

# Conduct Supervision of Banks in Spain

**Fernando Tejada**

**Director, Market Conduct and Claims Department**

**Conference “*Banking Conduct Supervision: new challenges ten years after the financial crisis*”**

Money Museum, Banco de Portugal

Lisbon, 25 September 2018



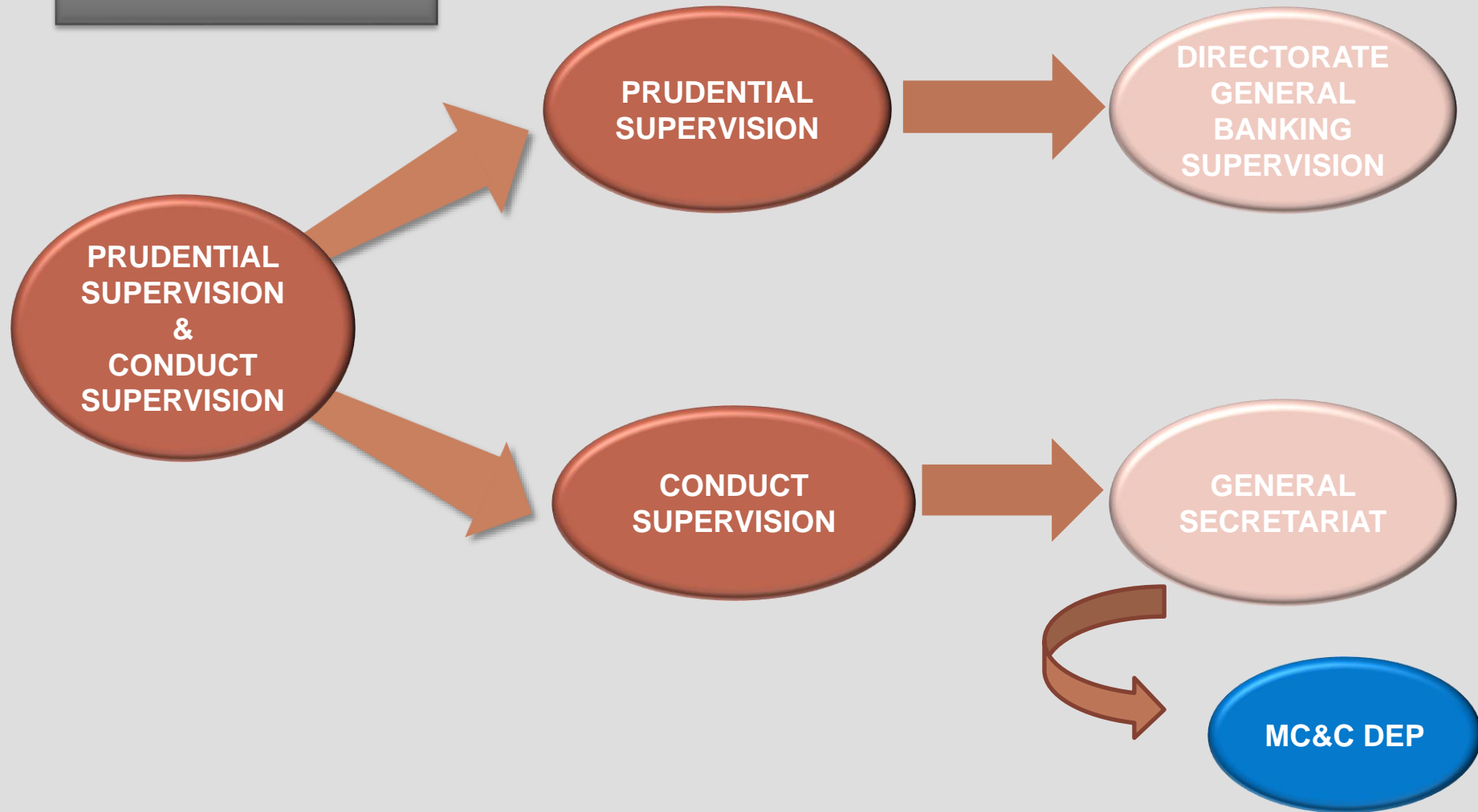
- Supervision of conduct is not included in the remit of the SSM
- Protecting bank customers to
  - ✓ safeguard public trust in the banking system
  - ✓ prevent the risk associated with a general loss of public confidence
  - ✓ **So, fostering the good functioning and stability of the financial system**
- Oversight and inspection of conduct goes further than compliance with transparency and consumer protection rules
  - ✓ promoting good market practice
  - ✓ handling enquiries and resolving complaints and claims made by clients
  - ✓ enhancing fair treatment of clients
  - ✓ strengthening self-regulation on advertising



