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SUPERVISION OF INSTITUTIONS' CONDUCT



CULTURE OF CONDUCT

The purpose of the supervision of conduct is to verify whether institutions are in line with transparency and customer protection legislation and also to transform their culture of conduct



ADVERTISING AND REMOTE MARKETING

Analysis of advertising activity for banking products and services, advertisements, and internal procedures and controls Supervisory focus on adequate explanations and pre-contractual information for banking products and services marketed in digital environments



PAYMENT SERVICES AND PAYMENT ACCOUNTS

Payment account switching. Contractual amendments. Basic payment account. Transparency in payment accounts (verifications through branch visits)



CONSUMER CREDIT

Revolving credit (new mandates). Responsible lending. Tacit overdrafts



REAL ESTATE CREDIT

Measures to alleviate the rise in interest rates on mortgage loans (New Code of Best Practice)



2022 SUPERVISORY ACTIVITIES AND SUPERVISORY MEASURES

Supervisory activities comprise supervisory actions (146 in 2022) and the monitoring of supervisory measures, monitoring of institutions and special monitoring. Supervisory measures adopted in 2022:

- i) 1 sanctioning proceeding initiated;
- ii) 25 requirements; iii) 57 recommendations; and iv) 81 publicity requirements

The conduct and reporting obligations imposed on supervised financial institutions by banking organisational and disciplinary rules act as customer protection measures and seek to preserve public confidence in the banking system, thereby helping to promote the stability of the financial system. Conduct-related supervisory actions have focused not only on verifying effective compliance with these rules, but also on guiding a change in institutions' culture of conduct, as an essential complementary way of ensuring an appropriate financial relationship between institutions and their customers.

In 2022 the Governing Council of the Banco de España approved a restructuring of the internal organisation, with the creation of the new Directorate General Financial Conduct and Banknotes. This new organisation represents a significant development in the framework of the Banco de España's strategy, aimed at guaranteeing the transparency of financial institutions' relations with their customers and the responsible banking model, and growing support for the actions in the areas of financial education and conduct supervision currently being performed by the Institutions' Conduct Department, while at the same time seeking to take better advantage of the synergies and proximity to the public offered by the branch network.

4.1 Conduct-related supervisory activity

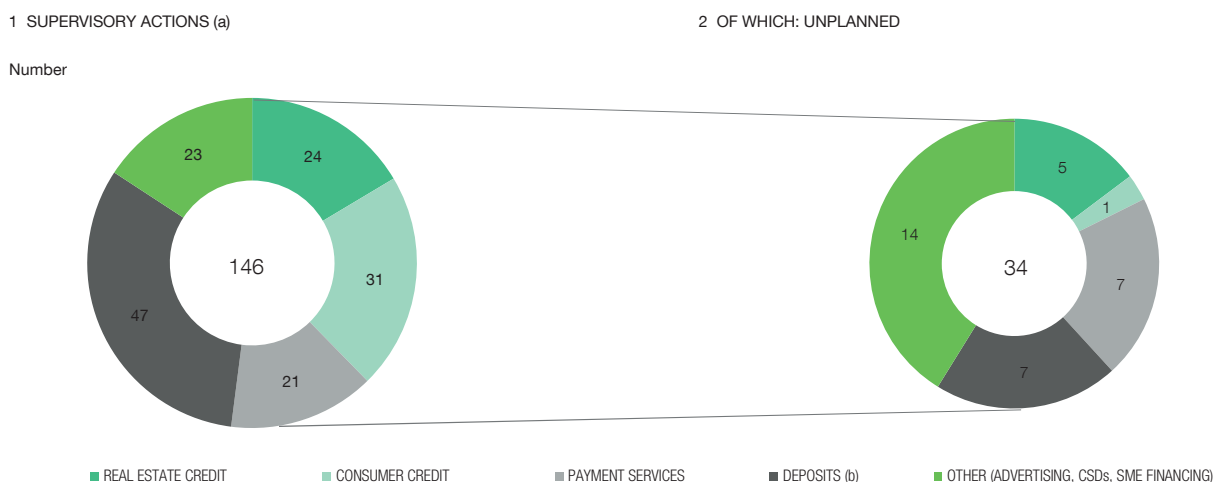
As part of the Banco de España's conduct strategy, and with the objective of identifying the priority areas of action for the year, conduct supervision is planned annually, taking into account the information obtained in the course of supervisory actions and in the ongoing monitoring of institutions. In addition to this planning, unplanned supervisory needs arose in the year and were duly addressed. As in previous years, in 2022 this supervisory activity, both planned and ad hoc, took the form of proposals for ongoing monitoring of institutions; and also of the performance of supervisory actions, either with a cross-institutional scope —to several institutions in relation to a specific regulatory aspect— or with an institution-specific scope —supervisory actions the distribution of which is shown in Chart 4.1.

