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SUPERVISION OF INSTITUTIONS' CONDUCT



CULTURE OF CONDUCT

The conduct-related supervision function should be geared towards bolstering institutions' culture to ensure honest and impartial behaviour and to strengthen the framework of trust in the relationship between institutions and their customers



PREVENTIVE SUPERVISION AND SUPERVISORY PRIORITIES IN 2023

The aim is to promote a preventive supervision approach, strengthening supervisory expectations and ongoing monitoring. In 2023, the supervisory priorities were focused on: i) measures in relation to groups facing difficulties; ii) best marketing practices; and iii) strengthening internal controls



GROUPS FACING DIFFICULTIES

Compliance with measures to mitigate the effects of rising interest rates on mortgage transactions was inspected and the application of the basic payment account regulations was verified



PRODUCT MARKETING

Within the appropriate marketing of products and services, priority has been given to the analysis of the deferral of payments at the point of sale, responsible lending and products ancillary to mortgage loans, as well as payment account switching and the fee information document



STRENGTHENING INTERNAL CONTROLS

Special emphasis has been placed on controls on fraud risk mitigation measures in the use of cards and in payments made through digital channels, customer service department information on websites and commercial communication policies



SUPERVISORY ACTIVITIES AND MEASURES IN 2023

The activities comprise both supervisory actions and the monitoring of supervisory measures and other monitoring. The following supervisory measures were adopted during 2023: 1 sanctioning proceeding initiated, 57 advertising requirements, 44 requirements on other matters and 76 recommendations

SUPERVISION OF INSTITUTIONS' CONDUCT

The exercise of the Banco de España's supervisory functions and responsibilities on matters of conduct, information transparency and customer protection is not limited to verifying compliance with the applicable regulations. The fundamental objective of this task is to promote a culture of compliance in institutions, prioritising the establishment of business models and organisational structures in which the relationship with the end customer takes precedence.

Of particular relevance in this regard is the recent amendment of Law 10/2014,¹ through Law 18/2022,² introducing a general principle or duty of conduct for institutions to act in an honest, impartial, transparent and professional manner, with respect for the rights and interests of customers. The amendment also requires credit institutions to define and establish appropriate organisational policies and procedures to ensure the effective application of and due compliance with the organisational and disciplinary rules governing institutions' conduct and bank customer protection.

Increasingly, supervisory attention is focused on assessing, with due respect to the principle of proportionality, the institution's internal control framework, thereby helping to improve the conduct of supervised institutions and to identify best market practices, ultimately leading to more effective conduct supervision.

4.1 Conduct-related supervisory activity

In 2023, the Banco de España's conduct strategy was structured around two central factors: the definition of supervisory priorities based on conduct risks with potential impact on customers; and the promotion of a preventive supervision approach, strengthening ongoing monitoring of institutions and conduct risks.

The information was obtained from the complaints and queries resolved by the Banco de España, details of which can be found in the [Complaints Report](#). Thus, this information feeds into both the process of calibrating the conduct risk of the various institutions and the definition of supervisable targets as part of the supervisory planning. Also, the complaints help assess the effectiveness of the corrections suggested to or imposed on institutions by the supervisor and the need for these to be supplemented by regulatory actions.

In a context of rising inflation and interest rates and market instability, supervisory priorities were focused on:

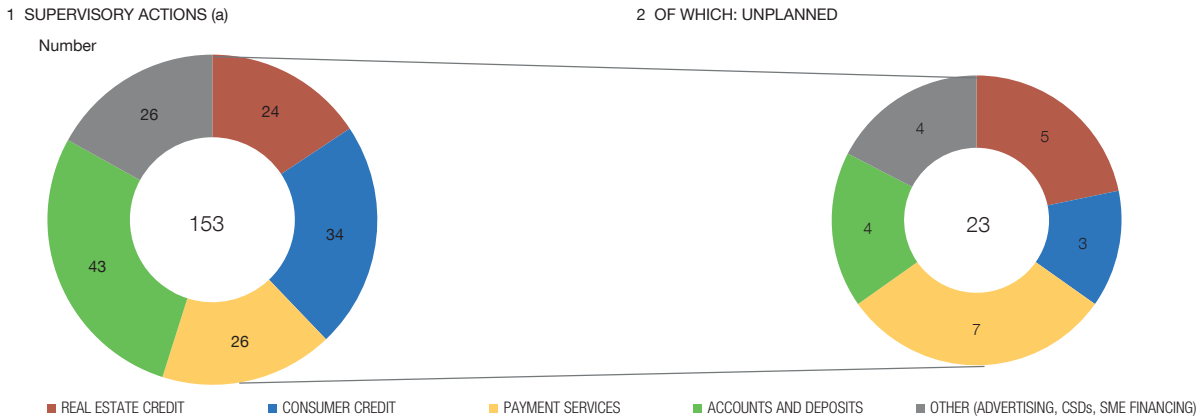
¹ Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

