of Review, are described below.

In accordance with the SSM Regulation, the Supervisory Board is responsible for planning and performing the supervisory tasks of the ECB. As an internal body of the ECB, it prepares draft decisions for adoption by the ECB Governing Council under the non-objection procedure (decisions are deemed to be approved unless the Governing Council objects within a specific period that may not exceed ten working days). The Governing Council may adopt or reject draft decisions, but it may not amend them.

The Supervisory Board comprises a Chair and a Vice-Chair, four ECB representatives and a representative of the NCA of each participating Member State.² Where the competent authority is not a national central bank, the Supervisory Board member may decide to include a representative from its central bank, in which case the two representatives together are considered as one member for the purposes of the voting procedure. The current Chair of the Supervisory Board is Danièle Nouy and the Vice-Chair is Sabine Lautenschläger, who is also a member of the ECB Executive Board. The Banco de España's representative on the Supervisory Board is the Deputy Governor.

The Supervisory Board shall establish a Steering Committee from among its members³ to support its activities and prepare its meetings. The Steering Committee is chaired by the Chair of the Supervisory Board and also includes the Vice-Chair of the Supervisory Board, one ECB representative and five NCA representatives. It shall have no more than ten members.

The Supervisory Board adopted its own Rules of Procedure on 31 March 2014, after the Rules of Procedure of the ECB were amended by the Governing Council regulating the interaction between the Governing Council and the Supervisory Board within the non-objection procedure. The Code of Conduct for the members of the Supervisory Board, approved on 12 November 2014, sets out the ethical standards required of them and procedures to deal with potential conflicts of interest.

In addition, a Mediation Panel⁴ has been established with a view to settling disagreements expressed by NCAs in relation to any objection of the Governing Council to draft decisions

² It currently has 25 members, now that Lithuania has joined the euro area. The number may vary, if new countries join the euro area or non-euro area Member States wish to participate under the terms of Article 7 of Regulation 1024/2013.

³ Article 26(10) of Regulation 1024/2013.

⁴ Article 25(5) of Regulation 1024/2013.

prepared by the Supervisory Board. The Mediation Panel has one member per participating Member State, chosen from among the members of the Governing Council and the Supervisory Board. In the first year of the Panel's operation, the Banco de España's representative will be the Governor (alternating annually with the Deputy Governor) as a member of the Governing Council.

Lastly, Regulation (EU) No 1024/2013⁵ provides for the creation of an Administrative Board of Review to carry out internal administrative reviews of the ECB's supervisory decisions. Any natural or legal person subject to supervision may request a review of a decision of the ECB that is addressed to that person or is of a direct and individual concern to that person.⁶ The Administrative Board shall review the request and adopt a non-binding opinion, based on which the Supervisory Board will submit a proposal to the Governing Council to maintain or amend the original decision. The Administrative Board of Review will have five independent members of high repute, with relevant knowledge and professional experience.⁷ The former Deputy Governor of the Banco de España, Javier Aríztegui, has been appointed a member of this Board.

COMPREHENSIVE ASSESSMENT OF THE BANKING SYSTEM

The SSM Regulation entered into force on 4 November 2013. Under the Regulation, the ECB was given one year — until 4 November 2014 — to complete the preparatory work for the SSM. The ECB formally assumed supervisory responsibilities on 4 November 2014. Prior to that date, and in accordance with Article 33 of Regulation (EU) No 1024/2013, the ECB carried out a comprehensive assessment of the significant banking groups in the euro area countries. The prime objectives of this comprehensive assessment were to increase the level of transparency regarding the condition of the largest European banks and to identify and implement any corrective action needed to strengthen their solvency.

This exercise, in which 128 euro area institutions participated (16 of which were Spanish⁸), consisted of two parts: an asset quality review and a stress test.

The asset quality review (AQR) involved an in-depth review of the balance sheets of the banks analysed. This process was decentralised, carried out with the assistance of leading audit firms and subject to strict centralised control from the ECB.

