

# ANNUAL REPORT

# 2019



Spanish Executive Resolution Authority

**ANNUAL REPORT**

**2019**



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## ABBREVIATIONS AND ACRONYMS

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<b>Act 11/2015</b>	Act 11/2015 of 18 June on the recovery and resolution of credit institutions and investment firms
<b>APS</b>	Asset Protection Scheme
<b>BMN</b>	Banco Mare Nostrum
<b>BRRD</b>	Bank Recovery and Resolution Directive
<b>CBCM</b>	Cross-border crisis management (groups), under the auspices of the FSB
<b>CCP</b>	Central Counterparty
<b>CET1</b>	Common Equity Tier 1
<b>CMG</b>	Crisis Management Group
<b>CNMV</b>	Spanish Securities Market Regulator (CNMV)
<b>CoCos</b>	Contingent convertible bonds
<b>CRR</b>	Capital Requirements Regulation
<b>DGF</b>	Deposit Guarantee Fund
<b>EBA</b>	European Banking Authority
<b>EBITDA</b>	Earnings before interest, tax, depreciation and amortisation
<b>ECB</b>	European Central Bank
<b>CI</b>	Credit institution
<b>ESM</b>	European Stability Mechanism
<b>EU</b>	European Union
<b>fmiCBCM</b>	Cross-border crisis management group for financial market infrastructures, under the auspices of the FSB
<b>FSB</b>	Financial Stability Board
<b>GCEU</b>	General Court of the European Union
<b>GSIB</b>	Global Systemically Important Bank
<b>ICAC</b>	Spanish Institute of Accountants and Auditors
<b>IF</b>	Investment firm
<b>IGAE</b>	Auditor General of the Spanish central government
<b>IRT</b>	Internal Resolution Team
<b>MREL</b>	Minimum Requirement of Eligible Liabilities
<b>NRA</b>	National Resolution Authority
<b>NRF</b>	National Resolution Fund
<b>ResCo</b>	Resolution Committee
<b>ReSG</b>	Resolution Steering Group
<b>RWA</b>	Risk-Weighted Assets

<b>Sareb</b>	Asset Management Company for Assets Arising from the Banking Sector Reorganisation
<b>SGRE</b>	Subgroup on Resolution Execution
<b>SGRPP</b>	Subgroup on Resolution Planning Preparedness
<b>SRB</b>	Single Resolution Board
<b>SREP</b>	Supervisory Review and Evaluation Process
<b>SRF</b>	Single Resolution Fund
<b>TLAC</b>	Total Loss Absorbing Capacity

## CHAIRMAN'S STATEMENT

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*It is once again my pleasure to present FROB's Annual Report, this time covering its activities over 2019.*

*This annual publication seeks to describe our activity in a transparent and illustrative manner and, as every year, we hope that it will be useful for all those who read it, will remain over time as a record of what happened in 2019 and, in general, will contribute towards effective fulfilment of our duty of accountability. This same objective forms the basis for an important project which saw the light last year: the publication of the report "10 years of FROB. A decade for financial stability"<sup>1</sup>. This work brings together the main figures and interventions of FROB and the most important features of the recapitalisation process of the Spanish banking sector over the previous decade.*

*FROB's activities in 2019 were once again framed within its two natural lines of action. Firstly, all the work resulting from our membership of the European Resolution Mechanism and our contribution to the ongoing work to strengthen the resolvability of financial institutions in Spain. Secondly, completion of the outstanding tasks of the bank recapitalisation process, particularly relating to monitoring our stakes in BFA-Bankia and Sareb.*

*Although it is always useful to stop and learn from what we have experienced, and that is the purpose of a Report such as this, as I write these words, it is impossible to ignore that in the first few months of 2020 an unimaginable new reality appeared that has since taken hold. Both because of its global scope and its profound effects (dramatic in terms of lives lost) and because of the general lack of knowledge about its ultimate limits and consequences, the crisis resulting from the COVID-19 pandemic is today the major challenge facing global society.*