Supervisory activity in this area aims not only to verify compliance with transparency and customer protection regulations, and with good banking practice criteria and the supervisory expectations transferred to institutions, but also, more broadly and perhaps also effectively, to transform institutions'

Chart 4.1

CONDUCT-RELATED SUPERVISORY ACTIONS IN 2022 BY SUBJECT MATTER

Supervisory actions were focussed mainly on the areas of activity relating to payment services, consumer credit and deposits.



SOURCE: Banco de España.

a Of these supervisory actions, 99 were initiated before the beginning of 2022.

b Deposits include, inter alia, current and savings accounts.

culture of conduct, moving towards a responsible banking model, with a focus on preventive supervision, and trying to ensure that the supervisory criteria derived from this activity reach all institutions. Therefore, once the deficiencies and weaknesses have been identified and, where appropriate, the corresponding supervisory measures have been imposed, the activity is centred on verifying institutions’ effective compliance with the measures adopted, on assessing the potential changes that the implementation of these measures has brought about in institutions’ customer relationships; and on defining guidance, criteria and supervisory guidelines for the sector in general, in order to achieve their effective implementation in the largest possible number of institutions.

4.1.1 Ongoing monitoring

Ongoing conduct-related monitoring work seeks to gain knowledge of institutions’ business models and strategies, and of the market in general, in order to anticipate potential conduct risks. This monitoring is carried out individually at institutions with the largest market share and retail activity, and in groups at the rest of the institutions, depending on the type of activity and business models; the monitoring involves analysing issues of significance from a conduct perspective, such as product offerings, the treatment and subject matter of claims, or how to address the problems of mortgage debtors in vulnerable situations. In

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MEASURES TO ALLEVIATE THE RISE IN INTEREST RATES ON MORTGAGE LOANS

Royal Decree-Law 19/2022 of 22 November¹ provided for various structural measures to improve the mortgage loan market. It is worth noting the creation of a new Code of Good Practice (CGP), with transitional nature—until 31 December 2024— and applicable to individuals holding loans or credits secured by real estate mortgages, granted until 31 December 2022, on the primary residence of the debtor or non-debtor mortgagor, whose acquisition price does not exceed EUR 300,000. It also modified the pre-existing CGP for the protection of mortgagors without resources, regulated in Royal Decree-Law 6/2012 of 9 March².

The following Figure specifies the access regime and the measures provided for in both codes.

Among other actions, the Banco de España will publish the following on its website: i) a «Guide of tools for mortgagors facing payment difficulties»; ii) two simulators to provide information on the eligibility and access regime for the measures in both CGPs and on the impact of the proposed measures on mortgage loan terms and conditions; and iii) a list of contact points of the State, the Autonomous Regions and local authorities for the provision of services to citizens facing payment difficulties on their primary residence.