The AQR was performed in different phases, defined in the methodology developed by the ECB. The first phase consisted of selecting the asset portfolios to be reviewed in the year, ensuring that they made up at least 50% of each institution's exposure. Subsequently, a complex analysis was performed, in different stages, to determine whether the classification of financial instruments, provisioning levels and the valuation of specific assets and collateral was appropriate. This process, following stringent quality control in which the national authorities played a pivotal role, resulted in a series of adjustments to the level of CET1 capital, and these were taken into account to set the starting levels for the stress tests.

The second key part of the comprehensive assessment of the banking sector was the stress test, which consisted of a forward-looking simulation aimed at assessing the resili-

⁵ Article 24(2) of Regulation 1024/2013.

⁶ A request for review of an ECB decision by the Administrative Board of Review shall not affect the right to take legal action before the European Court of Justice.

⁷ Excluding current staff of the ECB or of NCAs or other national or EU institutions or agencies taking part in the tasks conferred on the ECB.

⁸ There were effectively 15 Spanish institutions, following the merger between Unicaja and CEISS in 2014.

ience of institutions in severe, but plausible, hypothetical stress scenarios. The outcome of the test provided an indication of possible capital needs in the event of certain risks materialising and identified areas where further supervisory action may be required.

The stress testing exercise was basically designed by the institutions themselves (bottom-up approach), applying EBA methodology,⁹ and was subject to strict quality assurance by the ECB and the national authorities. It assessed the foreseeable situation of institutions under two scenarios: a baseline and an adverse scenario. The horizon for the exercise was three years (2014-2016), taking the consolidated balance sheets at end-2013 as the starting point.

In order to ensure that the results of the AQR were taken into account in the stress tests, an additional “join-up” exercise was performed, centrally-led by the ECB, to integrate the results of the two phases.

Minimum thresholds were set for the different parts of the comprehensive assessment. In particular, banks had to comply with a minimum CET1 ratio of 8% in order to come successfully through the AQR and the baseline scenario of the stress tests. In the adverse scenario of the stress tests, the minimum threshold was 5.5%. If a bank fell short of any of these thresholds, it had two weeks to submit a capital plan detailing how the identified shortfall would be filled, and six to nine months to cover the capital shortfall.

The comprehensive assessment results published on 26 October 2014 showed that, with the methodology used, 25 institutions had a capital shortfall over the three thresholds set (for the AQR and the baseline and adverse scenarios of the stress test). Of these, 11 had increased their capital sufficiently between 1 January and 30 September 2014, and only 13 continued to have a net capital shortfall. The capital shortfall for the whole of Europe was approximately €24.6 billion (gross) and €9.5 billion (net).

Only one Spanish bank, Liberbank, came out slightly below one of the thresholds set, specifically in the asset quality review. However, the estimated shortfall was very small (€32 million) and, in the course of 2014, the bank had taken measures to strengthen its capital by more than was needed to cover its shortfall.

Lastly, it should be noted that Spanish institutions were those required to make the least adjustments as a result of the asset quality review: just 0.14% of their risk-weighted assets.

1.3 Supervision in the new european framework

SIGNIFICANT INSTITUTIONS

Given the enormous number of CIs established in the euro area, supervision by the ECB will depend on their size. Thus, the SSM Regulation distinguishes between significant and less significant institutions based on certain objective and subjective criteria. Accordingly, an institution will be deemed significant if:

- Its consolidated total assets exceed €30 billion.
- The ratio of its assets to the GDP of the country where it is established exceeds 20%, unless its consolidated total assets are below €5 billion.

⁹ The stress tests were conducted in all EU countries. However, the exercise was more complex in the euro area, as an exhaustive asset quality review was also performed and the results taken into account in the stress tests.

- It is considered significant by the NCA following confirmation of the CI's relevance by the ECB after a comprehensive assessment. Unless circumstances advise otherwise, the three largest credit institutions in each Member State shall be deemed significant.
- It has subsidiaries in more than one of the participating countries and its cross-border assets or liabilities represent a significant part of its total assets or liabilities.
- It has received or requested direct financial assistance from the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM).

