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Ability To Administer Justice By The Supervisor Of Credit Institutions (European Central Bank And Bank Of Spain) Regarding The Application Of The Penalty System For Improper Operations Of Banks When Practicing The Functions They Are Allowed To[1]

Diego Perdigón De La Rosa[1]
Office Director of credit entity Liberbank S.A., Oviedo (Spain)
José Luis Vázquez Burguete[2]
Titular Professor, Faculty of Economics and Business Sciences, University of Leon (Spain)
María p. García Miguélez[3]
Lecturer univ. PhD, Faculty of Law, University of Leon (Spain)

Abstract

This paper aims to determine: i) the administrative capacity of the European Central Bank as Supervisor and the Bank of Spain as Competent National Authority, regarding the supervision of Spanish credit institutions, namely in terms of imposition of sanctions according to the legal system; and ii) the effectiveness of the sanctioning regime within the Single Supervisory Mechanism. The methodological approach is based on the description and interpretation of provided data. The findings show that the action of the Supervisor is supported by a coherent framework for compliance with the sanctioning regime at the national and EU level, according to the data on sanctions to banks due to serious or very serious failures from 2018 and to date as published in the website of the Bank of Spain. However, the fact that such sanctioning function is shared with the European Central Bank within the procedures of the Single Supervisory Mechanism could increase the management risk, as a permanent flow of information and collaboration between both supervisors is required in order to guarantee the suitability of the applied procedure as well as the due right to defence of the banks against unfavourable decisions (if so), always seeking balance, equity and justice principles.

Keywords: *Bank entities; EU Single Supervisory Mechanism; Supervisor; Competent National Authority; Infractions; Sanctions.*

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1. Introduction

As part of the process of continuous improvement which is been carried out within to the Single Supervisory Mechanism (SSM), whose ultimate goal is reversing the consumer's negative perception of financial services as a result of the impact of the financial crisis during the recent years in the European Union (EU), one of the aspects which has been assessed with a major emphasis is the one related to the strengthening of the functions of the Bank Supervisor(s) as regulator(s) of credit institutions.

In the case of Spain, this supervising function is shared by the European Central Bank (ECB) and the Bank of Spain (Banco de España, BE) – at the EU and national level, respectively–, namely regarding their administrative capacity to provide justice through the sanctioning power over regulated credit institutions, as a consequence of an improper performance while exercising the functions authorised to them.

Therefore, the purpose of this paper is to demonstrate, on the basis of the information obtained from the ECB and the Bank of Spain and its linkage through the SSM, the legal basis that regulates the action of the one and the other as Supervisor according to the Law 13/1994 of Autonomy of the Bank of Spain [1] and the Council Regulation 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2].

Regarding the specific regulation of the sanctioning scope, in the case of the Bank of Spain it is reflected in the above mentioned Law 13/1994 as well as in the Law 10/2014 [3], which includes in its Title 4 the sanctioning regime in accordance with the procedural rules established in the previous Law 30/1992 [4]. In the EU sphere, the sanctioning power of the ECB is verified in the art. 18, on administrative sanctions, of the Council Regulation 1024/2013, which establishes the procedure to be followed as well as the applicable sanctions, considering the Council Regulation 2532/98 [5].

Finally, a practical case is presented in order to verify the effectiveness of the regulatory framework and the administrative capacity of the Supervisor to establish the sanctioning regime, using as an example the firm sanctions issued to credit institutions due to infractions classified as serious and very serious[2]. These sanctions are published in the website of the Bank of Spain in accordance with the art. 115 of Law 10/2014.

[2] Against firm acts in administrative procedure, the extraordinary appeal for review will only proceed under concrete circumstances as, for example, when an error had been incurred when dictating them, when false documents or testimonies had influenced them, etc., in accordance with arts. 108 and 118 of Law 30/1992.