Figure 1
CODES OF GOOD PRACTICES: ACCESS REGIME AND MEASURES

CGP of RDL 19/2022, for mortgagors at risk of vulnerability		CGP of RDL 6/2012, for mortgagors experiencing financial hardship	
		Particular vulnerability (1)	Particular vulnerability (2)
Requirements	Income of the family unit below 3.5 times the annual Public Indicator of Income for Multiple Purposes (IPREM) for 14 payments (or 4.5 or 5.5 times the IPREM, in cases of disability or illness)	Income of the family unit below 3 times the annual IPREM for 14 payments (or 4 or 5 times, in cases of disability or illness)	Income of the family unit below the threshold of 3 times the annual IPREM for 14 payments (or 4 or 5 times, in cases of disability or illness)
	In the 4 years preceding the application, the family unit: (i) has suffered an increase in the effort represented by the mortgage burden of at least 20%, or (ii) is in a situation of particular vulnerability	In the 4 years preceding the application, the family unit: (i) has suffered an increase in the effort represented by the mortgage burden of at least 50%, or (ii) is in a situation of particular vulnerability	In the 4 years preceding the application, the family unit: (i) has suffered an increase in the effort represented by the mortgage burden of less than 50%, or (ii) is not in a situation of particular vulnerability
	Mortgage instalment of more than 30% of family unit's net income	Mortgage instalment of more than 50% of family unit's net income (40% in cases of disability or illness)	Mortgage instalment of more than 50% of family unit's net income (40% in cases of disability or illness)
Measures	(i) Extend the repayment period up to a maximum of 7 years —without extending its total duration beyond 40 years— and freeze the mortgage instalment for a period of 12 months. The unpaid principal shall will accrue interest at a rate that entails a 0.5% reduction in the net present value of the loan (ii) Conversion of the initial loan interest calculation formula, switching from a variable to a fixed interest rate, freely offered by each institution	(i) 5-year principal grace period (ii) Extension of the repayment period up to a maximum of 40 years (iii) Interest rate equal to Euribor minus 0.10% during the grace period	(i) 2-year principal grace period (ii) Extension of the repayment period with a maximum of 7 years, without extending the total duration of the loan beyond 40 years (iii) Reduction of the interest rate which entails a 0.5% reduction of the net present value of the loan during the grace period
		The new version of the CGP of RDL 6/2012 (i) allows for a second restructuring plan, and (ii) extends the period for applying for dation in payment of the principal residence to 2 years and the period for applying for and obtaining rent from the enforcing creditor of the dwelling to 12 months	

SOURCE: Banco de España.

1 Royal Decree-Law 19/2022 of 22 November, which establishes a Code of Good Practices to alleviate the rise in interest rates on mortgage loans on primary residences, amends Royal Decree-Law 6/2012 of 9 March on urgent measures to protect mortgagor debtors without resources, and adopts other structural measures to improve the mortgage loan market.
2 Royal Decree-Law 6/2012 of 9 March on urgent measures to protect mortgagor debtors without resources.

particular, and in relation to the latter issue –the problem of mortgagor debtors without resources– a new regulatory framework was recently approved, the essential aspects of which are summarised in Box 4.1, and which will be monitored in the coming months.

Information thus obtained in the monitoring work is very valuable for the design of a preventive supervisory strategy and of supervisory actions, and the establishment of a supervisory criterion in relation to certain aspects of conduct and their due transfer, through the tools available, to the institutions.

In addition, the new reporting of confidential information on conduct established by Banco de España Circular 4/2021 of 25 November to credit institutions and other supervised institutions on confidential return models relating to market conduct, transparency and customer protection and on the complaints register, is a milestone in the knowledge of institutions' business models and the definition of their conduct profiles. The first confidential returns to be submitted to the Banco de España will relate to the second half of 2022.

Figure 4.1

SUPERVISION OF ADVERTISING ACTIVITY

ONGOING SUPERVISION OF ADVERTISING OF BANKING PRODUCTS AND SERVICES		
ONGOING MONITORING	REVIEW OF ADVERTISEMENTS	ANALYSIS OF INTERNAL PROCEDURES AND CONTROLS
Analysis of information on banking products and services of supervised institutions	Ongoing review of advertisements broadcast in different media (press, TV, radio, digital media, social networks, etc.)	Assessment of the integrity and robustness of the controls implemented by institutions to manage risks arising from their advertising activity
Preparation of an annual monitoring report	Review of the content and format of advertising messages to verify that they comply with the principles and criteria to which they must conform	Review of marketing communication policies
Identification of supervisory priorities for the coming year	Sending institutions reporting requirements and requirements to withdraw or rectify advertisements, and management of institutions' representations	CONSULTATIONS ON REGULATIONS
Monitoring of institutions starting advertising activities	Detection of new media used by supervised institutions to disseminate advertisements	Resolution of consultations made by institutions in relation to the regulations
Monitoring of notifications of institutions' adherence to advertising self-regulation systems		Interpretation of Banco de España Circular 4/2020 of 26 June on the advertising of banking products and services
SUPERVISORY ACTION ON INTERNAL ADVERTISING REGISTERS	Supervisory action on a sample of 18 institutions to verify compliance with the obligations set out in Circular 4/2020 and in the technical specifications on the internal advertising register	
	Objectives: i) verify that the institutions in the sample record and keep all the documentation corresponding to each of the advertising campaigns disseminated over a given period and ii) conduct a statistical analysis of the information obtained to improve knowledge of the activity	

SOURCE: Banco de España.