- Supervisory actions, **planned or unplanned**, comprised
  - ✓ on-site inspections
  - ✓ off-site inspections
  - ✓ one-off supervisory monitoring, both individually and cross-sectorial
  - ✓ continuous monitoring of institutions' conduct, at an individual or aggregate level, according to the importance and conduct risk scoring of each institution
  
- Claims and complaints as one of the most valuable sources of information for the supervision of conduct
  - ✓ A tool to gauge bank's attention to clients
  - ✓ Detection of actual infringements
  - ✓ Detection of
  - ✓ Early indicator for troubles

# SUPERVISORY STRUCTURE

As from 01 / 06 / 2014





## MARKET CONDUCT AND CLAIMS DEPARTMENT

Transparency and Best Practice  
Division

Banking  
Customer  
Relations  
Division

Division for oversight of  
institution's conduct

Transparency  
Rules

Best Practice  
Criteria

Proceedings  
and  
Information  
Management

Inspection

Surveillance

CONDUCT SUPERVISION



# SUPERVISORY ACTIVITIES 2017



Number		
By type	Inspections (a)	Off-site monitoring (b)
Mortgages		
Mortgages (transparency)	34	4
Mortgages (Code of Good Practice)	1	26
Consumer loans	0	5
Advertising	1	168
Other (capital contributions credit cooperatives, ATMs, financial reporting to SMEs, customer service departments, transparency)	1	20
<b>TOTAL</b>	<b>37</b>	<b>223</b>
<i>of which unplanned</i>	8	45

SOURCE: Banco de España.