2. Fundaments of the bank supervisor authority in Spain: European Central Bank and Bank of Spain

On the one hand, the European Central Bank was established in June 1998 as the body responsible for managing the EU monetary policy, which constitutes the core nucleus of the Eurosystem[3] and the Single Supervisory Mechanism. Its headquarters are located in Frankfurt am Main (Germany) and it has some 3,500 employees at the moment.

The ECB is assigned various tasks in collaboration with the national central banks of the EU Member States. In the case of those functions related to bank supervision, it maintains a permanent contact with the Competent National Authority (CAN), that is, the Bank of Spain in Spain, within the sphere of the agreements of the SSM.

All countries in the Eurosystem are participants in the SSM, as well as those other EU countries wishing the establishment of a close cooperation with the ECB without being included in the euro area or Eurozone, this way embracing this supervisory system.

On the other hand, the Bank of Spain was formerly established by a Royal Document (Real Cédula) in 1782 as National Bank of San Carlos (Banco Nacional de San Carlos) and turned its name to the current one in 1856. It is located in Madrid and it has some 3,000 employees. Through Law 13/1994 it became the responsible for the monetary policy at national level and, within the SSM framework, the supervisor of the Spanish system of credit institutions together to the ECB.

In this supervisory dual system in the country, the ECB exercises a direct supervision over those entities which are considered as 'significant'[4]. For its part, the CAN Bank of Spain exercises a direct supervision over the 'less significant' entities, while the ECB exercises an indirect supervision on them. The classification between significant and less significant institutions in Spain by 09 September 2019 is as follows[5]:

- Significant entities (12 entities): Abanca Corporación Financiera S.A., BBVA S.A., Banco de Crédito Social Cooperativo S.A., Banco de Sabadell S.A., Banco

[3] The Eurosystem was established as the monetary authority of the euro area, i.e. those EU countries whose currency is the euro. It comprises the ECB as well as the national central banks of these countries.

[4] Significant entities: total assets > 30,000 million euros; percentage of assets over the GDP in the country > 20%; it is one of the three largest entities in a Member State; it has subsidiaries in more than one of the participating countries, whose cross-border assets or liabilities exceed more than 20% of its total assets or liabilities; it has received or requested financial assistance from the European Financial Stability Facility or the European Stability Mechanism.

[5] The total list of significant and less significant entities is available at https://www.bde.es/bde/es/secciones/mus/participantes/ Participantes.html (accessed at 30 September 2019).

Santander S.A., Bankinter S.A., Bankia S.A., Caixabank S.A., Ibercaja Banco S.A., Kutxabank S.A., Liberbank S.A., and Unicaja Banco S.A.

- Less significant entities (77 entities): A&G Banca Privada S.A., Allfunds Bank S.A.U., Andbank España S.A., Banca March S.A., Banca Pueyo S.A., Banco Alcalá S.A., Banco Caminos S.A., Banco Pichincha España S.A., Cecabank S.A., Renta 4 Banco S.A., etc.

3. The single supervisory mechanism (SSM) in Spain: composition, functions and supervision model

In June 2012 the EU Chiefs of State and Government agreed to establish the Single Supervisory Mechanism in order to improve the quality of the banking supervision, to support the integration of financial markets and to foster the confidence of the consumers of financial services in credit entities.

Namely, the design and functioning of the SSM was specified with the approval of the Council Regulation (EU) No 1024/2013. It conferred specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, and specifically refers to such mechanism as an integrated European system for monitoring financial institutions, which embraces the leadership of the ECB, in the supervisory function, with the involvement of the Competent National Authorities of the countries in the euro area –including the Bank of Spain– and of those other EU member States wishing to join the SSM by establishing close cooperation links with the ECB.

The SSM became operational on 4 November 2014, date from which the ECB assumed the supervisory functions conferred by the aforementioned Council Regulation. In the Spanish case, the Bank of Spain started also to participate in this mechanism. This was the first step towards the establishment of the Banking Union at EU level[6]. SSM functions include:

- Ensuring the improvement of the supervision and robustness of the European banking sector in accordance with a unique set of rules and high-level requirements.