The methodology applicable for determining significance (calculation criteria, definition of scope, etc.) is described in Part IV of the SSM Framework Regulation.

In the case of Spain, 15 institutions were considered significant at end-2014: Abanca, Banco Bilbao Vizcaya Argentaria (BBVA), Banco Financiero y de Ahorros (Bankia), Banco Mare Nostrum, Banco Popular Español, Banco Sabadell, Banco Santander, Bankinter, Caixabank, G.C. Cajamar, Ibercaja Banco, Kutxabank, Liberbank, Unicaja Banco¹⁰ and Catalunya Banc.¹¹ Each year, the ECB will review the status of each institution and, if necessary, will publish an updated list.

SUPERVISORY MODEL

Institutions deemed significant will be subject to direct supervision by the ECB. All others, the less significant institutions (LSIs), will be directly supervised by the NCAs and indirectly supervised by the ECB.

- Where the ECB exercises direct supervision (significant institutions), the Banco de España will assist by sending information, participating in on-site inspection teams and joint supervisory teams, preparing draft decisions to send to the ECB for consideration and implementing decisions adopted by the ECB.

The on-site inspections teams will essentially be national teams, along with the Head of mission who will usually be a member of the national authority. The ECB will ensure that the quality and the methods used are uniform throughout the euro area. Two specialised divisions – the Supervisory Quality Assurance Division and the Centralised On-site Inspections Division – have been created for this purpose.

The Joint Supervisory Teams (JSTs) are a cornerstone of the SSM for the supervision of significant institutions. A JST has been established to supervise each significant institution or significant consolidated group. Each JST will be composed of staff members from the ECB and the NCAs, working under the coordination of an ECB staff member – who may coordinate several JSTs – and assisted by one or more NCA sub-coordinators, particularly as regards employees appointed by the respective NCA. The ECB will be responsible for the establishment and composition of the JSTs. The NCAs will appoint one or more of their

¹⁰ Banco de Caja España de Inversiones, Salamanca y Soria, SA (Banco CEISS) was removed from the list after being acquired by Unicaja Banco.

¹¹ The number of significant Spanish institutions will drop to 14 when Catalunya Banc is merged into BBVA.

employees as JST members; the ECB may request that NCAs modify the appointments made.

The JSTs are responsible for the day-to-day supervision of institutions and for implementation of the activities envisaged in the annual supervisory examination programmes. The supervisory review and evaluation process which they carry out includes ongoing assessment of banks' risk profiles (through a uniform risk assessment and control system) and of liquidity adequacy and solvency (based on their internal assessment procedures). As a result, they propose verifications to on-site inspection teams and submit draft decisions to the Supervisory Board. Lastly, they also monitor correct compliance with the recommendations made.

- Where the Banco de España exercises direct supervision (less significant institutions), it will have to notify the ECB ex-ante of any material supervisory procedure and report on any other measures it adopts. Furthermore, as it is responsible for the functioning of the SSM and in order to ensure the consistency of supervisory outcomes within the SSM, the ECB may issue regulations, guidelines or general instructions that the Banco de España and other NCAs must follow in their direct supervision of LSIs and it may request that NCAs perform on-site inspections of those institutions or provide any information considered necessary on them.

The distribution of work explained in this section – based on the significance of CIs – will also apply to CIs established in a non-participating Member State which establish a branch or provide cross-border services in Spain or in another participating Member State.

Irrespective of the type of institution (significant or less significant), the ECB will be responsible for decisions on procedures relating to authorisation or withdrawal of authorisation and on procedures relating to qualifying holdings.

INTERNAL ORGANISATION

The ECB has established four dedicated Directorates General (DGs) to perform the supervisory tasks conferred on the ECB in cooperation with NCAs.