*The financial sector is such an intricate part of life in our societies that, although its epicentre is in the world of public health, a shock of this nature cannot happen without affecting the banking industry. It is clear that in the face of this health emergency and the ensuing economic crisis, the authorities responsible for financial stability will have to rethink their capabilities and tools for managing a situation of this type. And they must do so with flexibility and prudence.*

*Fortunately, much progress has been made since the financial crisis. We are facing this situation in better conditions from various perspectives: from a prudential perspective, with more and better capitalised entities; from the area of resolution, with significant improvements in terms of planning and available instruments, and from an institutional perspective, with European supervisory (ECB) and resolution (SRB) systems in full operation within the Banking Union.*

*However, at the start of this new and turbulent time, we have not yet managed to complete some important elements for the resolvability of European banks. These*

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<sup>1</sup> Available at: [https://www.frob.es/en/Documents/10%20years%20of%20FROB\\_2009-2019.pdf](https://www.frob.es/en/Documents/10%20years%20of%20FROB_2009-2019.pdf)

*include the absence of a common deposit insurance scheme or the divergences, which have grown over recent days, between the legislation on State support and the legislation on the distribution of losses in resolution, or the lack of harmonised bankruptcy legislation bringing together the different European responses to failing banks. That is why it is necessary to once again highlight the importance of completing the Banking Union in order to deploy harmonised responses to challenges such as those faced today.*

*As it has always been, the main challenge henceforth will be for the rules that were designed as a result of the previous crisis to operate effectively to remedy what are largely unprecedented difficulties. Financial authorities cannot rely on their ability to predict every risk. Their institutional strength is also measured by their capacity to adapt to changing circumstances. It is therefore a good thing to see how the full institutional potential of the European banking authority is currently being deployed thanks to a flexible approach that aims to meet its ultimate aims by responses that are in line with the seriousness of the context. Institutions that are firm in their objectives and flexible in their actions are probably the best tool for governing what is to come and, in this regard, Spain and the Banking Union have learned a great deal and made much progress over recent years.*

*Finally, I would like to thank all FROB's employees and the members of its Governing Committee for the work carried out in 2019, the results of which are presented in this Annual Report. This year I would also like to thank all of those who, for the five years during which I have had the honour of chairing the institution, have contributed with their commitment and dedication to defending, often in very demanding circumstances, the public interest that we represent. I would therefore like to publicly acknowledge our professionals and the work done over these years. The current challenges confirm that the road ahead will not be easy. However, in turn, FROB's journey shows that times were never easy and supports the idea that resolution authorities such as this, with the right people, experience and institutional culture, will always be essential for meeting the challenges that lie ahead.*

Jaime Ponce Huerta

Chairman

## EXECUTIVE SUMMARY

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During 2019, FROB continued carrying out its duties within its remit established by the Single Resolution Mechanism:

- It has analysed the recovery plans of 12 significant credit institutions submitted by the Bank of Spain, and of 21 investment firms received from the CNMV.
- It has reviewed and issued a report on the resolution plans of 26 less significant institutions and three investment firms.
- It has been actively involved in reviewing and analysing the draft resolution plans of 12 Spanish significant institutions and participated as an observer in seven resolution colleges

As the Spanish authority acting as contact for and coordinator in resolution matters, it has continued to defend Spain's position on the various international resolution-related forums. In this regard, the work performed in the context of the Single Resolution Board (SRB) plenary session is noteworthy, which has centred on enhancing the resolvability of banks, effectively managing the different resolution cases brought forward and promoting a robust resolution framework. It has also participated in various working groups of the SRB whose objective is to improve the resolvability of banks and make the plans more operational. Particular noteworthy among these is the development of the new MREL policy, which aims to incorporate the changes in the banking package which will apply as from December 2020 (BRRD2/CRR2).

*Vis-à-vis* the resolution funds, during 2019, FROB collected contributions from 92 credit institutions, 28 investment firms and three non-EU branches totalling EUR 709 million.