- Contributing to the financial stability and the financial integration in the euro area as well as in the EU internal market as a whole.

[6] According to the European Council, the Banking Union is defined as "a banking supervision and resolution system which operates on the basis of EU-wide rules" which "aims to ensure that the banking sector in the euro area and the wider EU is safe and reliable and that non-viable banks are resolved without recourse to taxpayers' money and with minimal impact on the real economy". It is comprised of three main building blocks, as follows: i) the single rulebook; ii) the Single Supervisory Mechanism (SSM); and iii) the Single Resolution Mechanism (SRM). More detailed information is available at the EU Council's website (https://www.consilium.europa.eu/es/policies/banking-union/).

To carry out those functions, the supervision model of the SSM is based on four pillars, as follows:

- an effective and prudent regulation, including rules of access and to exercise the banking activity;
- a continuous supervision of banking entities, with reception and analysis of periodic information and on-site inspections;
- corrective measures, as requirements and recommendations, remediation plans, intervention or replacement of administrators; and
- a disciplinary and sanctioning regime that can affect both financial entities and their administrators.

3.1. Capacity of the European Central Bank as supervisor of credit entities within the SSM

Since the implementation of the SSM in 2014 on, the European Central Bank became responsible for the supervision of the EU credit institutions. This fact was specifically supported by the art. 1 of the Council Regulation 1024/2013, stating that "this Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage".

Subsequently, the art. 4.1, on the tasks conferred on the ECB, delimits its attributed functions as SSM supervisor, which are later on developed in the arts. 9 and 12 as well as in the section 2 of the Council Regulation. Those functions are:

- to authorise credit institutions and to withdraw authorisations of credit institutions (subject to art. 14);
- in case of credit institutions already established in a participating Member State, which wish to establish a branch or provide cross-border services in a non-participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;
- to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution (subject to art. 15);
- when required (regarding the acts referred in art. 4.3), to ensure compliance with the imposed prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
- when appropriate (again regarding the acts referred in art. 4.3), to ensure compliance with the imposed requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk

management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;

- to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures, where specifically made available to competent authorities by relevant Union law;

- to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State; and

- to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements, and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers.

However, and regardless the attributions of the ECB, this institution must work together with the other European regulatory authorities, namely the Bank of Spain, in accordance with the art. 3, on cooperation, in order to ensure an adequate level of regulation and supervision within the EU.

The Council Regulation 1024/2013 also shows the administrative capacity of the ECB at the community level for the application of the sanctioning regime for improper conducts of the banks when exercising the functions for which they are authorised.

At any case, the supervisory capacities of ECB and national banks are delimited by the classification of entities as 'significant' or 'less significant'.

3.2. Capacity of the Bank of Spain as supervisor of credit entities within the SSM

Since 1962 on, different legal provisions have been attributing the faculty of supervising Spanish credit institutions to the Bank of Spain (Banco de España, BE), which as of 2014 is shared with the ECB within the SSM framework. The

basic delimitation of the supervisory power of the BE regarding credit institutions is mainly reflected in[7]:

- The Council Regulation No 1024/2013 itself, which regulates the creation and operation of the SSM for credit institutions.

- Law 13/1994 of 01 June 1994, on the Autonomy of the Bank of Spain, establishing that the BE must supervise the solvency and compliance of credit institutions and any other institution and markets whose supervision is attributed to it.

- The Spanish Law 10/2014, of 26 June 2014, on ordinance, supervision and solvency of credit institutions, which attributes to the BE the supervisory and sanctioning function of credit institutions in the country, regardless the competences attributed to the ECB by the Council Regulation 1024/2013. This national norm grants the BE the capacity to supervise the operations between a Spanish entity and its non-financial parent or subsidiaries.