DGs Micro-Prudential Supervision I and II are responsible for the direct day-to-day supervision of significant institutions. DG Micro-Prudential Supervision I is responsible for supervision of the most significant groups (around 30, of which four¹² are Spanish) and DG Micro-Prudential Supervision II for the remaining significant groups (around 90, of which 11 are Spanish).

DG Micro-Prudential Supervision III is responsible for indirect supervision of the less significant institutions supervised by the NCAs (around 3,500, of which 87 are Spanish¹³) and oversees the implementation of common and harmonised supervisory practices. The Banco de España conducts direct supervision of these institutions.

DG Micro-Prudential Supervision IV performs specialised and horizontal tasks in respect of all credit institutions under the SSM's supervision. It engages in specific activities in the areas of supervisory quality assurance, policies, methodologies and standards, on-site

¹² Banco Santander, BBVA, Banco Financiero y de Ahorros (Bankia) and Caixabank.

¹³ Including 11 branches of credit institutions of EU countries not participating in the SSM.

inspections, authorisations, sanctions, risk analysis, model validation and crisis management.

Additionally, a dedicated Secretariat service supports the activities of the Supervisory Board, helping it prepare meetings and resolve related legal issues.

Furthermore, the supervisory tasks of the SSM are supported by the ECB's shared services, such as human resources, information systems, legal and statistical services, etc.

One key difference from the traditional supervisory model in Spain is that the SSM model draws a distinction between monitoring and inspection activities. Under the SSM model, these tasks are assigned to different teams, whereas at the Banco de España the analysis, monitoring and inspection of institutions had traditionally been performed by the same teams, the so-called inspection operating divisions. In order to facilitate interaction between the two authorities, the Directorate General Banking Supervision was reorganised, creating a structure that mirrors that of the ECB. Thus the present Directorate General Banking Supervision departments replicate the four Directorates General of the SSM. One of the main changes was precisely to concentrate all the teams responsible for inspection of significant institutions in Supervision Department IV, replicating the SSM structure.

With the entry into force of the SSM, the high level of technical expertise of the Banco de España's staff was recognised, with around 100 experts joining the new SSM, including one of the four directors general and two of the seven deputy directors general. In 2014 a large number of Banco de España supervision experts joined the ECB, in a much higher proportion than that which would correspond to Spain based on the relative weight of Spanish institutions in the SSM countries overall.

SUPERVISORY MANUAL - GUIDE

One of the key challenges facing the SSM is managing the different "supervision cultures" in the participating Member States. In order to mitigate the risks arising from this fragmentation at source, the ECB has developed a single supervisory manual for internal use, which describes the processes, procedures and methodology for the supervision of significant and less significant institutions. In addition, under the Interinstitutional Agreement between the European Parliament and the ECB, in September 2014 a Guide to Banking Supervision was published, which explains the functioning of the SSM and provides guidance on its supervisory practices.¹⁴ The Guide is aimed at supervised institutions and the general public.

SUPERVISORY FEES

The introduction of supervisory fees is also a key change for Spanish institutions.¹⁵ The purpose of the fees – which will be levied on significant and less significant institutions established in participating Member States and on branches established in those Member States by CIs belonging to non-participating Member States – is to recoup the costs incurred by the ECB in the exercise of its supervisory tasks. The fees will be calculated at the highest level of consolidation within participating Member States (excluding subsidiaries established in non-participating Member States) and will be based on objective criteria relating to the importance and risk profile of the CI concerned. In order to calculate the fee payable by each institution, the ECB's annual expenditure in relation to its supervisory tasks is split into two parts: the amount to be recovered from significant institutions and the amount to be recovered from less significant institutions. For each group, the fee will

¹⁴ See: <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssmguidebankingsupervision201409en.pdf>.

¹⁵ Article 30 and Whereas clause number 77 of Regulation 1024/2013, and Decision ECB/2015/7.

have a fixed and a variable component: the fixed component will cover 10% of the expenses relating to each group of institutions, and the variable component will be allocated based on the importance of each institution by total assets and risk profile (risk exposure), with both factors equally weighted. The fee will be paid in advance in the final quarter of the year, based on the ECB's estimated expenditure for that year, and will be subsequently adjusted in the event of any changes.

