

3 PRUDENTIAL SUPERVISION OF OTHER INSTITUTIONS

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3.1 Introduction

As indicated earlier, the start-up of the SSM entailed the reallocation of supervisory responsibilities from the national sphere to the ECB. However, the Banco de España maintains all supervisory functions over institutions other than credit institutions that provide services or perform functions related to the financial sector: payment institutions, electronic money institutions, specialised lending institutions, mutual guarantee and reguarantee companies, currency-exchange bureaux and appraisal companies. In addition, the Banco de España exercises limited supervisory functions over banking foundations and Sareb and functions related to investigations into encroachment by unauthorised operators.

The following sections in this chapter refer, first, to the supervision of the above-mentioned institutions in 2014, with details of the requirement and observation letters sent to them as a result of that activity. The following section refers to authorisations and procedures and the last section to the procedures followed in exercise of the sanctioning power.

3.2 Supervisory activity

In 2014 a total of 13 inspections (see Table 3.1) were conducted, mainly at specialised lending institutions and payment institutions.

In addition, a further 268 steps were taken relating to periodic general monitoring, review of audit reports and yearly review of internal capital adequacy assessment reports.

Following the supervisory actions, 10 letters were sent to institutions containing 18 requirements and recommendations, 39% of which related to credit risk and internal management and control policies (see Tables 3.2 and 2.4).

3.3 Authorisations and other procedures

3.3.1 GRANTING AND WITHDRAWAL OF LICENCES

The Banco de España is the competent authority for authorising and withdrawing authorisation from specialised lending institutions and currency-exchange bureaux. It also issues the mandatory report on the authorisation of electronic money institutions or branches in Spain of non-EU electronic money institutions, of payment institutions or branches in Spain of non-EU payment institutions and of mutual guarantee companies. In addition, it also officially recognises appraisal companies so that their valuations have effect in the cases envisaged in Article 1 of Royal Decree 775/1997 of 30 May 1997 on the rules governing the approval of appraisal services and companies.

These companies are recorded in the corresponding official registers which are kept by the Banco de España.

In 2014 two specialised lending institutions were added to the registers and three were removed, one electronic money institution and one payment institution were added and four payment institutions were removed, one currency-exchange bureau was added and six appraisal companies were removed.

3.3.2 QUALIFYING HOLDINGS

The Banco de España may object to qualifying holdings being taken in electronic money institutions and officially recognised appraisal companies, under Article 21 of Electronic Money Law 21/2011 of 26 July 2011 and Article 3 ter of Mortgage Market Law 2/1981 of 25 March 1981.

ON-SITE SUPERVISORY ACTIONS AT OTHER INSTITUTIONS. INSPECTIONS

TABLE 3.1

| Number | Supervisory actions | | | |
|----------------------------------|---------------------|-----------|-----------|-----------|
| | 2011 | 2012 | 2013 | 2014 (a) |
| Specialised lending institutions | (b) | (b) | (b) | 4 |
| Appraisal companies | 3 | 4 | 2 | — |
| Mutual guarantee companies | 8 | 6 | 1 | — |
| Payment institutions and other | — | — | 10 | 8 |
| Currency-exchange bureaux | 6 | 5 | — | — |
| Electronic money institutions | — | 5 | 2 | — |
| Sareb | — | — | — | 1 |
| TOTAL | 17 | 20 | 15 | 13 |

SOURCE: Banco de España.

- a** Of these actions, 3 were under way at year—end, consisting of inspections at payment institutions.
- b** In 2011, 2012 and 2013 SLIs were credit institutions. The entry in force on 1 January 2014 of Royal Decree-Law 14/2013 of 29 November 2013 abolished the credit institution status of SLIs. The proceedings against these institutions in those years are shown in Table 2.2.

SUPERVISORY ACTIVITY. LETTERS SENT TO OTHER INSTITUTIONS

TABLE 3.2

| Number | 2011 | 2012 | 2013 | 2014 |
|--------------------------------------|----------|----------|----------|-----------|
| | (a) | (a) | (a) | |
| Specialised lending institutions (a) | (a) | (a) | (a) | 1 |
| Appraisal companies | — | — | — | — |
| Mutual guarantee companies | 1 | 2 | — | 2 |
| Payment institutions | — | — | 5 | 5 |
| Currency-exchange bureaux | — | 1 | — | — |
| Electronic money institutions | — | 1 | 1 | — |
| Sareb | — | — | — | 2 |
| TOTAL | 1 | 4 | 6 | 10 |

SOURCE: Banco de España.

- a** In 2011, 2012 and 2013 SLIs were credit institutions. The entry in force on 1 January 2014 of Royal Decree-Law 14/2013 of 29 November 2013 abolished the credit institution status of SLIs. The information on CFIs for those years is shown in Table 2.3.