² Law 18/2022 of 28 September 2022 on the creation and growth of companies.

Chart 4.1

CONDUCT-RELATED SUPERVISORY ACTIONS IN 2023 BY SUBJECT MATTER

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



SOURCE: Banco de España.

a Of these supervisory actions, 109 were initiated before the beginning of 2023.

- compliance with the alleviation measures established in relation to groups facing difficulties;
- appropriate marketing of products and services, especially those marketed through remote channels; and
- improvement of institutions’ internal controls, with particular emphasis on the control measures implemented to address the risk of fraud in the use of cards and in payments made through digital channels.

In line with the defined strategy, actions were planned during 2023 aimed at achieving these three objectives, although unplanned actions were also carried out to respond to ad hoc supervisory needs. Chart 4.1 shows both types of action separately, with the breakdown by subject matter.

An important part of supervisory work is identifying market trends and best market practices which, based on evidence, feed into an increasingly comprehensive and integrated legal framework, ultimately leading to more effective supervision. Thus, with regard to granting consumer credit, the *Guidelines on the governance and transparency of revolving credit*³ were drawn up and good practices were identified in relation to credit in the form of tacit current account overdrafts (see Figure 4.1). The knowledge gained also fed into the technical opinion conveyed during the review work on European consumer credit

³ These guidelines, published in December 2023, contain the best market practices identified in the exercise of the supervisory function and the criteria and procedures that the Banco de España considers appropriate for compliance with the rules applicable to the granting of this type of credit.

legislation,⁴ developed in response to market developments (see Box 4.2), thus helping improve the regulation of the financial sector in line with European Union (EU) principles and best practices.

Lastly, as an essential complement to the conduct-related supervisory strategy, and in the ongoing search for greater supervisory impact in this area, the exchange of information and the transmission of relevant messages to supervised institutions is fostered, including, among other aspects, the communication of supervisory priorities and expectations.

4.1.1 Ongoing monitoring

Ongoing conduct monitoring is a key part of supervisory planning. This monitoring provides greater knowledge of business models, commercial strategies and the financial market in general, which is crucial for identifying potential conduct risks, designing a preventive supervisory strategy, planning supervisory actions and establishing supervisory criteria on specific conduct matters.

In 2023, monitoring was carried out individually at institutions with the largest market share, and in groups at the rest of the institutions, depending on the type of activity and business model. This monitoring assesses institutions' compliance with transparency and customer protection regulations, their commercial strategy, organisational structure, product offerings and the handling of customer complaints.

Regular meetings with institutions are an essential part of the monitoring. In 2023, contact with institutions was intensified with the aim of facilitating the transmission of supervisory criteria and priorities and enhancing supervisory knowledge. This interaction with institutions also allowed institutions to modify certain aspects prior to the adoption of supervisory measures, which confirms the effectiveness of these collaborative mechanisms between supervisor and institutions.

In line with the established supervisory priorities, the monitoring paid particular attention to the following aspects: the treatment of mortgagor debtors without resources (see Box 4.1); the location of customer service department (CSD) information on institutions' websites; the provision of payment account switching services and the provision and content of the payment account fee information document; and the problem of fraudulent transactions.

Within the framework of ongoing monitoring, it is also worth noting the supervisory activity aimed at reviewing institutions' organisational policies and procedures in two specific areas of action: advertising activity, and the functioning of CSDs.