PENALTIES REGIME

As for the penalties regime,¹⁶ the SSM Regulation provides that the ECB will be competent for imposing pecuniary penalties on legal persons as a result of any breach of directly applicable European law (regulations and decisions).

In the case of other penalties – for breach of European law transposed into national legislation or penalties for individuals performing senior management functions – the ECB may require that the Banco de España and other NCAs initiate the corresponding penalty procedures. In any event, the penalties applied by the ECB and by NCAs must be effective, proportionate and dissuasive.

LANGUAGE REGIME

Under Article 24 of the ECB's Framework Regulation, any document sent to the ECB by a supervised credit institution or other natural person individually subject to ECB supervisory procedures may be drafted in any of the official EU languages.

The ECB, the supervised credit institutions and any other natural or legal person individually subject to ECB supervisory procedures may agree to use one official EU language in their written communication. If a credit institution revokes that agreement, the change will only affect the parts of the ECB supervisory procedure that have not yet been carried out. In the case of Spain, all supervised credit institutions have initially opted to use English in their written communications.

If participants in an oral hearing ask to be heard in an official EU language other than the language of the ECB supervisory procedures, advance notice must be given to the ECB so that the necessary arrangements can be made.

COMMUNICATION BETWEEN THE SSM AND SUPERVISED INSTITUTIONS

To maintain efficient communication between the supervisor and the supervised institutions, irrespective of the duty of cooperation in good faith and the obligation to exchange information between the ECB and the NCAs, it was agreed that, as a general rule, the ECB will act as the point of entry for receiving ad hoc reports, certain requests and authorisations, waivers, etc., which are within the scope of the tasks assigned to it.

The Banco de España and the other NCAs will act as the point of entry for communications on requests for licenses and in processes relating to qualifying holdings, European passports, assessments of whether managers are fit and proper, and for regular reporting of supervisory information and financial statements.

1.4 Supervisory competences of the Banco de España under the new framework

As explained in previous sections, the entry into force of the SSM involves a reallocation of supervisory responsibilities from the national central bank to the ECB. However, this reallocation of competences does not entail a decrease in the workload of the Banco de España, whose supervisory functions remain key for fulfilling financial stability objectives.

¹⁶ Article 18 of Regulation 1024/2013.

One. The Banco de España participates in the supervision of significant Spanish banks through the joint supervisory teams

The joint supervisory teams (JSTs) are a cornerstone of the supervision of significant institutions. They are made up of staff from the ECB and the NCAs and carry out an essential part of supervisory tasks. They are each headed by a coordinator appointed by the ECB. The national coordinator plays a key role in the JSTs and will be responsible, inter alia, for supporting the coordinator in the supervision of significant credit institutions, coordinating ongoing monitoring activities at a national level, helping to prepare and review supervisory plans and to make key decisions, reporting to the coordinator on procedures that fall within the competence of the Banco de España and putting forward the points of view of the Banco de España.

The importance of the role played by the national authorities is reflected in the fact that they contribute 75% of the members of the JSTs.

This arrangement allows the SSM to take advantage of the national authorities' knowledge of the institutions and of their resources and years of experience.

Two. The Banco de España plays an essential part in on-site inspections of Spanish significant institutions

The ECB's supervisory model establishes a clear divide between ongoing monitoring and inspection activities. The inspection teams operate under the mandate and guidelines of the ECB and are made up primarily of national supervisors, headed by a manager who is generally proposed by the national authority.

Three. The Banco de España maintains its competence in the supervision of less significant institutions

The direct supervision of less significant credit institutions (LSIs) continues to lie with the Banco de España and other national authorities, although it must be exercised in accordance with the protocols and standards established by the ECB and the Banco de España must inform the ECB of the results of its activities. The ECB, if it deems necessary, may assume the direct supervision of an LSI.