In 2014 three procedures were handled relating to qualifying holdings in appraisal companies.

3.3.3 CROSS-BORDER ACTIVITY

The issuance of electronic money and the provision of payment services, including through an agent, by Spanish electronic money institutions and payment institutions in non-EU countries require the authorisation of the Banco de España, pursuant to Article 13 of Electronic Money Law 21/2011 of 26 July 2011 and Article 11 of Payment Services Law 16/2009 of 13 November 2009. These rules also require that Spanish electronic money institutions and payment institutions inform the Banco de España if they engage in activities in EU Member States.

Branches and agents of foreign electronic money institutions and payment institutions shall be recorded in the corresponding registers of the Banco de España.

In 2014 the Banco de España handled two procedures relating to change in conditions of branches of Spanish payment institutions and 14 procedures relating to operation by Spanish payment institutions in EU Member States under the freedom to provide services, six of which related to new activities and eight to changes in conditions. It also handled 26 procedures relating to registrations and changes in agent networks of Spanish payment institutions and electronic money institutions abroad.

Regarding foreign institutions in Spain, in 2014 two new branches of foreign EU payment institutions were recorded in the Official Registers of the Banco de España, along with one branch of a foreign EU electronic money institution and one change of name. In addition, two registrations and three changes in conditions were recorded in the case of agent networks of EU payment institutions. Turning to institutions operating under the freedom to provide services, particularly noteworthy are the 44 EU payment institutions added to the registers and the 10 changes in conditions recorded, along with the 11 electronic money institutions added and the six changes recorded.

3.3.4 SUITABILITY

The Banco de España analyses the suitability of directors, managing directors and similar officers and of other persons responsible for key functions and control functions at these institutions in the same cases as indicated in section 2.3.4 above, since the sectoral legislation of these institutions refers to the suitability assessment criteria and procedures established in banking legislation.

In 2014 the Banco de España prepared a total of 130 suitability assessment files in respect of these institutions, 62 of which related to specialised lending institutions, 44 to electronic money institutions, payment institutions and currency-exchange bureaux, and 24 to appraisal companies.

3.3.5 PROCEDURES RELATING TO OWN FUNDS

The Banco de España is responsible for supervising the solvency of specialised lending institutions, electronic money institutions, payment institutions and mutual guarantee companies, which may entail handling authorisations or specific procedures. The Banco de España may also participate in the adoption of joint decisions on capital adequacy, as the supervisor of these institutions when they belong to a consolidated group of credit institutions, as established in Article 20 of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms.

In 2014 one procedure was handled relating to the own funds of a mutual guarantee company.

3.3.6 AMENDMENTS OF ARTICLES OF ASSOCIATION

The regulations governing the supervised institutions stipulates that they must send their articles of association in force at any given time to the Banco de España for inclusion in the Special Register of Articles of Association, once any necessary administrative authorisation has been obtained.

Of the total entries (202) made in that Special Register, 31.7% refer to institutions other than credit institutions. Most noteworthy are the numbers relating to specialised lending institutions (15), payment institutions (23) and officially recognised appraisal companies (19).

3.4 Exercise of the sanctioning power

The sanctioning power exercised over institutions which, although not credit institutions, are subject to supervision by the Banco de España is a necessary complement to the supervisory activity, intended to act as a means of ensuring compliance with the organisational and disciplinary regulations applicable to certain types of institutions.

This sanctioning power also extends to persons seeking 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 those institutions or any other name that may be confused with them.

3.4.1 PROCEEDINGS INITIATED IN 2014

In 2014 the Executive Commission of the Banco de España resolved to initiate five sanctioning proceedings, as described below.

First, sanctioning proceedings were initiated against a company and its directors in view of the fact that the institution had provided payment services without the corresponding authorisation.

In the second case, the Executive Commission resolved to initiate the corresponding proceedings against a payment institution and its board members for alleged breach of the applicable sectoral legislation relating to: i) the obligation to safeguard the funds of users of payment services; ii) accounting; iii) minimum own funds; iv) the obligation to submit information to the Banco de España; and v) internal control.

The Executive Commission of the Banco de España also resolved to initiate proceedings against a foreign company for using the restricted term “banco” without having obtained the necessary authorisation from the Minister for Economic Affairs and Competitiveness and without being recorded in the Special Register of the Banco de España.

In the fourth case, sanctioning proceedings were initiated against a mutual guarantee company, and against its directors and managers, as the result of an alleged deficit of own funds estimated below 80% of the minimum level required by the applicable rules.

Lastly, the Executive Commission resolved to initiate the corresponding proceedings against a payment institution and its sole director for alleged breaches of: (i) the obligation to have the annual accounts audited; (ii) accounting legislation; (iii) the obligation to safeguard the funds of users of payment services; and (iv) the requirements for maintenance of the authorisation to pursue the activity. The disciplinary proceedings were subsequently extended to include the former sole director of the payment institution.