**a** Of these inspections, 24 were initiated before the beginning of 2017.

**b** Of these off-site monitoring activities, 93 were initiated before the beginning of 2017.

# SUPERVISORY MEASURES 2017



Number

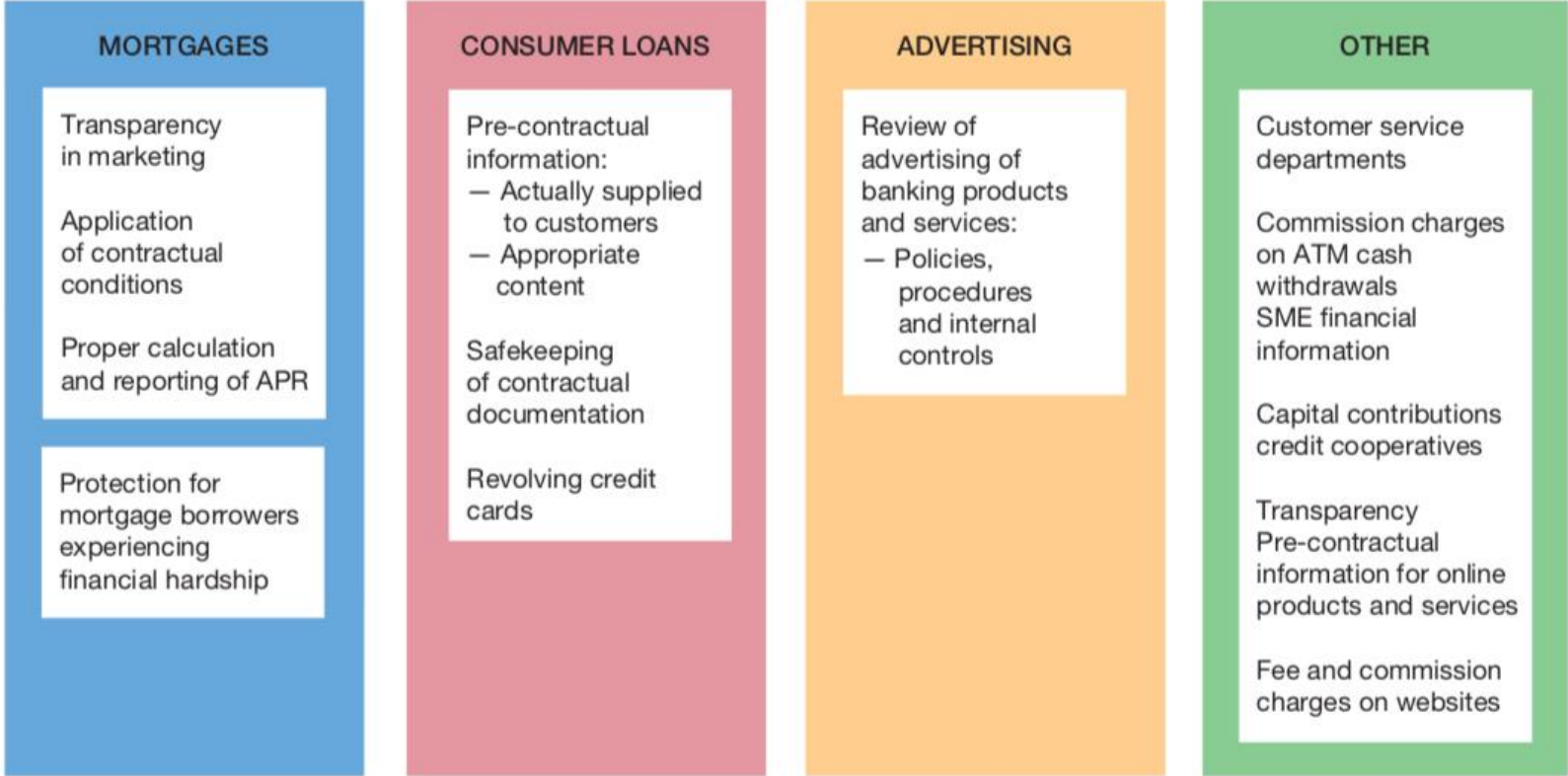
	Inspections (a)	Off-site monitoring (b)
Initiation of penalty procedures	5	1
Letters of requirements	8	114
Recommendation and observation letters	8	226
Other letters	0	81
Other actions concluded not involving letters	1	14
<b>TOTAL</b>	<b>22</b>	<b>436</b>

SOURCE: Banco de España.

- a** The eight requirements letters contain 68 specific requirements for the institutions. In addition, there are five completed inspections for which the adoption of supervisory measures has yet to be formalised.
- b** The 114 requirements letters contain 330 specific requirements for the institutions.

# OVERSIGHT OF CONDUCT: MAIN AREAS OF ACTIVITY

## 2017



SOURCE: Banco de España.