⁴ Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (CCD2).

In 2023, with regard to the supervision of advertising, the verification of internal procedures and controls that ensure adequate management of the risks derived from this activity was one of the key aspects, together with the review of the content and design of adverts. In this respect, the number of adverts classified as correct increased and the number of withdrawal or rectification requests decreased thanks to the evolution of regulations (which have been focused on strengthening internal controls since 2010 and, especially, since 2020) and to the supervisory work carried out in recent years.

With regard to the supervision of CSDs, the review of their rules of procedures and the monitoring of their activity are particularly relevant. Also, special attention is paid to the effective implementation of the practices, methodologies and procedures developed in the *Guidelines on the organisational and operating criteria of customer service departments at institutions supervised by the Banco de España*, published in 2021.⁵ In relation to this last-mentioned matter, there is a gradual implementation of the best practices set out in the guidelines.

4.1.2 Inspection actions

The annual plan of supervisory activities for 2023 was drawn up on the basis of the supervisory priorities defined for the year which are focused on the monitoring of alleviation measures for groups facing difficulties, the appropriate marketing of products and services and the improvement of internal controls.

With regard to the verification of compliance with the legislative measures established to support groups facing difficulties, on the one hand, in the mortgage area, inspections were carried out to verify the application of the measures⁶ to mitigate the effects of the rise in interest rates and, on the other hand, compliance with the basic payment account regulations was verified. Box 4.1 has more information on this last-mentioned action.

As regards the review of the requirements applicable to the marketing of products and services, due to significant changes in the consumer credit market (see Box 4.2), the activity was focused on enhancing knowledge of the technological solutions used by institutions for deferred payments at the point of sale and on verifying the implementation of responsible lending principles. Also in relation to consumer credit, actions under way related to the marketing of loans granted in the form of overdrafts on demand deposits were finalised (see Figure 4.1).

In relation to the development of new technological solutions for deferred payment at the point of sale, a cross-institutional action was carried out making it possible to

⁵ These guidelines are available at the following link: https://app.bde.es/clf_www/leyes.jsp?id=193122&tipoEnt=0




⁶ These measures are basically aimed at facilitating the novation or subrogation of variable rate mortgage contracts, through the exemption or suspension of the application of fees or compensation for the novation or early repayment of loans, provided that the conversion of the variable interest rate to a fixed rate is agreed.

Figure 4.1

STRENGTHENING THE TRANSPARENCY REQUIRED IN TACIT OVERDRAFTS AND IN THE CHARGE FOR THE COST OF CLAIMING DEBIT POSITIONS (CCDP)

NEW GOOD PRACTICE STANDARDS APPLICABLE TO TACIT CURRENT ACCOUNT OVERDRAFTS AND CHARGE FOR THE COST OF CLAIMING DEBIT POSITIONS (CCDP)

As a result of the cross-institutional supervisory action involving 22 institutions, regarding compliance with obligations established in relation to tacit overdrafts granted to individuals, different practices in the treatment of such overdrafts and the charge for CCDP could be identified. The analysis made it possible to define new criteria for good practices.

Opening and settlement of the overdraft		<ul style="list-style-type: none"> – Give the customer the option to disallow the charging of bills when overdrawn – Report on the period for regularising the debit balance before settling the overdraft and the possibility of CCDP being passed on
		<ul style="list-style-type: none"> – Settle the overdraft before requiring it to be recovered – After settlement, set a minimum time limit for paying the balance before conducting a claim process involving the charging of CCDP – Unpaid and claimed overdrawn balances shall not be re-settled; therefore, they will not lead to new fees or CCDP, regardless of any late payment interest – In the calculation of the largest overdrawn balance for the purpose of calculating the annual percentage rate of charge for tacit overdraft provided for in Rule 13(7)(e) above, the amounts corresponding to any fees or charges for services passed on by the institution (including those resulting from the actual settlement of an overdraft in respect of these items) should not be included – The following may not generate or increase an overdraft: (i) the reversal of fees or expenses with a date subsequent to their charge, (ii) the overdraft entry of loan or credit instalments of the institution itself, (iii) the allocation to a cash deposit or ATM deposit of a value date later than the date on which the deposit was made
CCDP treatment		<ul style="list-style-type: none"> – To be able to pass on CCDP: <ul style="list-style-type: none"> • The appropriate claim procedures must have been performed and the overdraft must have been settled • The debtor balance must not yet be regularised – If a CCDP is issued prior to the settlement of the overdraft, this cost shall be deemed to be part of the items passed on by the provision of the tacit overdraft service itself and, therefore, of the cost of the credit for the purposes of Rule 13(7) (e) of Circular 5/2012