In addition, ongoing monitoring is carried out on specific matters, allowing the supervisory framework and supervisory planning to be specified, such as the advertising of banking products and services described in Figure 4.1, claims and consultations, or the functioning of customer service departments (CSDs) and, in particular, the location of such information on their website. As a result of the monitoring of advertising activity, greater clarity in the advertising messages disseminated and a greater number of adverts being reviewed and classified as correct advertising were observed.

4.1.2 Inspection actions

In 2022, a significant portion of supervisory actions were focused on ascertaining and verifying the degree of compliance with payment service provision regulations. Thus, inspections were carried out with the aim of analysing the procedure for notifying changes in current account conditions of certain supervised institutions, and verifying compliance with basic payment account regulations. In addition, actions were carried out on the practical application of contractual limits on withdrawals as mitigants of the risk of potential fraud in payment services; and on the application of the mechanism provided for in the regulations to ensure the swift switching of payment accounts and of the services and direct debits linked to them (see Box 4.2).

As in previous years, visits were made to bank branches in order to verify that the staff dealing with customers have sufficient knowledge of payment account regulations, and that this knowledge is conveyed with due clarity through appropriate explanations to customers. During these visits, the following are verified: i) the adequacy of the explanations and offering of the basic payment account; ii) the delivery of pre-contractual information in good time; iii) the information provided on the termination of accounts; or iv) the unauthorised payment transactions regime, all with the aim of enabling institutions to correct any shortcomings identified.

Also, an inspection was carried out at an electronic money institution, where shortcomings were identified in the processes of contracting and terminating contracts with customers.

As regards consumer credit, most of the actions were cross-institutional and included several institutions in their subjective scope. They analysed, among other issues, responsible lending practices and policies; loans granted in the form of overdrafts on demand deposits, which are detailed in Box 4.3; the various technological solutions, platforms and additional services associated with cards to defer payments at points of sale; and the measures implemented to comply with the

PAYMENT ACCOUNT SWITCHING. A SWIFT AND EFFICIENT SERVICE THAT INSTITUTIONS MUST OFFER THE CUSTOMER

The payment account switching service, regulated by Royal Decree-Law 19/2017 of 24 November and implemented by Ministerial Order ECE/228/2019 of 28 February, is intended to enable customers to easily switch their payment accounts from their former institution to other institutions whose offer may be more suited to their interests and needs. To this end, the former and new institutions must facilitate an efficient, swift and free switch of their accounts, collaborating and exchanging the necessary information, within a maximum period of 13 working days.

With the aim of verifying the degree of compliance with the obligations established in the regulations, detecting inadequate practices and identifying good practice criteria, a cross-institutional supervisory action was carried out on 19 institutions in 2022.

The review performed showed that: i) although the regulation stresses the importance of the former and new institutions offering a clear, fast and secure account switching procedure, the institutions analysed reported to the Banco de España that they had received a very small number of applications; and ii) the intended efficient and swift switch of payment accounts may not be taking place, firstly, because the new institutions are not giving adequate visibility to the service and, secondly, because they do not appear to be in a position, in all cases, to send the a copy of the customer authorisation to payers of standing orders and issuers of direct debits and, therefore, the customer's direct management is sometimes required to make the changes.

Therefore, the Banco de España addressed these institutions so that they are in a position to ensure that:

- The application form is available on their website, in a visible manner and with a clear and intuitive URL.
- The switch can be completed on a non-face-to-face basis, when services are provided remotely.
- The procedures include, among the actions to be taken by the new institutions, the delivery of a copy of the switch authorisation to the customer.
- The existence of enforceable obligations could only prevent the switch of the balance, but does not prevent the switch of the remainder of the operation.

Also, good practice criteria passed on to the institutions were identified, such as: (i) making videos, infographics or guides available to customers, which ease and guide the customer through the switch procedure when it is completed on a non-face-to-face basis; (ii) the information contained in the switch application form should be clear, concise and complete; and (iii) the receiving payment service provider should communicate to the applicant the reasons preventing the switch process from being completed on paper or on another durable medium.

As a result of the supervisory action, the institutions analysed are making the service visible on their websites and incorporating tools that facilitate the comprehension of the form and guide customers through the procedure for requesting the switch of their accounts.

new transparency and creditworthiness assessment obligations under the revolving credit regulation, which are detailed in Figure 4.2.