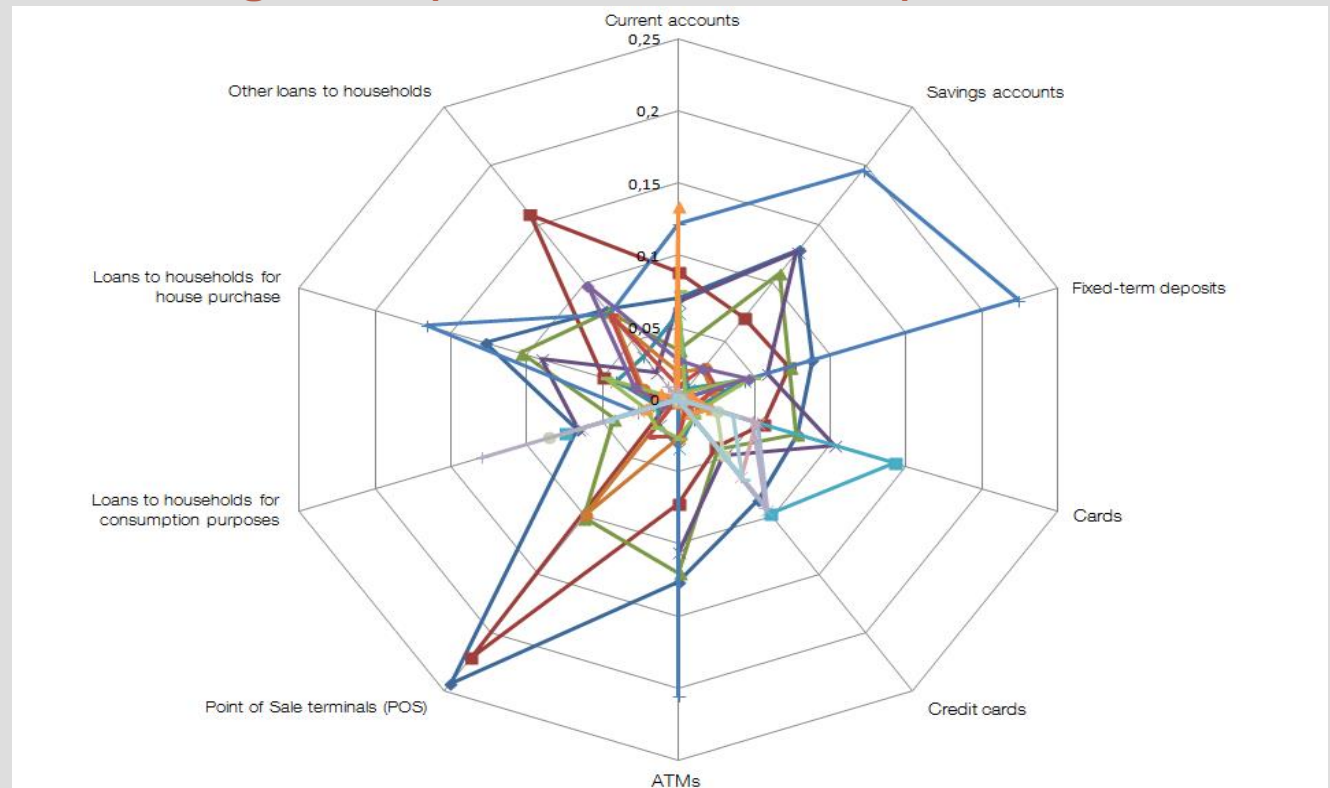




## 1 CONDUCT CATEGORY

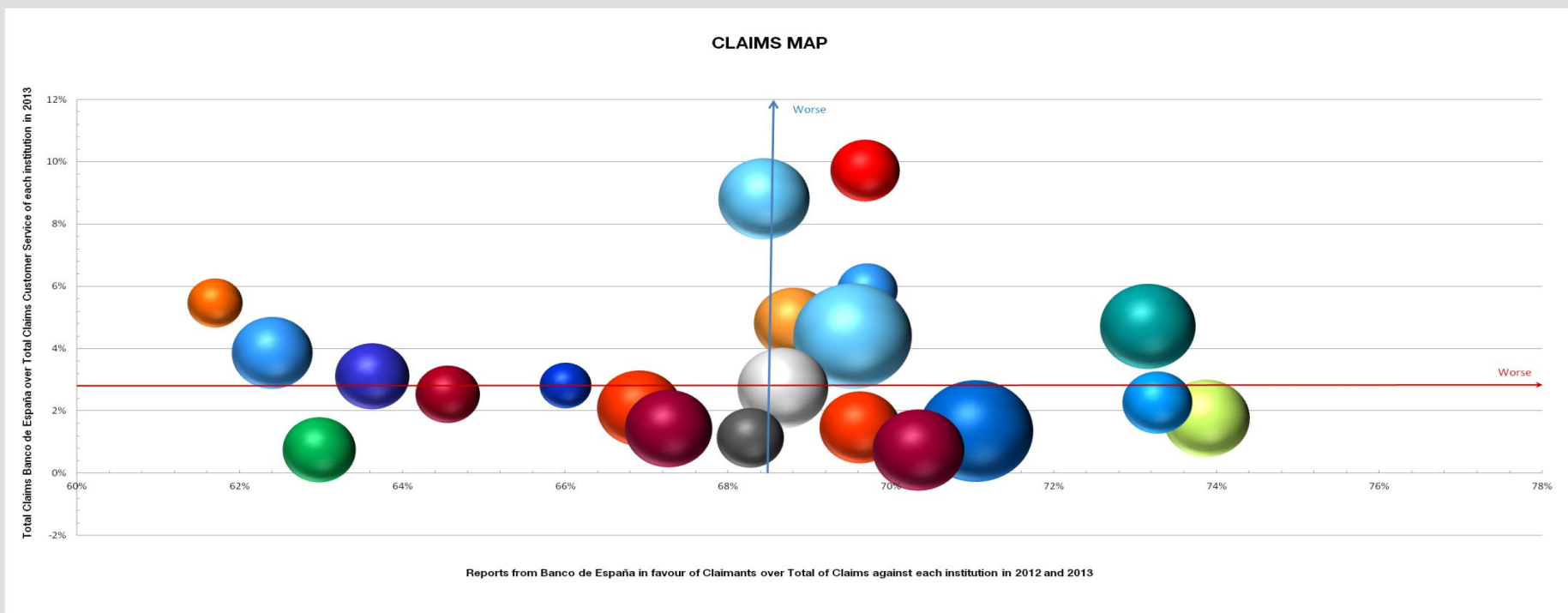
- Annual assignment of a conduct category to each financial institution.
- Conduct category depends on the type of institution (official registers) and its market share in certain segments (financial statements)

EXAMPLES  
OF MARKET SHARE  
BY SEGMENTS  
OF A SAMPLE OF  
INSTITUTIONS



## 2 CONDUCT PROFILE

- Assignment of conduct profile to each institution depending on different parameters according to its conduct category
- Parameters based on data regularly reported by the institution to BdE and other internal information (e.g. claim statistics)





3 (i)  
SUPERVISORY PRIORITIES  
BY FINANCIAL INSTITUTION

SUPERVISORY MONITORING				
Conduct Category	Conduct Profile			
	A	B	D	E
C1				
C2				
C3				
C4				
C5				

INSPECTION CYCLE				
Conduct Category	Conduct Profile			
	A	B	D	E
C1				
C2				
C3				
C4				
C5				

Monitoring	Individual monitoring
	Monitoring of a Group of Entities
Inspections	3-year Cycle
	5-year Cycle
	8-year Cycle



4  