SOURCE: Banco de España.

ascertain existing practices and business models and to identify a series of information transparency weaknesses related to the quality of the explanations offered and the delivery of pre-contractual information. As a result of the action, various supervisory measures were adopted to correct the incidents detected, compliance with which is subject to supervisory monitoring.

With regard to the correct application of responsible lending principles and the implementation of appropriate marketing practices in institutions' lending activity, the weaknesses identified during the supervisory work were focused on the following areas: the procedures to assess the customer payment capacity, staff training, information provided to customers facing financial difficulties and the promotion of active debt renegotiation policies. The areas for improvement detected did not require the adoption of corrective measures; however, they were communicated to the institutions concerned, seeking effective and improved compliance with these principles.

As in previous years, visits were made to bank branches to verify that the staff dealing with customers have sufficient knowledge of payment account regulations and convey

this knowledge with due clarity to customers. As a result of these visits, there was a positive evolution in institutions' commercial practices, which could signify an improvement in the training they provide to their employees.

Another supervisory focal point in 2023, in view of the increase in fraud in card payments and payments through digital channels, was the internal control procedures put in place by institutions to mitigate this risk. In this regard, various supervisory actions were carried out to ascertain and assess how they manage the risk of fraud vis-à-vis their customers—for example, by verifying that customer communications are carried out in accordance with the regulations—and to check the degree of control of their fraud protection measures and systems, including customer awareness programmes and employee training. As a result of these actions, it has become evident that institutions have significantly improved the design of customer communications, awareness programmes and employee training.

Lastly, in the current economic climate, it is to be expected that there will be adaptive decisions by customers and that institutions will have to manage default situations. Therefore, it will be necessary to strengthen the oversight of institutions' competitive practices and behaviour in order to deal with this context.

4.2 Supervisory measures

4.2.1 Adoption of supervisory measures

The supervisory measures adopted in 2023 include most notably the initiation of 1 sanctioning proceeding and the issuance of 101 requirement letters and requests for the cessation and rectification of conduct. As for the requirement letters and requests for the cessation and rectification of conduct, 57 were issued in the area of advertising activity, requesting the withdrawal or rectification of advertising pieces for not complying with regulations, 18 in the framework of the cross-institutional action on institutions' internal advertising registers and 9 on the action related to technological solutions used by institutions for payment deferral at the point of sale. The remaining letters were issued in the area of supervisory activities on real estate credit, consumer credit and payment services.

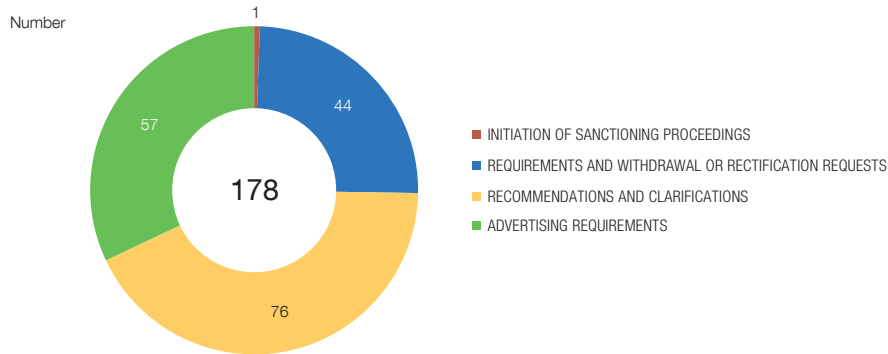
Also, 76 letters with recommendations and clarifications were sent to institutions in relation to the treatment applicable to certain products, transactions, actions or specific situations. These include most notably 25 letters with clarifications on the application by institutions of the responsible lending principles in consumer credit and 20 letters with recommendations and clarifications in relation to loans granted in the form of overdrafts on demand deposits.