Four. The Banco de España participates in the governing bodies of the SSM

The Banco de España is represented on the ECB's Governing Council by the Governor and on the Supervisory Board by the Deputy Governor. As a member of these collegiate bodies, the Banco de España participates in decisions not only on Spanish banks but also on other European banks.

In general, in the normal operation of the SSM, draft decisions are prepared by the JSTs, although the regulations envisage that the Banco de España can submit decisions directly to the ECB. However, in the so-called "common procedures" (acquisition of qualifying holdings, granting of banking licenses and withdrawal of licences), draft decisions must be submitted by the national authority.

Given that, in accordance with the preceding paragraph, the representatives of the Banco de España participate in decisions on institutions in other SSM countries, the Banco

de España will have to perform general monitoring work on institutions in those countries in order to contribute well-founded opinions in the decision processes affecting those institutions. A specialist unit has been created for this purpose at the Banco de España.

Five. The Banco de España participates in the networks organised by the SSM for horizontal functions

In order to channel the participation of the national authorities in the horizontal functions developed by SSM Directorate General IV, networks of experts in each of the areas mentioned have been created, in which the representatives of the Banco de España play an active part.

Six. The Banco de España participates in administrative procedures relating to significant institutions

For practical purposes, four types of procedures may be identified:

- a) Common procedures, defined as such in the SSM Regulation: granting of banking licences, withdrawal of licenses and acquisition of qualifying holdings. In these cases, it is the national authority that must submit a specific draft decision to the ECB, both for significant and less significant institutions. However, intermediate monitoring by the ECB is envisaged, specifically by the JSTs and horizontal functions.
- b) Other authorisations included among the responsibilities of the ECB's horizontal function: granting of passports and assessment of the fit and proper character of the members of credit institutions' management bodies.
- c) Other prudential procedures envisaged in EU regulations or national law arising from Directives. These are included in the scope of the SSM, meaning that the work will be assumed by the JSTs. For instance, authorisation to early redemption of hybrid instruments eligible as own funds.
- d) All other prudential procedures required by national regulations. These are excluded from the scope of the SSM and, therefore, are the responsibility of the Banco de España, without prejudice to the need for coordination. For instance, issue of a report by the Banco de España prior to authorisation of structural changes.

Seven. Supervision of areas not transferred to the SSM relating to supervision of credit institutions

The supervision of certain key areas of banking activity, which is traditionally or may be exercised by the prudential supervisory authorities, has not been assumed by the SSM and will, therefore, continue to be exercised by the national authorities, both for significant and less significant institutions. In this respect, the Banco de España will continue to exercise supervisory powers (or to cooperate with other Spanish authorities) in the areas of prevention of money laundering and terrorism financing, consumer protection and, partially, control of the financial markets.

- a) *Prevention of money laundering.* The SSM assumes no functions in this respect, so the supervision of procedures for the prevention of money laundering continues to pertain to the national authorities. In Spain, the authority responsible for supervising and inspecting compliance with prevention of money laundering obligations and for adopting the necessary measures in the event of noncompliance is SEPBLAC (Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias). The Banco de España cooperates in activities in this sphere, in accordance with the co-operation arrangement established in Law 10/2010 of 28 April 2010 and in the agreement signed with SEPBLAC in 2013.

- b) *Consumer protection.* This is an area that should remain within the competence of the national competent authorities and has attracted growing interest in recent years. In 2014 the Banco de España created a Division for Oversight of Institutions' Conduct, belonging to the General Secretariat, to strengthen supervision in this area and separate it at an organisational level from the Directorate General Banking Supervision, allowing it to use supervisory approaches more appropriate to the goals pursued.