FROB's work in recovery and resolution processes prior to the entry into force of Act 11/2015 and following completion in 2018 of the restructuring process of Spanish credit institutions focused on: proper exercise of its rights in BFA/Bankia and Sareb; overseeing the legal disputes deriving from the resolution measures taken; managing the guarantees granted during the divestment of entities receiving bailouts; and monitoring the divestment of entities in which FROB continued to hold stakes. In this regard, it is worth highlighting publication of the "Agreement regarding the management of the indirect stake of FROB, through BFA Tenedora de Acciones, S.A.U., in Bankia, S.A.", which provides for responsible and informed monitoring of FROB's stake in the BFA Group/Bankia.

Finally, in 2019 FROB celebrated the 10th anniversary of its creation. A series of activities were carried out to commemorate this anniversary, which are described in detail in this annual report.

## ACTIVITIES IN 2019

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### 1. WORK WITHIN THE FRAMEWORK OF THE SINGLE RESOLUTION MECHANISM

1. In 2019, FROB continued carrying out its duties within its remit established by the Single Resolution Mechanism<sup>2</sup>:
  - For significant credit institutions or cross-border institutions, as representative in Spain of the governing bodies of the SRB and entity responsible for the implementation at a national level of the SRB's resolution decisions; and
  - For other banks (less significant institutions), as executive resolution authority charged with approving and executing the resolution schemes, and with certain advisory powers in the planning phase.
2. There are still 12 significant institutions in Spain.
3. With regard to less significant institutions and investment firms (IFs), as executive resolution authority FROB is responsible for 55 credit institutions and 29 groups or individual IFs whose resolution plans are prepared by the CNMV under Act 11/2015.

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<sup>2</sup> [Regulation \(EU\) No 806/2014](#) establishes a Single Resolution Mechanism (SRB) in which the SRB is appointed as the single resolution authority directly responsible for all significant credit institutions supervised by the Single Resolution Mechanism (SRM), and any others that, while not significant due to their size, operate in two or more countries in the Banking Union. In addition to the SRB, the regulation establishes a Single Resolution Fund (SRF) which all significant and insignificant credit institutions in the Banking Union must pay into. This fund is managed by the SRB. The Single Resolution Mechanism is also made up of the National Resolution Authorities of each Member State, which are responsible for the credit institutions outside the scope of the SRM and investment firms not included in banking groups.

**Table 1. Table of Spanish entities**

Spain	
SRB's responsibility	FROB's responsibility
Significant institutions	LSI and IFs
Santander	Less Significant Institutions (LSI)  <i>Total</i> 55
BBVA	
La Caixa	
Sabadell	
Ibercaja	
Liberbank	
Unicaja	
Cajamar	
Bankinter	
Kutxabank	
Abanca	
BFA-Bankia	
<i>Total</i> 12	
<i>Cross-border groups</i>	Investment firms (IFs)  <i>Total</i> 29
Allfunds	
<i>Total</i> 1	
<b>Total: 13</b>	<b>Total: 84</b>

Source: FROB.