Similarly, both the Law 13/1994 and the Law 10/2014 show the administrative capacity of the Bank of Spain at the national level for the application of the sanctioning regime for improper conduct of banks in the exercise of the functions for which they are authorised, which will be discussed later on.

4. Theory and practice of the application of the sanctioning regime in Spain by the Bank of Spain and the European Central Bank

4.1. Legal basis of the sanctioning regime at national level by the Bank of Spain and at EU level by the European Central Bank

Regarding the national level, on the one hand, and according to the art. 7.6 of the above mentioned Law 13/1994, the Bank of Spain must supervise the solvency, performance and compliance by the credit institutions of the specific regulations they are subject to. Moreover, it will be up to the Governing Council of the BE to impose the sanctions whose adoption falls within its competences (art. 21.1.i); and it will be the responsibility of the Executive Committee of the BE, subject to the guidelines from the Governing Council, to formulate to the credit institutions the precise recommendations and requirements, as well as to agree regarding them and their administrative and management bodies the initiation of disciplinary proceedings and implementation of intervention measures, the replacement of their administrators, or any other precautionary measures provided in the legal order and entrusted to the BE (art. 23.1.f).

On the other hand, the Law 10/2014 reflects in its Title 4 the sanctioning regime, including chapters related to general provisions, infractions, sanctions, rules of procedure and communication of infractions to the credit institutions.

[7] See https://www.bde.es/bde/es/areas/supervision/funcion/Base_legal/Base_legal.html (accessed at 30 September 2019).

Furthermore, the 14th Additional Provision of this Law 10/2014 establishes the sanctioning competences of the State with respect to the Autonomous Communities (Regions) which, in principle, may have their own sanctioning regime, to which those facts that may be constituting infractions detected by the Supervisor will be added, when different from those typified by the Autonomous Communities.

Regarding the EU level, the core legal basis of the sanctioning regime applicable by the European Central Bank is found in the art 18, on administrative sanctions, of the Council Regulation 1024/2013. Specifically, it establishes both the procedure to follow and the corresponding sanctions, taking in consideration the Council Regulation N1 2532/98 of 23 November 1998, concerning the powers of the European Central Bank to impose sanctions.

4.2. Applicability of the sanctioning regime at national level by the Bank of Spain and at EU level by the European Central Bank

Regarding the Spanish national level, the credit institutions and those holding administrative or management positions therein which violate ordination and discipline rules will incur sanctionable administrative responsibility. The Bank of Spain is responsible for the instruction and resolution of this type of procedures, and it may impose sanctions and administrative measures as appropriate.

The procedures initiated by the BE will comply the provisions in the Title 4 of the sanctioning regime according to Law 10/2014 [3] and Law 30/1992 [4], are as follows:

- In case of very serious infractions[8] (prescribing at 5 years), it will be considered if there is a large number of affected individuals, repetition in the offending behaviour, effects on the trust of the clientele, effects on the stability of the system, and/or if the action affects to the confidentiality of customer data. The corresponding sanctions will be: between 3 and 5 times the amount of the benefits of the infraction (when they could be quantified); between 5%-10% of total annual net turnover; a fine between € 5,000,000 and € 10,000,000; or the revocation of the permission as an entity.

- In case of serious infractions (prescribing at 4 years), that is, when the above circumstances (for very serious infractions) do not occur and the infraction appears as occasional or isolated, the corresponding sanctions will be: between 2 and 3 times the amount of the benefits of the infraction (when they could be quantified); between 3%-5% of total annual net turnover; or a fine between € 2,000,000 and € 5,000,000.

[8] The Bank of Spain will inform the Minister of Economy and Business about the imposition of penalties for very serious infractions.

- And in case of minor infractions (prescribing at 2 years), that is, due to any other cause than what was provided in the previous two categories, the sanctions will be: between 2 and 3 times the amount of the benefits of the infraction (when they could be quantified); between 0.5%-1% of total annual net turnover; or a fine between € 100,000 and € 1,000,000.