SUPERVISORY  
PROGRAM

SUPERVISION DEPARTMENT RULES

BANCODE

ESPAÑA

Eurosistema

Conducta de Mercado y Reclamaciones

CIRCULAR INTERNA

3/2015, de 18 de marzo

MARCO GENERAL DE LOS PROCEDIMIENTOS APLICADOS EN LA DIVISI3N  
DE SUPERVISI3N DE CONDUCTA DE ENTIDADES EN EL DESARROLLO DE SUS  
FUNCIONES

3NDICE

SUPERVISORY PROGRAM  
AND INSPECTION PLAN (ANNUAL)

BANCODE

ESPAÑA

Eurosistema

Departamento de Comunicaci3n

NOTA DE PRENSA

Madrid, 25 de marzo de 2015

Aprobado el primer programa supervisor anual del Departamento de  
Conducta de Mercado y Reclamaciones

En su reuni3n del d3a 24 de marzo de 2015 el Consejo de Gobierno del Banco de Espa3a ha sido informado de la aprobaci3n por la Comisi3n Ejecutiva, el pasado d3a 18 de marzo, del primer programa supervisor anual elaborado por el Departamento de Conducta de Mercado y Reclamaciones, que el pasado 1 de octubre de 2014 asumi3 las competencias supervisoras en materia de conducta de mercado, transparencia informativa y sistemas o mecanismos de atenci3n a los clientes de entidades supervisadas.