## 1.1. RESOLUTION PLANNING

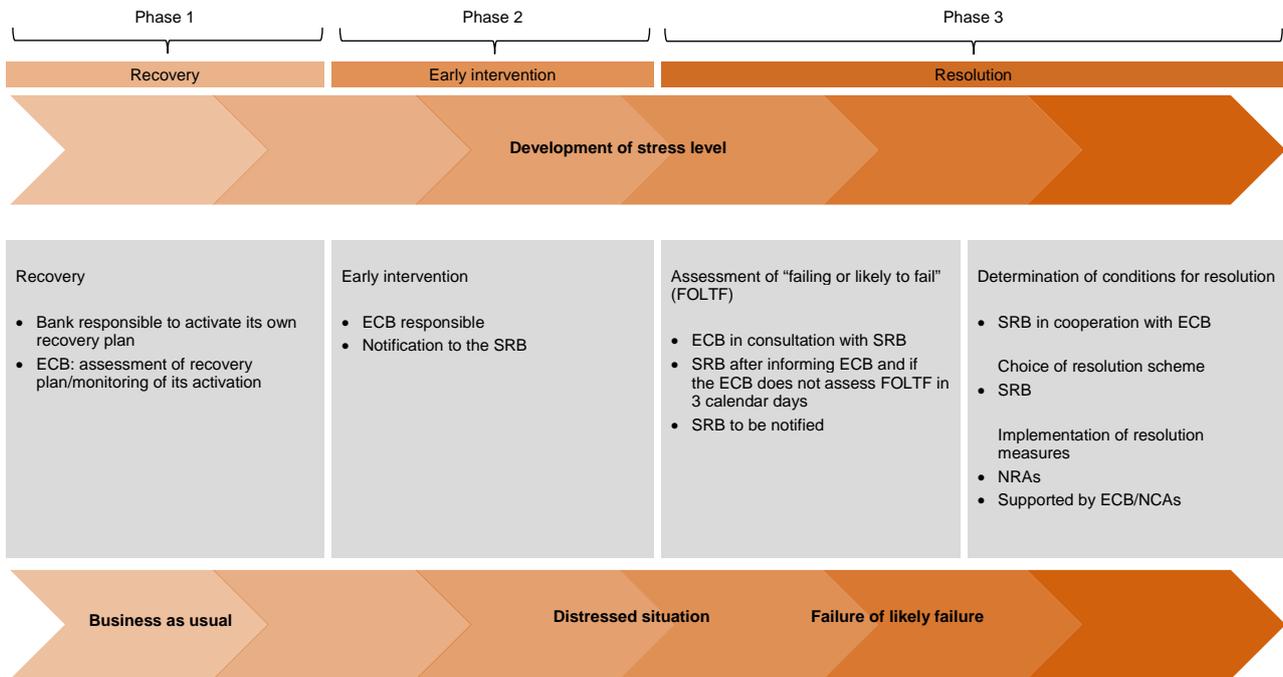
- The European resolution framework places considerable emphasis on preventing the resolution of credit institutions and investment firms and on planning for the resolution of these entities.

### 1.1.1. Early intervention and recovery

- While these preventive powers are primarily exercised by the supervisors (the European Central Bank, the Bank of Spain and the CNMV), the SRB and national resolution authorities also have certain legal powers in this area.
- With regard to early intervention, Act 11/2015 requires all entities to prepare recovery plans that must be approved by the supervisor. Such plans must set out the measures that may be taken by the entity to re-establish its financial position in the event of a significant deterioration of its capital, liquidity or profitability or any other event that could jeopardise its viability.
- In general, recovery plans must be updated annually, although updates can be less frequent in the case of plans that the supervisor deems to be subject to simplified obligations as permitted in Article 5 of Royal Decree 1012/2015.

8. In 2019, FROB analysed the recovery plans of 12 significant credit institutions. It also analysed and issued a report on the recovery plans of 21 investment firms submitted by the CNMV. The aim of FROB’s review of these plans is to evaluate whether the content thereof could negatively affect the entities’ resolvability

**Table 2. From recovery to resolution <sup>3</sup>**



Source: FROB

### 1.1.2. Resolution planning

#### Less significant institutions and investment firms.

9. In the case of less significant institutions and investment firms, Act 11/2015 establishes that the preventive resolution authority – the Bank of Spain and the CNMV, respectively – must prepare and revise a resolution plan for these entities, which will be updated on a yearly basis, except in the case of those subject to simplified obligations, for which updates can be less frequent than in general.
10. Once these plans have been drawn up, they must be sent to FROB and the competent authority so that they can prepare the mandatory reports required under Act 11/2015 and analyse whether an entity is resolvable, i.e. if there would

<sup>3</sup> Significant institutions.

be no obstacles to either its liquidation through insolvency proceedings or its resolution, depending on each case.

11. The Bank of Spain must also send the resolution plans to the SRB to garner its opinions on them.
12. During 2019, FROB reviewed and issued a report on the resolution plans of 26 less significant institutions and three investment firms.