Chart 4.2 includes a breakdown of the supervisory measures adopted in 2023.

Chart 4.2

SUPERVISORY MEASURES ADOPTED AND ADVERTISING REQUIREMENTS IN 2023

In 2023, as a result of the supervisory actions carried out, 1 sanctioning proceeding was initiated, and 101 requirements letters and withdrawal or rectification requests were issued, of which 57 were related to the framework of the supervisory activity relating to advertising, and 76 recommendations and clarifications letters were issued.



SOURCE: Banco de España.

Lastly, in addition to the adoption of the above supervisory measures, the supervision of CSDs led to letters being sent to institutions and customer ombudsmen as a result of the verification of their rules of procedures and other issues regarding their head officers, and to other supervisors, in the case of the verification of the CSD rules to which other institutions under their supervision adhere. Specifically, in 2023, 287 letters were sent to institutions, 4 to ombudsmen and 3 to the CNMV.

4.2.2 Monitoring and effectiveness of supervisory measures

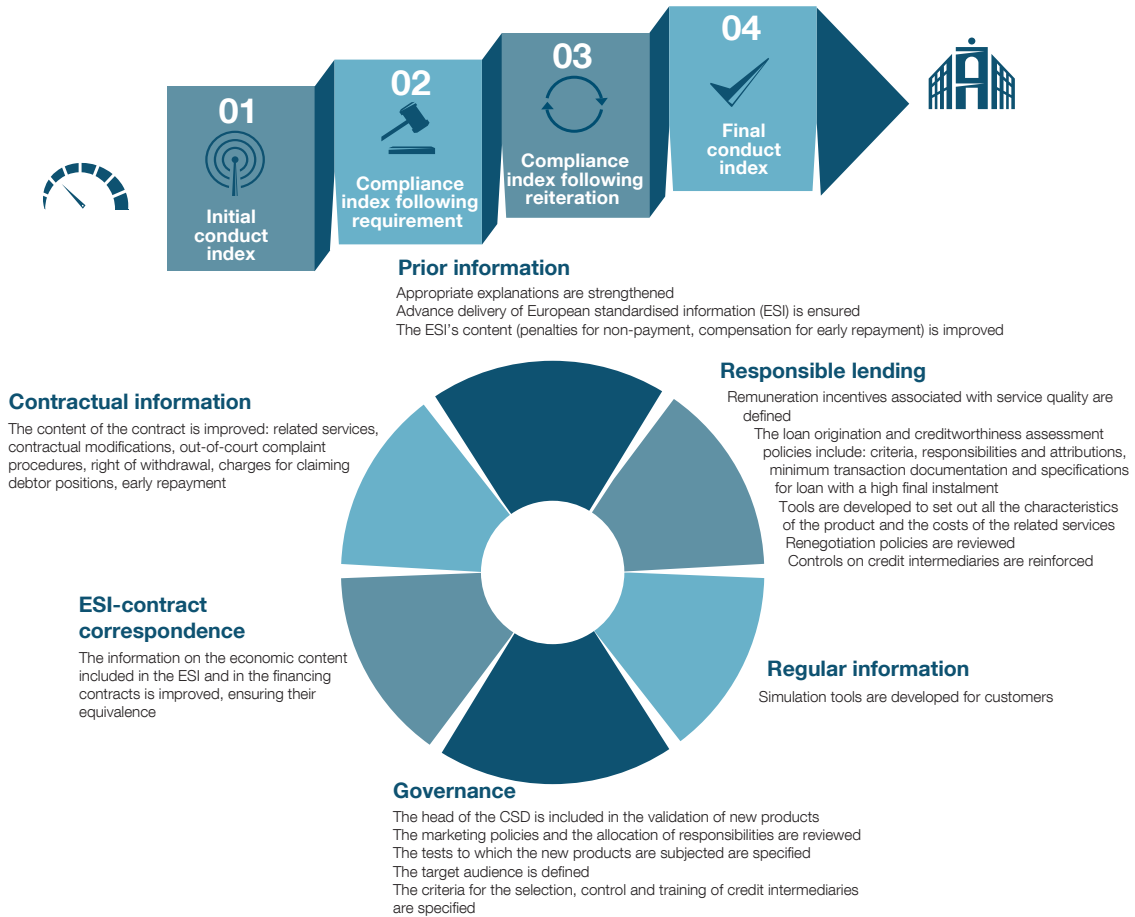
In 2023 effective compliance with the supervisory measures adopted as a result of the various supervisory actions performed was verified, with an overall positive assessment.