Lastly, two inspections were carried out on the arrangement of consumer credit, in which shortcomings were identified in the product marketing and offering processes, the correction of which is necessary to ensure that the customer has sufficient information upon arranging the credit and to avoid situations of over-indebtedness.

In relation to real estate lending, in 2022 the inspection carried out in recent years was concluded. Its objective was to check that the effective application of

LOANS GRANTED IN THE FORM OF OVERDRAFTS (TACIT OVERDRAFTS)

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

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

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

- Demand account contracts providing for this service include the minimum content established by the regulations.

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

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

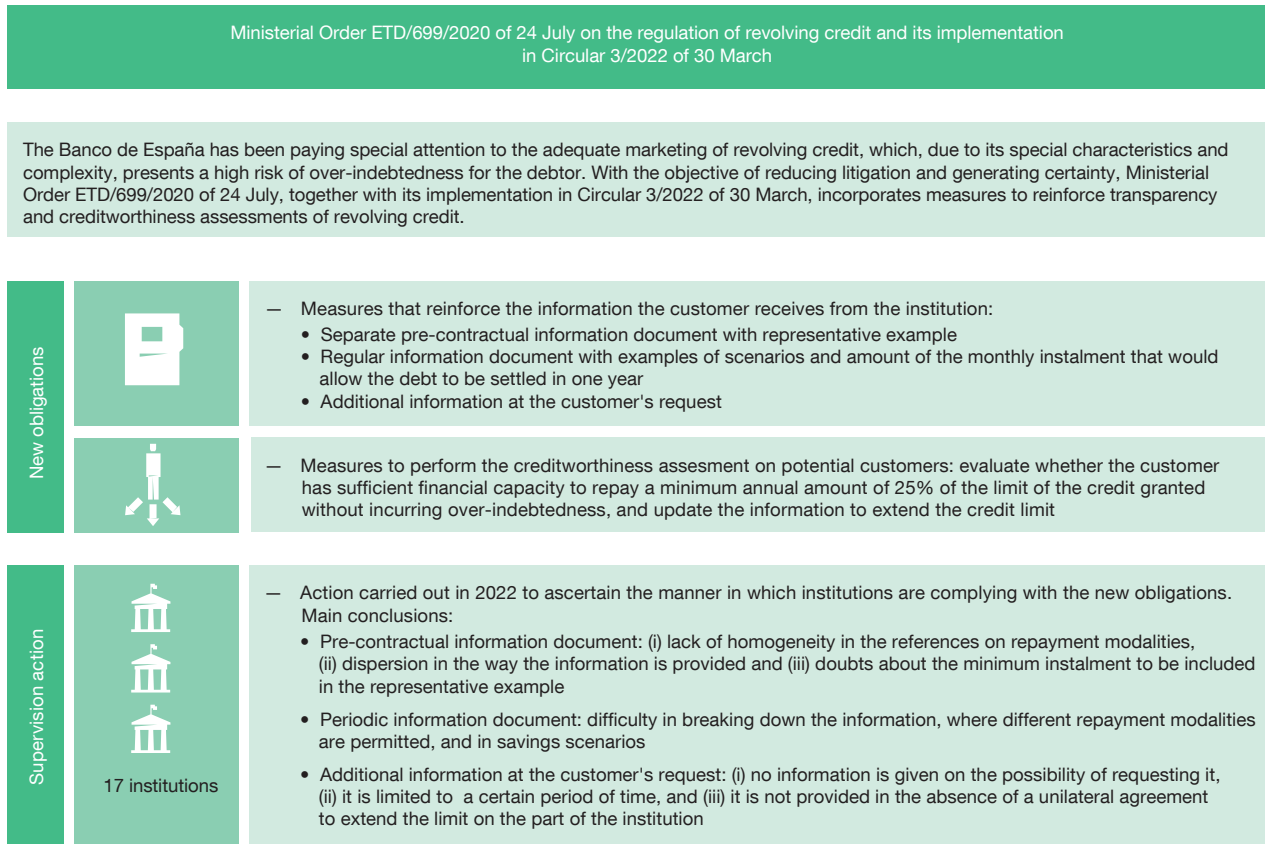
“floor clauses” (i.e. clauses that set a lower limit on interest rates) by institutions complies with the terms agreed in the corresponding contracts, and this was the most extensive inspection carried out to date, in terms of both the number of institutions and the files reviewed.