### **Significant credit institutions and cross-border groups.**

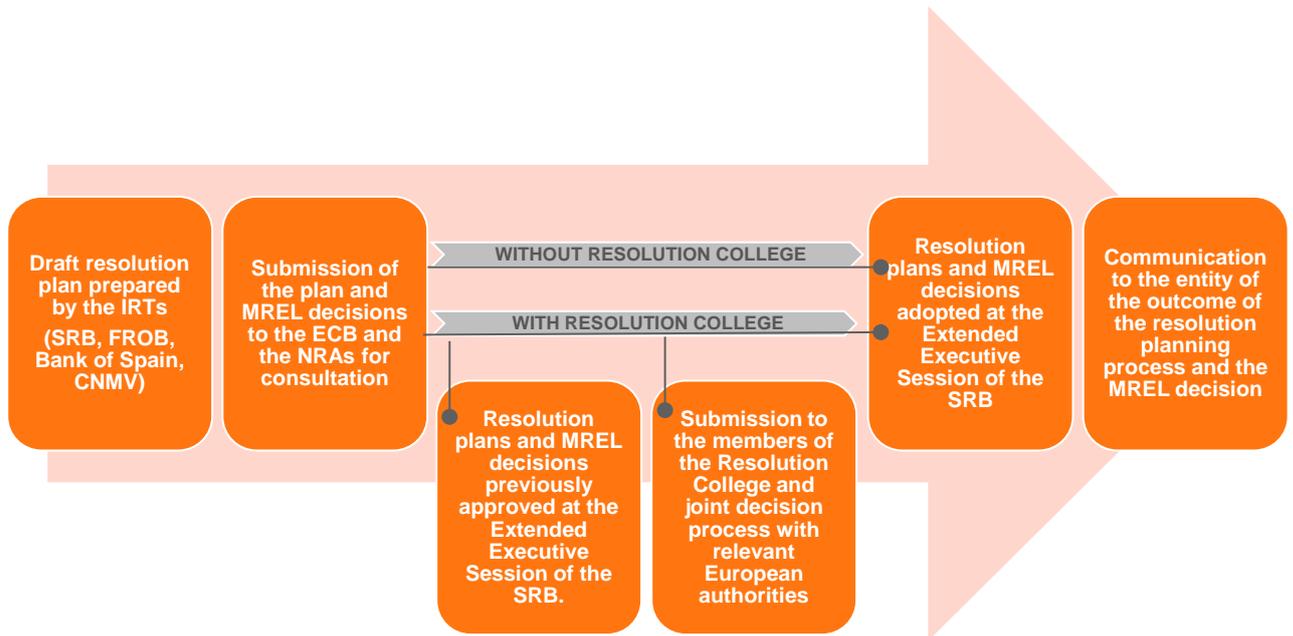
13. The SRB is responsible for the resolution of significant credit institutions, while their resolution plans are prepared by joint working groups (internal resolution teams or IRTs) comprising personnel from the SRB and the national resolution authorities (in Spain: the Bank of Spain, the CNMV and FROB) headed up by a member of the SRB.
14. The resolution plans of significant institutions are signed off by the SRB in a so-called extended executive session involving the members of the board and representatives of the NRAs of the countries of the bank affected by the decision. FROB's chairman attends these sessions as a member with voting rights.
15. With the aim of unifying, as from 2020, the planning cycle of all banks under the remit of the SRB, both those with and those without a resolution college, it was decided that 2019 would be a transitional year with the banks divided into three groups: (i) banks with resolution college<sup>4</sup>, whose planning cycle began in September 2018 and for which the resolution plan and binding MREL<sup>5</sup> decision were approved in the fourth quarter of 2019; (ii) priority banks without resolution college, for which the resolution plan and binding MREL decision are updated during 2019, which will be approved in 2020; and finally (iii) non-priority banks without resolution college, for which the resolution plan is not updated in 2019, but for which work continues on the established work priorities and on improving their resolvability.
16. In the case of banks with resolution college, the resolution plans and MREL decisions are previously approved at the Extended Executive Session of the SRB. They are subsequently sent to the members of the resolution college, initiating the formal approval procedure, which lasts four months, which includes the right to be heard process in which banks may make comments with regard to the proposed MREL, and the meetings of the resolution colleges. Formal approval ends with the resolution authorities participating in the colleges signing the joint decisions on both the resolution plans and the MREL.