As for those holding administrative or management positions, faults are also classified as very serious, serious and minor. The corresponding sanctions are:

- In case of very serious faults: a fine up to an amount of € 5,000,000; the suspension in the exercise of the administrative or management position in the credit institution for a term not exceeding 3 years; or the separation of the position in the credit institution, with disqualification to exercise administrative or management positions in the same credit entity for a maximum term of 5 years.

- In case of serious faults: a fine up to an amount of € 2,500,000; the suspension in the exercise of the administrative or management position in the credit institution for a term not exceeding 1 year; or the separation of the position in the credit institution, with disqualification to exercise administrative or management positions in the same credit entity for a maximum term of 2 years.

- And in case of minor faults: a fine up to an amount of € 500,000; and, in addition to the planned penalty, a private warning may be imposed as an accessory measure.

The sanctions for committing very serious, serious of minor infractions are determined on the basis of an established set of criterions. The main considered criteria are: the nature and entity of the infraction; the degree of responsibility in the facts; the severity and duration of the infraction; and the importance of the benefits obtained or the losses avoided, as appropriate, as a consequence of the acts or omissions constituting the infraction.

In general, the resolutions of the BE that put an end to the sanctioning procedure will be afterwards appealable before the Minister of Economy and Business, as provided in Law 30/1992. And specifically, the sanctions and reprimands for very serious and serious infractions must be published in the State Official Bulletin (BOE) once they are firm on the administrative way, and they must be also published on the BE website, within a maximum deadline of 15 business days since the sanction or reprimand is firm in administrative proceedings.

There are several notable aspects in the text of the Law 30/1992, as:

- it collects the rules related to the interested parties, that is, to those who promote the procedure, as well as its legitimacy and the right of access to the public information;

- it regulates the principles of abstention and disqualification for Public Administration personnel who, in response to a series of cases, must refrain from intervening in the procedure;

- it regulates the requirements of administrative acts, terms and deadlines, from the beginning, which can be done *ex officio* or at the request of the interested parties;

- it regulates the forms and effects of the notification of the procedure and allegations (evidence), as well as its completion through resolution, withdrawal, resignation or expiration;

- it regulates essential aspects such as the nullity of the full-fledged procedure and the effects of the execution, including the forced execution, that is, i) urgency on the patrimony, ii) subsidiary execution, iii) coercive fine, and iv) compulsion on individuals;

- it establishes the system of administrative resources (appeal and optional replacement appeal), taking into account that the resolution of the appeal will estimate in whole or in part, or will dismiss, the claims made in it, or it will declare its inadmissibility; and

- it regulates the basic principles to which the exercise of the sanctioning capacity of the Administration must be submitted (among them, the principles on presumption of innocence, information, defence, responsibility, proportionality, etc.).

Regarding the EU level, the Council Regulation 1024/2013 includes the administrative restrictions whose competence is attributed to the European Central Bank, in accordance with the Council Regulation 2532/98. Both legal rules give together the ECB the power to impose fines or periodic coercive payments to those credit institutions defaulting on the functions for which they are authorised.

Specifically, such a kind of sanctions refers to:

- Fines: the maximum limit being equal to double the amount of the benefit obtained or loss avoided through the infringement in case this benefit or loos could be determined, or 10% of the entity's total annual turnover.

- Periodic coercive payments or coercive fines: the maximum limit being equal to 5% of the average daily turnover for each day of infringement. Periodic coercive payments may be imposed for a maximum period of 6 months.

In case the ECB considers that the credit institution has committed an infringement, it will carry out the corresponding investigation, as appropriate. Once it has concluded and before issuing the decision, the ECB will notify in writing the conclusions from the investigation and allow objections against it. The right of the credit institution to access the procedure file will be guaranteed.