The Banco de España's supervisory teams used SupTech natural language processing tools and machine learning techniques to perform this action, which made it possible to increase the size of the samples of files analysed.

Moreover, the correct application by member institutions of the Code of Good Practices included in the annex to Royal Decree-Law 6/2012 of 9 March on urgent measures to protect mortgage debtors without resources was verified.

Figure 4.2

NEW TRANSPARENCY AND CREDITWORTHINESS ASSESSMENT OBLIGATIONS PROVIDED IN THE REVOLVING CREDIT ORDER



SOURCE: Banco de España.

In addition, in an increasingly digitalised banking service provision environment, particular attention was paid to how institutions complied with their transparency obligations on the basis of the contracting channels used. As shown in Figure 4.3, institutions adapted to comply with prior reporting obligations in digital environments.

In 2022 inspection actions were also carried out to verify the information reported to the Banco de España by the supervised institutions in the “Interest rates on lending transactions in Spain with the resident private sector” reporting included in Annex 9 of Circular 5/2012, with the objective of contributing to the preparation of benchmark indices, and assessments were made of the effective compliance with reporting obligations for SMEs in the event of the cancellation or reduction of the flow of finance.

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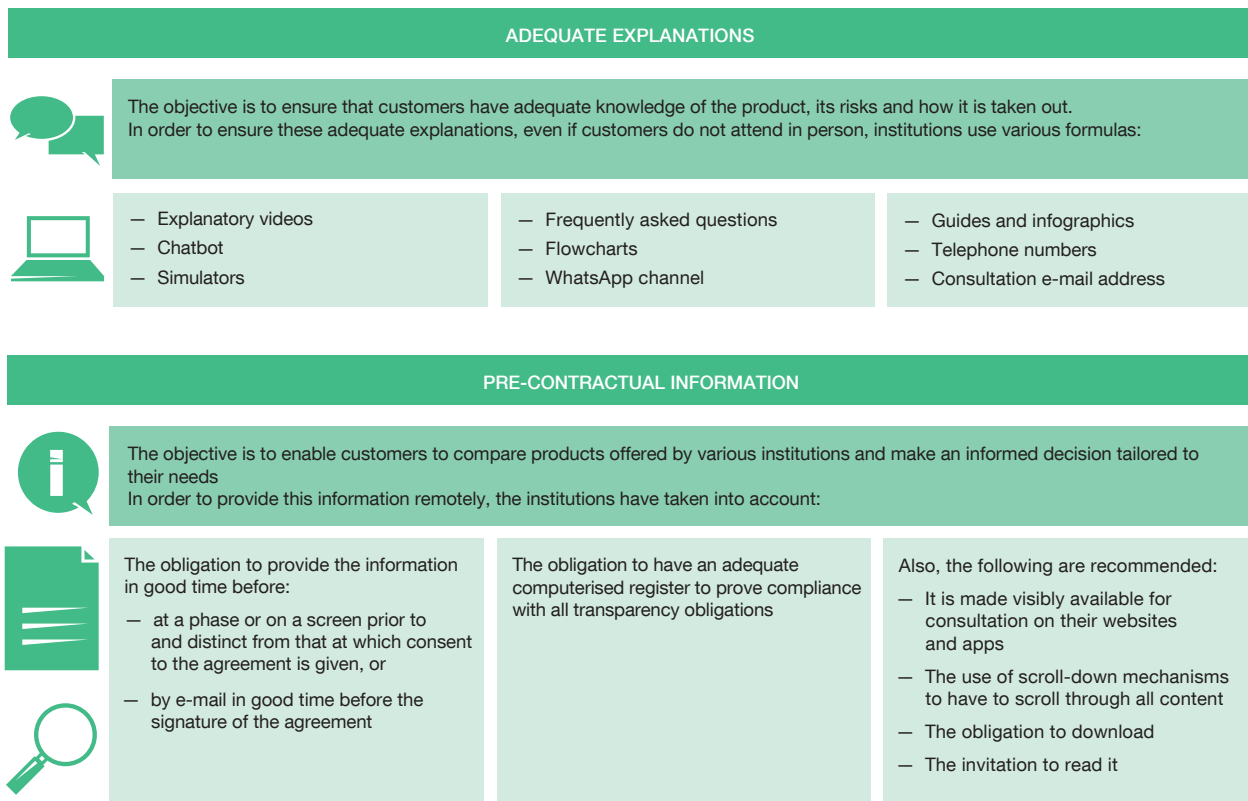
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Figure 4.3