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<sup>4</sup> Significant European Union banks that operate in other countries that do not belong to the Banking Union.

<sup>5</sup> Minimum requirement of eligible liabilities.

**Table 3. Procedure for adopting resolution plans**



Source: FROB

17. For these institutions, FROB has participated as an observer in 7 RCs (three for entities with controlling companies in Spain<sup>6</sup> and the remaining four<sup>7</sup> with controlling companies in the Banking Union and with significant branches or subsidiaries in Spain). As part of the approval procedure, FROB’s Chairman casts his vote at the corresponding extended executive sessions of the SRB.
18. In the case of Global Systemic Banks (G-SIBs), certain agreements are also reached with the resolution authorities of non-EU countries in Crisis Management Groups (CMGs). FROB has been a member of a CMG during the year<sup>8</sup>.
19. As for banks without resolution college<sup>9</sup>, for those considered as priorities, FROB has actively participated, within the IRT, in reviewing and analysing the draft resolution plans and MREL corresponding to the 2019 planning cycle, which were approved in January and February 2020, with FROB’s Chairman voting in favour in the corresponding extended executive sessions of the SRB. For non-priority banks, work was focused on monitoring the established work priorities and enhancing these banks’ resolvability.

<sup>6</sup> Santander, BBVA and Sabadell.

<sup>7</sup> ING, Deutsche Bank, BNP Paribas and Crédit Agricole.

<sup>8</sup> The CMG for Santander.

<sup>9</sup> Liberbank, Ibercaja, Unicaja, Cajamar, Abanca, Caixabank, Kutxabank, Bankia and Bankinter.

20. FROB is also a member of the IRTs of three cross-border groups under the remit of the SRB<sup>10</sup>. The resolution plan for Finantipar, corresponding to the 2018 planning cycle, was approved in 2019. In addition, as part of the 2019 planning cycle, a resolution plan was drafted for the first time for the Allfunds Group<sup>11</sup>, which was approved, together with the MREL decision, in January 2020.

**Table 4. Joint collaboration in preparing resolution plans of significant and cross-border institutions**

ENTITIES	BANKING UNION	EUROPEAN UNION (outside Banking Union)	Third country	FROB investment
<b>No resolution college</b>				
- Significant institutions	Parent + subsidiary			Caixabank, Ibercaja, Liberbank, Unicaja, Cajamar, Bankinter, Kutxabank, Abanca, BFA-Bankia, Banque Degroof Petercam, Caixa Geral de Depósitos & Crédit Mutuel
- Cross-border institutions	Parent + subsidiary			Banco Finantia & Banco Mediolanum
<b>With resolution college</b>	Parent	Subsidiary		BBVA, Banco Santander, Banco Sabadell, ING, Deutsche Bank, BNP Paribas, Crédit Agricole, Société Générale
	Subsidiary	Parent		EFG (A&G Banca Privada)
<b>With European resolution college</b>	Subsidiary	Subsidiary	Parent	
<b>With crisis management group (CMG)</b>	G-SIB	G-SIB	G-SIB	Banco Santander

Source: FROB

## 1.2. RESOLUTION PHASE

21. The resolution of a credit institution or investment firm entails an extraordinary administrative procedure to manage its non-viability without having to resort to liquidation in normal insolvency proceedings. FROB is the authority responsible for executing the resolution decisions adopted by the SRB for significant institutions. For other entities, FROB is authorised to directly exercise its powers within the framework of the European Single Resolution Mechanism.
22. No resolution cases were opened in Spain during 2019. Nonetheless, FROB has continued its efforts over this period to improve the preparation of resolution plans for future cases. To this end, it has drawn up several internal crisis management manuals according to the resolution tool to be used; the national internal recapitalisation manual being the most noteworthy.