## SURVEILLANCE: INDIVIDUALLY / BY GROUP / TRANSVERSAL

### Planning:

- Continuous & predefined off-site surveillance
- Occasional off-site surveillance activities
- Enforcement control

### Sources of information:

- Submitted to the Banco de España
- Previous inspections.
- Requested ad hoc to the entities.
- Extracted from our ADR mechanism.

### Target to achieve:

- Update conduct profile.
- Detect signals of potential weaknesses.
- Identify the scope of new inspections.
- Follow up of supervisory measures
- Eventually, disciplinary measures



ON-SITE INSPECTION PHASES



- Communication to the financial institution
- Communication to other supervisors

- Previous note:
  - Scope
  - Team
  - Time frame program

- Inspection works
- Extraordinary actions
- Inspection report

- Meeting with the financial institution

- Scope, results and conclusions
- Signed by the responsible staff and reported to the management





## 6 SUPERVISORY MEASURES

- **OBSERVATIONS AND RECOMMENDATIONS**
  - **NOTIFICATION OF REQUIREMENTS**
  - **SANCTION PROCEDURES**

SANCTIONS	VERY SERIOUS	SERIOUS	MINOR
Revocation of Authorisation	√	-	-
Monetary Fine			
- Profits	3 - 5 times	2 - 3 times	2 - 3 times
- Turnover	5% - 10%	3% - 5%	0,5% - 1%
- Amount	5 - 10Mill€	2 - 5Mill€	0,1 - 1Mill€
Reprimand	Public	Public	Private
Cessation of conduct	√	√	√

➤ It is also contemplated to impose sanctions on directors or managers responsible for the infringement (suspension from practice, disqualification from functions in any financial institution, fines).





## A LOT OF QUESTIONS ...WITH FEW ANSWERS

- ☐ Are the risks covered by current regulation?
- ☐ Is the market able to cope with them?
- ☐ Is new regulation the most efficient way to cope with such risks?
- ☐ Should all the FinTech activities be under the regulatory focus?
- ☐ All to the same extent? - Complete value chain or just one link?
- ☐ What should be the nature of the regulatory body? How wide its scope? What about the regulator's liability?



SP: No specific regulation applicable to 'FinTech' companies as such.

## **REGULATED**

- FinTech regulated services: deposit taking, payment services, e-money issuance, investment services, etc. are subject to prior authorisation and must comply with the applicable national legislation implementing relevant European legislation
- Lending-based and investment-based crowdfunding platforms are regulated under bespoke national legislation (*Ley 5/2015*)

## **NOT REGULATED**

- Virtual currencies and Distributed ledgers technologies related services.
- Payment initiation service providers and data aggregators (AISPs) are will be regulated under national legislation implementing PSD2.

## **OTHER REGULATIONS**

- FinTech companies might be subject to comply with national legislation implementing European Directives on AMLand/or Data Protection



## TO FOSTER

- **Competence**
- **Freedom of establishment increasing the attractiveness for new projects**
- **Innovation**
- **Inclusion**
- **Digital advantages (immediacy)**
- **Simple solutions**

## WHILE PRESERVING

- **Supervisory control of regulated activities**
- **Level playing field (same business, same risks, same rules)**
- **Financial stability (concern for incumbents)**
- **Consumers protection**
- **Pre-contractual information (due assessment time lags)**
- **Growing complexity of financials**



## ANY CONCLUSIONS? TOO EARLY; JUST A SET OF GENERAL PRINCIPLES

Neutral to  
technology

Single set of  
binding rules for  
all participants  
(LPF)

Dialogue with  
industry - learning

Flexibility  
(proportionality)  
on a case by  
case

Tailored solutions  
for different cases  
(services,  
jurisdictions...)

Keep consumer  
protection as the  
top value to  
guarantee

Foster  
international  
coordination

Foster  
coordination with  
other national  
authorities

Strengthen financial  
education  
initiatives



Thanks for your attention

BANCO DE **ESPAÑA**  
Eurosistema

**Market Conduct and Claims Department**