Moreover, as part of the SSM, the ECB may require the Bank of Spain, depending on the type of infraction, to establish the convenient procedures aiming to adopt convenient measures to ensure appropriate sanctions are imposed, which must be effective, proportionate and dissuasive. Therefore, it is determined that the BE will continue applying its sanction regime to the less significant credit institutions and it will support the ECB in case of those procedures on significant entities, so that both ECB and BE must work in coordination.

4.3. Empirical evidence of imposition of fines to credit entities in Spain

In accordance to the provisions in the art. 115 of Law 10/2014, the Bank of Spain must publish on its website the sanctions and reprimands imposed on credit institutions due to serious or very serious infractions within 15 business days from the date on which they were firm in the administrative way. Table 1 shows a summary of those sanctions imposed on different credit institutions in 2018 and up to date. Some of them were considered as very serious (Banco Santander S.A. and Bankia S.A. –both by 26/10/2018–, Caixabank S.A. –by 30/11/2018–, and Unicaja Banco S.A. –by 29/03/2019–). Some others were considered as serious, reaching as a whole the sum of €17,301,000.

Table 1. Summary of sanctions imposed by the Bank of Spain to Spanish credit institutions in 2018 and to date

Date of resolution	Information on infringements and sanctions imposed	Level	Pecuniary sanction
30/05/2018	Banco Pichincha España S.A.: failure to comply with the rules of transparency of banking services and responsibility in the granting of loans	Serious	€ 351,000
30/05/2018	Caixabank S.A.: non-compliance in the application of the Code of Goods Practices	Serious	€ 350,000
29/06/2018	Banca Pueyo S.A.: infringement regarding transparency and protection of the client of banking services	Serious	€ 876,000
26/10/2018	Banco Santander S.A.: failure to comply with the delivery and the mandatory content that must include the pre-contractual and contractual information provided to customers, the calculation of the Annual Percentage Rate of Charge (APR) and the application of commissions for services not provided	Serious	€ 1,500,000
26/10/2018	Banco Santander S.A.: infringements regarding compensation and commissions in cases of early amortization and application of interest rate rounding clauses	Very serious	€ 3,000,000
26/10/2018	Bankia S.A.: acts or operations infringing the norms dictated under art. 29.2 of the Law on Sustainable Economy [6]	Serious	€ 300,000
26/10/2018	Bankia S.A.: failure to comply with the performance of acts or operations prohibited by ordination and discipline rules with the rank of Law or with non-compliance with the requirements established therein	Very serious	€ 900,000

30/11/2018	Caixabank S.A.: infringements regarding compensation for withdrawal in early repayments, benchmarks and rules on interest rate rounding	Very serious	€ 3,600,000
29/03/2019	Unicaja Banco S.A.: infringements regarding the prohibition of charging commissions for issuing bank documentation proving loan payment	Very serious	€ 1,050,000
30/05/2018	Banco Pichincha España S.A.: failure to comply with the rules of transparency of banking services and responsibility in the granting of loans	Serious	€ 351,000
30/05/2018	Caixabank S.A.: non-compliance in the application of the Code of Good Practices	Serious	€ 350,000
29/06/2018	Banca Pueyo S.A.: infringement regarding transparency and protection of the client of banking services	Serious	€ 876,000
30/11/2018	BBVA S.A.: occasional or isolated infringements of rules with the rank of Law (compensation for withdrawal in early amortization and rules on the replacement of benchmarks)	Serious	€ 1,200,000
30/11/2018	BBVA S.A.: infringements in the delivery of the pre-contractual information to be provided to the client, in the calculation of the APR, in the information on compensations for interest rate in early amortizations, and in the collection of commissions for registration cancellation	Serious	€ 1,500,000
30/11/2018	Caixabank S.A.: infringements in the delivery of pre-contractual information to the client, the way of calculating the APR, and the information on compensation for interest rate in early repayments	Serious	€ 1,200,000
21/12/2018	Abanca Corporación Bancaria S.A.: infringements in the pre-contractual information provided to the client about expenses and costs of mortgage loan operations, and the inclusion of such costs and expenses in the calculation of the APR	Serious	€ 3,000.000
27/02/2019	Tríodos Bank N.V.: infringements regarding the pre-contractual information provided to the client on the expenses and costs of the operation, and the inclusion of such costs and expenses in the calculation of the APR	Serious	€ 174,000
29/03/2019	Banco Santander S.A.: non-compliance with regard to commissions for early repayment, for compensation for interest rate risk, and for novation in term extensions, and for interest rate rounding	Serious	€ 3,200,000