The monitoring of compliance with these measures is the final stage in the process of supervising institutions' conduct. In turn, the knowledge gained from this serves to inform supervisory planning and promote best market practices, thereby contributing to the ongoing strengthening of the conduct of supervised entities.

Specifically, last year work was carried out on monitoring compliance with the supervisory measures derived from actions related to the appropriate marketing of payment accounts (remote contracting, account switching service, notification of contractual modifications and basic payment account), consumer credit (financing for car purchases and loans granted in the form of tacit overdrafts), the information reported to the Banco de España by institutions in relation to Annex 9 of Circular 5/2012, for the preparation of benchmark indices, and institutions' internal advertising register. Further detail on the effectiveness of the measures adopted by institutions in relation to financing for car purchases and internal advertising registers can be found in Figures 4.2 and 4.3, respectively.

Figure 4.2

THE EFFECTIVENESS OF THE SUPERVISORY ACTION ON FINANCING FOR CAR PURCHASES. MAIN CORRECTIONS



SOURCE: Banco de España.

Figure 4.3

INTERNAL ADVERTISING REGISTERS

In 2023 the action on internal advertising registers, which began in 2022, was finalised with the aim of verifying part of the institutions' internal controls, which allow for an adequate management of the risks arising from this advertising activity. The weaknesses identified were communicated to the institutions, which have taken measures to strengthen their procedures, workflows and controls



SOURCE: Banco de España.

PROMOTION OF BEST MARKET PRACTICES IN THE IMPLEMENTATION OF THE MEASURES ESTABLISHED IN RELATION TO GROUPS FACING DIFFICULTIES

Code of Good Practice

In 2023, in the framework of the recurrent monitoring of supervised institutions, special attention was paid to the financial difficulties of mortgagor debtors without resources and to compliance with the regulatory framework established in Royal Decree-Law 19/2022¹ and Royal Decree-Law 6/2012,² which provide for various mechanisms to protect mortgagor debtors, establishing an access regime and a series of measures set out in their respective codes of good practice.

Thus, in 2023 a specific review was carried out on institutions' compliance with obligations related to: i) application of the measures provided for in the codes of good practice; ii) adherence to the codes; iii) communication of their content to customers; and iv) submission of confidential information to the Banco de España relating to both codes. After reviewing the information received, it was found that the institutions assessed showed room for improvement in terms of the information available on the two codes on their websites, communications to customers and staff training. In addition, the autumn issue of the *Financial Stability Report* commented in detail on institutions' use of both codes.

Basic payment account

The basic payment account responds to the need to promote financial inclusion in the European Union by facilitating consumers' access to minimum banking services. Spanish credit institutions have been obliged to offer this product since the entry into force of Royal Decree-Law 19/2017³ and its implementing regulations.

In the last year, several supervisory actions have been carried out in relation to the marketing of the basic payment account; it has been noted that, in general, institutions provide information on this product both on noticeboards and on their websites and that employees are aware of its existence, although a certain lack of knowledge has been detected with regard to the characteristics of this type of account, especially the free-of-charge scheme for certain groups, and in the prior information provided to applicants. These actions have made it possible to identify best market practices, including the establishment of mechanisms for identifying groups facing difficulties to whom this account is offered.

The number of basic payment accounts opened in Spain is not high, which may be due to institutions' not being proactive when it comes to offering this product, but also to the high level of banking penetration and the existence of other marketed products with similar characteristics. On the other hand, the refusal rate for opening basic payment accounts recorded in institutions' systems is low; the main reason for refusal is that the customer already has another current account.

