

4 OVERSIGHT OF INSTITUTIONS' CONDUCT

4 OVERSIGHT OF INSTITUTIONS' CONDUCT

4.1 Introduction

The increasing importance and social impact of financial institutions' relations with their customers – of great significance for the orderly functioning of the market for banking services and a priority issue for international banking regulatory and supervisory agencies – lay at the root of the assignment to the Market Conduct and Claims Department of the Banco de España's General Secretariat, with effect from 1 October 2014, of powers in the area of supervision of market conduct and information transparency. The assumption of these new functions, previously performed by the Directorate General Banking Supervision, meant that the department had to be restructured, with the creation¹ of a new Division for Oversight of Institutions' Conduct.

The setting up of this new division is another step within the framework of the Banco de España's strategy to ensure that financial services users are treated appropriately by institutions, to promote good market practice, to offer effective conflict resolution systems and to promote financial education. The department is authorised to interact directly with institutions when exercising its functions of monitoring, supervising and overseeing market conduct and compliance with transparency regulations.

It should be noted that the Banco de España, like the other national supervisory authorities participating in the Single Supervisory Mechanism (SSM) fully retains its supervisory powers in relation to the activity of the institutions entered in its official registers (as it also does (see Chapter 3) in the case of its prudential supervision ones in respect of other financial institutions or those relating to the financial sector other than credit institutions, such as payment institutions, electronic money institutions, specialised lending institutions, mutual guarantee and reguarantee companies, currency-exchange bureaux and appraisal companies).

In addition, foreign institutions equivalent to the ones mentioned in the previous paragraph that are authorised to operate in Spain without a permanent establishment are obliged to respect, in their business in Spain, the regulatory and disciplinary rules that may be applicable to them in relation to market conduct.

4.2 Supervisory strategy

The exercise of the new functions of surveillance and control assumed by the Market Conduct and Claims Department since the start of the final quarter of 2014 is governed by some general lines of action that encapsulate the strategy guiding supervisory activity in the area of market conduct. These lines of action are, inter alia, the following:

- Control of the appropriate functioning of institutions' customer service departments and/or ombudsmen, with a view to their acting as an efficient filter satisfying the legitimate aspirations of their customers, with the resulting general benefits in terms of protection of the consumer and of the reputation of the institution itself and for the system as a whole.

¹ The Executive Commission of the Banco de España adopted, on 6 June 2014, a resolution to restructure the Market Conduct and Claims Department, by setting up a new Division for Oversight of Institutions' Conduct and, within the latter, a Surveillance and Inspection Unit. This decision supplements the creation, in June 2013, of the Market Conduct and Claims Department, with the purpose of bringing under a single roof the Banco de España's competences in relation to market conduct, information transparency, good practices, the publication of information, consumer information, financial education, conflict resolution and other similar matters, which are all very closely interrelated.

- Verification of the governance of banking products, with the aim of avoiding the potentially damaging effects of inappropriate marketing (arising from the design of the products, their marketing to groups for whom they are inappropriate, the use of inappropriate sales incentives, etc.).
- Strengthening control of the advertising of bank products, in order to identify any areas with transparency-related shortcomings, in respect of which decisions and actions need to be taken.
- Analysing and checking the usual procedures for action by institutions in relation to certain operations in respect of which uncertainty has arisen regarding the correct application of transparency and customer protection regulations.
- The appropriate reaction, in terms of time and form, to information or allegations received from other public authorities or agencies, for which purpose the necessary clarifications must be obtained from the institutions and any actions deemed appropriate taken. The public authority or agency concerned shall be advised of the actions initiated and their results.

4.3 Supervisory activities

The activities carried out by the Market Conduct and Claims Department in relation to the oversight of institutions' conduct are, in procedural terms, similar to those performed in the area of prudential supervision. They include off-site monitoring, on-site inspection, both at the head office and branch network of the supervised institutions, and the adoption of any corrective measures that may be deemed necessary, such as the formulation of recommendations and requirements, or a proposal for the initiation of sanctioning proceedings.

A key aspect of the exercise of these supervisory powers is the determination and constant updating of institutions' conduct profile, which provides a uniform and structured framework for their supervisory classification. This allows action priorities to be determined and, consequently, supervisory resources to be allocated, and it serves as a basis, along with other information available, for the adoption of the relevant supervisory measures.

The off-site supervisory monitoring work also contributes very significantly to the continuous updating of institutions' conduct profile. This monitoring is carried out by processing the information available on institutions, which, among other sources, comes from the periodic statements they send to the Banco de España, the meetings held with their representatives, the allegations made against them by individuals or other public institutions, and analysis of the claims their customers file with the Banco de España.

This latter source – the complaints and claims filed with the Banco de España – offers highly relevant indications of the conduct of institutions in relation to compliance with transparency and customer protection regulations and respect for good financial practice and conduct. In 2014 a decline was recorded, relative to the previous year, in the number of claims received in the Market Conduct and Claims Department, filed by individuals and businesses in relation to the supply of products and banking services, which gathered pace as the year progressed.

Thus, in 2014 as a whole, approximately 29,500 claims were received, 15% fewer than in 2013. This general decline was matched by a similar fall in the claims arising from the ap-

plication of the limits on the interest rate envisaged in mortgage agreements (known as “floor clauses”), which totalled 15,610.

In relation to the monitoring and control of the advertising of banking services and products, a highly relevant activity for the determination of institutions’ conduct, there was a notable number of requirements for the withdrawal or rectification of press and Internet advertisements. These totalled 132 in 2014, all of which were complied with.

In the exercise of its new supervisory powers in the area of bank transparency and customer protection, the Market Conduct and Claims Department, between 1 October 2014 (the date on which, as mentioned above, they were assumed by the department) and the end of the year, initiated 18 actions to check and monitor supervised institutions and one on-site inspection.

These actions had different origins or causes. In some cases they were initiated as a result of facts made known to the department by other units or departments of the Banco de España or other public institutions, private associations or individuals and, in others, because certain conduct or types of relations with customers that warranted the action initiated were inferred from a detailed analysis of claims filed with the Banco de España against supervised institutions.

These actions led, among other communication exchanges, to the sending of three letters to an equal number of institutions formulating observations or requests for information, and another letter to an institution notifying it of five requirements resolved upon by the Executive Commission of the Banco de España.

In December 2014 an inspection of a credit financial intermediary was initiated to verify if certain facts described in allegations by a public agency amounted to the infringement of non-compliance with the regulations on transparency and customer protection as regards advertising and the pre-contractual and contractual information supplied to its customers.

The supervisory activities carried out off-site analysed various supervised institutions to check their compliance with specific obligations in relation to information transparency, good practices and customer protection. Specifically, the activities included the following aspects:

- Actions to check compliance with the Code of Good Practices contained in the annex to Royal Decree-Law 6/2012 of 9 March 2012 on urgent measures to protect mortgage debtors, as a result of allegations made by various public institutions against various credit institutions.
- Verification of diverse matters relating to bank transparency and customer protection in the area of consumer credit, as a consequence of allegations made by a public agency against a number of lenders.
- Checking that the agreements for and the opening of current accounts by a credit institution were correct.
- Monitoring and control of the return to compliance with the obligations of certain institutions to file with the Banco de España certain statements on aspects of transparency.

- Verification of the control policy established by institutions for access by their customers to their positions with the institution using internet banking.
- Checking of the appropriate application of and compliance with contractual clauses in mortgages, which led to the sending of a letter of requirements to an institution, as mentioned above.