- c) *Financial markets.* Although the CNMV (Comisión Nacional del Mercado de Valores) holds the main supervisory powers over financial markets, the Banco de España exercises some powers in this respect. In particular, it supervises credit institutions' activities related to securities markets, certain aspects of the internal organisation of issuers or participants in securities markets that fall under its supervision and certain aspects of the rules established relating to the regulatory framework of the mortgage market and mortgage market issues. The Banco de España must also cooperate with the CNMV and take part in the procedures envisaged where the CNMV exercises its powers in respect of credit institutions and other institutions supervised by the Banco de España.

- d) *Macro-prudential instruments.* The national designated authorities in this area will maintain their competence in respect of macro-prudential instruments, although close cooperation with the ECB, and with the other pertinent European authorities, such as, for example, the European Systemic Risk Board (ESRB), will be essential. In the case of the instruments envisaged in European legislation, and in particular in the CRR/CRD (such as the counter-cyclical capital buffer or systemic risk buffer), the SSM Regulation provides that the national authorities have the power to activate those instruments. When they adopt any such measures they must notify the ECB and, where appropriate, other European institutions. However, the ECB will have the power to impose stricter measures than those applied by the national designated authorities if it deems appropriate.

- e) *Resolution powers.* The SSM Regulation establishes that the ECB will not assume resolution powers over credit institutions. According to Law 11/2015 on the recovery and resolution of credit institutions and investment firms, the Banco de España will be the preventive resolution authority for credit institutions, and the FROB (Fund for the Orderly Restructuring of the Banking Sector) the executive resolution authority, without prejudice to the powers exercised by the Single Resolution Board pursuant to Regulation (EU) No 806/2014.

- f) *Sanctioning power.* The ECB has sanctioning power over significant credit institutions in the case of breach of directly applicable European law, when the penalties applicable are pecuniary penalties. The ECB will also have sanctioning power both over significant and less significant credit institutions in the case of breach of ECB regulations or decisions. In all other cases the Banco de España will continue to exercise sanctioning powers.

Eight. Supervisory powers that the Banco de España maintains over institutions other than credit institutions

The Banco de España maintains all its supervisory powers over other financial institutions or other institutions with functions related to the financial sector. Specifically:

- *Credit financial intermediaries.* These institutions engage, inter alia, in lending activities, including consumer credit, mortgage lending and financing of commercial transactions, but excluding taking of deposits and were, until 2014, classed as credit institutions. Pursuant to Law 5/2015 of 27 April 2015 on the promotion of business financing, which will be the object of subsequent implementing regulations, credit financial intermediaries will be subject to prudential regulations and to a supervision regime based on those applicable to credit institutions.
- *Payment institutions.* The legislation grants the Banco de España supervisory powers over payment institutions, which are institutions authorised to perform payment services such as transfers, direct debits or card payments.
- *Electronic money institutions.* The Banco de España has supervisory powers over institutions authorised to issue electronic money that is accepted as a means of payment. It is also responsible for control and inspection of the activity of these institutions.
- *Currency-exchange bureaux.* The Banco de España has certain supervisory powers over these establishments.
- *Mutual guarantee and reguarantee companies.* These companies provide guarantees to make it easier for SMEs to access bank lending. The Banco de España has the power to supervise, control and inspect them.
- *Appraisal companies.* The Banco de España exercises supervisory powers over the statutory aspects of licensed appraisal companies and over their reports for credit institutions or other reports required under mortgage market legislation.
- *Banking foundations.* The Banco de España exercises limited supervision over these foundations to ensure that they and the credit institutions in which they have holdings are soundly and prudently managed.
- *SAREB.* The Banco de España has supervisory powers over SAREB, the asset management company for assets arising from bank restructuring created, in the context of restructuring of the Spanish financial sector, to receive troubled real estate assets, as to its compliance with its exclusive corporate purpose, with the requirements for its assets and liabilities and with transparency and good governance rules.

- *Investigation of unauthorised activities.* At the request of the Ministry of Economic Affairs and Competitiveness, the Banco de España may gather information or conduct inspections to investigate the financial activities of natural or legal persons that are not inscribed in any of the administrative registries established by law for financial institutions.