29/03/2019	Banco Santander S.A.: infringements in the delivery of pre-contractual information to customers, in the content of settlement documents in early cancelations, in the debit of commissions in the novation of operations, in the calculation of the APR, etc.	Serious	€ 3,200,000
29/03/2019	Unicaja Banco S.A.: infringements in the delivery of pre-contractual information to customers, as well as in the way in which the APR was calculated in the pre-contractual and the contractual documentation, as not all the formalization expenses to be paid by the borrower were included nor the cost of the damage insurance required to arrange the operation	Serious	€ 450,000

Source: Banco de España, Sanciones impuestas por el Banco de España [7]

Additionally, the Bank of Spain included in its Annual Report for 2018 a section on the exercise of the supervisory authority, including a summary of its actions on credit institutions, infringements and sanctions applied [7].

Thus, the administrative capacity of the Supervisor to apply the sanctioning regime provided in the regulations is verified, through the imposition of financial penalties to the regulated credit institutions, whose ultimate aim is requiring the offender to put an end to his conduct and to refrain from repeat it.

5. Conclusions

The transparency and protection of the banking clientele are nowadays core aspects of the supervisory model, which must seek excellence in management. At this purpose, reinforcing the independence of the Supervisor, as well as its ability to administer justice, appears as a requirement. Therefore, the sanctioning regime for improper performance of credit institutions in the exercise of the functions for which they have been authorised is included within the competences attributed to the Supervisor by laws and regulations.

In previous pages it has been determined that the EU Supervisor – the European Central Bank – and the Spanish Competent National Authority –the Bank of Spain – are assigned faculties for supervision and sanction within the Single Supervisory Mechanism, and that such powers are applied based on the classification of the credit institution, then determining that the ECB exercises a direct supervision over significant entities and an indirect supervision in case of less significant entities, while the BE exercises a direct supervision over less significant entities.

In this sense, the common procedures are under the responsibility of the ECB, and the proposal of this procedures (both in case of significant and less significant entities) corresponds to the BE.

These procedures include, for example, the authorization of credit institutions or its revocation. Additionally, the ECB has the power to impose sanctions in case of non-compliance with EU law directly applicable to significant credit institutions, with the exception of non-pecuniary sanctions and the sanctions to natural persons.

In turn, the BE exercises the direct supervision over less significant credit entities and prepares the proposals for procedures, as mentioned above. In a same way, it has the sanctioning power over significant entities, prior instruction of the ECB, due to infringements of national regulations transposing community directives, or infractions attributable to administration and management positions in credit institutions, as well as the power to impose non-pecuniary sanctions.

Although the legal basis for the exercise of the functions attributed to the Supervisor to administer justice is considered as adequate and sufficient, we should highlight that with the commissioning of the SSM and the distribution of competences of the sanctioning regime between the ECB and the BE, no matter if a significant or a less significant credit entity is regulated, the legal and regulatory system becomes more dense, exhaustive and complex, and this could increase the risk of co-management between both supervisory entities in the correct application of the sanctioning procedure. At this purpose, high, close and permanent communication and collaboration between the supervisors, guaranteeing at all times the due procedure and the defence capacity of the credit institutions involved according to the legal system.

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