3.4.2 PROCEEDINGS RESOLVED IN 2014

In 2014 four sanctioning proceedings, all initiated in 2013, were concluded by decisions to impose sanctions.

These decisions imposed sanctions on:

- An electronic money institution and its board members, for the commission of various very serious or serious infringements. Particularly noteworthy are the sanctions of withdrawal of the institution’s authorisation and disqualification for some of its directors from serving as a director or senior manager at any electronic money institution or financial sector institution.

PROCEEDINGS INITIATED BY THE BANCO DE ESPAÑA AGAINST OTHER INSTITUTIONS

TABLE 3.3

| Number | Institutions | 2011 | 2012 | 2013 | 2014 |
|--|--------------|----------|----------|----------|----------|
| Specialised lending institutions (a) | | (a) | (a) | (a) | — |
| Payment institutions | | — | 2 | 3 | 2 |
| Unauthorised payment institutions | | — | 1 | 1 | 1 |
| Appraisal companies | | — | — | — | — |
| Currency-exchange bureaux and money transfer agencies | | — | 1(b) | — | — |
| Use of names or pursuit of activities reserved for credit institutions | | 1 | — | — | 1 |
| Unauthorised currency-exchange bureaux | | — | — | — | — |
| Appraisal company revocations | | — | — | — | — |
| Currency-exchange bureaux revocations | | 2 | — | — | — |
| Electronic money institutions | | — | — | 1 | — |
| Mutual guarantee companies | | — | — | — | 1 |
| TOTAL | | 3 | 4 | 5 | 5 |

SOURCE: Banco de España.

- a In 2011, 2012 and 2013 SLIs were credit institutions and no proceedings were brought against them in those years. The entry in force on 1 January 2014 of Royal Decree-Law 14/2013 of 29 November 2013 abolished the credit institution status of SLIs.
- b Proceeding recommenced following a stay to avoid prejudicing criminal proceedings.

PROCEEDINGS RESOLVED AGAINST OTHER INSTITUTIONS, BY TYPE OF INFRINGEMENT

TABLE 3.4

| Number | | Sanctioning procedures | | | | | | | | | | Non-sanctioning proceedings | |
|---|---|------------------------|-------|----------------------------------|---------------------------|----------------------|-------------------------------|--|--|-----------------------------------|---------------------|-----------------------------|---|
| Numbers of proceedings | Infringement | | | Against supervised institutions | | | | Intruders | | | Revocation | | |
| | Very serious | Serious | Minor | Specialised lending institutions | Currency-exchange bureaux | Payment institutions | Electronic money institutions | Use of names or pursuit of activities reserved for credit institutions | Unauthorised currency-exchange bureaux | Unauthorised payment institutions | Appraisal companies | Curr. Exch. Bureaux | |
| | Against institutions other than credit institutions | | | | | | | | | | | | |
| 2011 | 4 | 1 | 2 | 4 | (a) | 1 | — | — | 1 | 2 | — | — | 2 |
| 2012 | 1 | — | 1 | — | (a) | — | 1 | — | — | — | — | — | — |
| 2013 | 4 | 7 | 3 | — | (a) | 1 | 2 | — | — | — | 1 (b) | — | — |
| 2014 | 4 | 5 | 7 | 1 | — | — | 2 | 1 | — | — | 1 | — | — |
| Against owners of qualifying holdings and directors | | | | | | | | | | | | | |
| 2011 | 5 | 6 | 7 | — | (a) | 5 | — | — | — | — | — | — | — |
| 2012 | 1 | — | 1 | — | (a) | — | 1 | — | — | — | — | — | — |
| 2013 | 6 | 9 | 3 | — | (a) | 4 | 2 | — | — | — | — | — | — |
| 2014 | 10 | 16 | 17 | — | — | — | 2 | 7 | — | — | 1 | — | — |

SOURCE: Banco de España.

- a In 2011, 2012 and 2013 SLIs were credit institutions, so the information on resolution of sanctioning proceedings against these institutions is shown in Table 2.9. The entry in force on 1 January 2014 of Royal Decree-Law 14/2013 of 29 November 2013 abolished the credit institution status of SLIs.
- b The only sanctioning proceeding brought against two institutions simultaneously.

- A payment institution and its sole director, for the commission of two very serious and one serious infringement.
- A payment institution and its sole director. The former for the commission of four serious infringements and a minor one, and the latter for the commission of four serious infringements.
- A company and its sole director, for the commission of a very serious infringement, as the company was deemed to be exercising the activity of a payment institution without the required authorisation and without being recorded in the relevant register.