REMOTE MARKETING OF BANKING PRODUCTS AND SERVICES

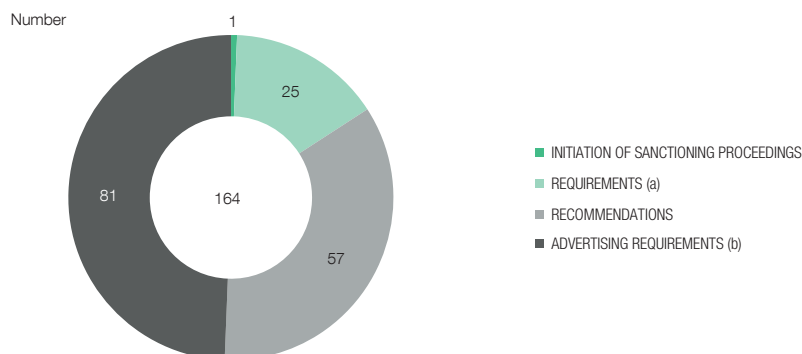


SOURCE: Banco de España.

Chart 4.2

SUPERVISORY MEASURES ADOPTED AND ADVERTISING REQUIREMENTS IN 2022

In 2022, as a result of the supervisory actions carried out, 1 sanctioning proceeding was initiated, and 25 requirements and 57 recommendations were issued mainly on matters concerning payment services, including those relating to payment account switching services and customer information in branches on payment accounts; consumer credit, including revolving credit; and real estate lending, inter alia. Additionally, within the framework of the supervisory activity relating to advertising, 81 requirements were issued.



SOURCE: Banco de España.

a The 25 requirements letters contain 104 specific requirements for institutions.

b Of the 81 advertising requirements issued in 2022, at year-end 37 had resulted in the removal of advertising and 36 in the rectification of advertising.

4.2 Supervisory measures

4.2.1 Adoption of supervisory measures

In 2022, a total of 106 requirements were issued, of which 81 related to requests issued in the area of supervision of institutions' advertising activity, requesting the withdrawal or rectification of advertising that did not comply with regulatory requirements, and 19 requirements within the framework of the cross-institutional supervisory action on the payment account switching service. The other requirements issued include those relating to real estate lending and consumer credit.

Also, 57 recommendations were sent to institutions, focusing on aspects related to customer information in branches on payment accounts, the provision of the account switching service and real estate lending.

In addition to the measures contained in the recommendation letters, and in relation to real estate lending actions on the correct application of the so-called "floor clauses", noteworthy is the detection of around 62,000 incidents in the contracting processes, which have been remedied and have led to the refund of around 133 million euros, which has contributed to reinforcing confidence in the banking system.

Chart 4.2 includes a breakdown of the supervisory measures adopted in 2022.

Lastly, in addition to the adoption of the above-mentioned supervisory measures, the supervision of CSDs gave rise to letters being sent to institutions. Specifically, in 2022 448 letters were sent to institutions and 13 letters were sent to other supervisors as a result of the verification of their operating rules and suitability assessments of their head officers.

4.2.2 Monitoring and effectiveness of supervisory measures

In 2022, work was performed on monitoring compliance with supervisory measures arising from various cross-institutional actions and supervisory actions related to consumer credit, including revolving credit, and to real estate lending. As a result of this monitoring, there was a general improvement in institutions' conduct due to compliance with supervisory measures.

Thus, in relation to the supervisory measures related to revolving credit, the majority of institutions subject to the monitoring action were noted to have carried out an in-depth review of their product and their pre-contractual information and marketing procedures, for which they implemented various initiatives aimed at providing their

customers with adequate explanations and revised their pre-contractual information documents.

Through the monitoring of supervisory measures related to the supervision of consumer credit, certain improvements were noted in relation to, inter alia, the following: (i) the content of pre-contractual information and the way in which such information is provided to customers, both for products and ancillary services; (ii) the contractual information being in line with the pre-contractual information; (iii) responsible lending; or (iv) the governance of consumer financing products offered.

This monitoring of supervisory measures constitutes the final phase of verifying institutions' conduct and, at the same time, the new starting point for their ongoing monitoring, and the definition of an appropriate preventive supervision and supervisory planning framework.