Promoting an agreement between the institutions and the Public Prosecutor's Office

In relation to measures to support the legal capacity of persons with disabilities in the area of banking, in 2023 the Public Prosecutor's Office and the main banking associations entered into an agreement, accompanied by the Banco de España, as an observer, to guarantee the autonomy of persons with disabilities in relation to banking services and products. As a result of this agreement, information has been made available to the public on the Public Prosecutor's Office website.

1 Royal Decree-Law 19/2022 of 22 November 2022, 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 2012 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 2012 on urgent measures to protect mortgagor debtors without resources.

3 Royal Decree-Law 19/2017 of 24 November 2017 on basic payment accounts, payment account switching and comparability of fees.

REGULATORY AND SUPERVISORY RESPONSE TO CHANGES IN THE CONSUMER CREDIT MARKET

In recent years, rapid technological advances and digitalisation have contributed to generating significant changes in the consumer credit market, on both the supply and demand side. The credit offered to consumers has evolved and diversified considerably, due to factors such as the emergence of new products and changes in consumer behaviour and preferences.

Thus, the use of new technologies has led to the entry of new players in the consumer credit sector, such as crowdfunding platforms and service providers commonly

referred to as "buy now, pay later".¹ Moreover, the offer of deferred payment facilities² by the major online service platforms, with access to a large customer base, could lead consumers to unthinking consumption and distort competition, given their ability to generate network effects,³ and, therefore, the European legislator has identified the need to introduce certain limits on the use of these facilities by goods and service providers.⁴

As regards the legal framework, it is still not fully harmonised, leading to some divergences in the EU

Figure 1
REGULATORY AND SUPERVISORY RESPONSE IN THE CONSUMER CREDIT MARKET

REGULATION AND SUPERVISORY GUIDELINES	<p>Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (CCD2)</p>	<p>The aim is to strengthen consumer protection and remove potential obstacles to the cross-border consumer credit market</p>			
	<p><i>Guidelines on the governance and transparency of revolving credit</i> for institutions subject to Banco de España supervision</p>	<p>Most relevant aspects: (i) extends its scope to agreements which had been excluded from the previous regulation, (ii) provides for consumer credit intermediaries and creditors to be subject to a recognition and registration procedure and subject to supervision, and (iii) provides for measures to limit borrowing rates, annual percentage rates or total costs of the credit to the consumer</p>			
SUPERVISION	<p>Technological solutions for deferral of point-of-sale payments</p> <p>Supervisory action on 10 institutions</p>	Observed practices		Adoption of supervisory measures	
		Different kinds of solutions	Prevalence of online channel	Adequate explanations	Provision of pre-contractual information
	Target audience: 31-45 years	Amount less than €200			
	<p>Responsible lending</p> <p>Supervisory action on 25 institutions</p>	Areas with weakness detected			
<p>Procedures for assessing customers' payment capacity, their interests and needs</p>	Staff training, especially intermediaries	Active debt renegotiation policies and information to customers in financial difficulties			

SOURCE: Banco de España.

- 1 BNPL (buy now, pay later).
- 2 Commercial practices whereby the supplier of goods or services grants the consumer a period of time to pay for the goods or services without interest and at no other cost. These commercial practices, which are common and generally advantageous for consumers, have so far been excluded from the regulatory perimeter, as long as there is no third party offering the credit.
- 3 The network effect, or pull effect, arises when a good or service is more valuable to a user the more users use the same or other compatible goods or services.
- 4 Recital 17 of Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC.

REGULATORY AND SUPERVISORY RESPONSE TO CHANGES IN THE CONSUMER CREDIT MARKET (cont'd)

internal market. In some jurisdictions, an authorisation or specific registration is required in order to carry out the consumer loan origination activity, while in other cases there is no vetted access to activity and no prudential or conduct of business requirements are necessary to carry out the activity. This situation could generate distortions in

a slowly growing supply of cross-border credit as a result of digitalisation and, consequently, in competition and in the ability of consumers to take advantage of this supply.

Figure 1 details the main regulatory and supervisory response to these developments.