<sup>10</sup> Finantipar and Banca Mediolanum with subsidiary in Spain and Allfunds Group, whose parent is a credit institution established in Spain and subsidiary in Luxembourg.

<sup>11</sup> The entity was previously part of the Santander Group.

### 1.2.1 Developments concerning the European resolution of Banco Popular Español

23. The procedure initiated by the SRB so that shareholders and creditors affected by the resolution decision of Banco Popular might exercise their right to be heard, submitting the comments that they deemed appropriate, with regard to the report prepared by Deloitte assessing whether the shareholders and creditors would have received better treatment had the entity entered into normal insolvency proceedings ("Valuation 3 Report", accessible at the SRB website<sup>12</sup>) and in relation to the SRB letter of 2 August 2018 stating that, on the basis of said Report, the SRB preliminarily decided that the aforementioned shareholders and creditors of Banco Popular would not receive compensation, was completed during the year.
24. In particular after the period for submitting comments concluded in 2018, the SRB examined over 2019 the comments relating to its preliminary decision on the difference in treatment. It also asked Deloitte to draw up a document (the "Clarification Document", accessible on the SRB website<sup>13</sup>) in which, after analysing the comments relating to the Valuation 3 Report, it would determine whether said report was still valid. On 18 December 2019, Deloitte sent the aforementioned Clarification Document to the SRB. In said document, it confirmed that both the strategy and the various hypothetical liquidation scenarios detailed in Valuation 3 Report, as well as the methodologies followed and the analyses used, remained valid. Although it does not correspond to the time period covered in this report, it is important to note that, having received said Clarification Document, the SRB adopted its final decision on 18 March 2020. The SRB concluded that the shareholders and creditors of Banco Popular Español affected by the resolution will not be entitled to compensation since the winding-up of the entity under normal insolvency proceedings would have led to greater losses<sup>14</sup>.
25. Finally, over this period, the SRB Appeals Panel adopted eight decisions ruling on appeals relating to the exercise of the right of access to SRB documentation within the framework of the Banco Popular resolution process.

### 1.3. SINGLE RESOLUTION FUND AND NATIONAL RESOLUTION FUND

26. Resolution funds, which may be used by resolution authorities in certain circumstances, comprise contributions of the credit institutions and investment firms established in Spain (as well as the contributions of the credit institutions of the other member countries of the Banking Union, in the case of the Single Resolution Fund). In the particular case of the Single Resolution Fund (hereinafter, "SRF"), an objective has been set to collect a minimum amount

<sup>12</sup> Available at: [https://srb.europa.eu/sites/srbsite/files/annex\\_i\\_-\\_valuation\\_3\\_report\\_en.pdf](https://srb.europa.eu/sites/srbsite/files/annex_i_-_valuation_3_report_en.pdf)

<sup>13</sup> Available at: [https://srb.europa.eu/sites/srbsite/files/annex\\_ii\\_-\\_clarification\\_document\\_en\\_0.pdf](https://srb.europa.eu/sites/srbsite/files/annex_ii_-_clarification_document_en_0.pdf)

<sup>14</sup> Available at: <https://srb.europa.eu/en/content/banco-popular>

equivalent to 1% of the credit institutions' covered deposits, which must be achieved by 31 December 2023 (i.e., by the end of the initial eight-year period as from 1 January 2016).

27. Spanish investment firms not in a banking group are required to contribute to the National Resolution Fund (hereinafter, "NRF"), as per Act 11/2015 transposing Directive 2014/59/EU into Spanish law, while the credit institutions and investment firms that are subsidiaries of credit institutions make contributions that are collected by FROB and transferred in full to the SRF. Using information provided by the affected entities, the fund itself, managed by the SRB, is responsible for calculating each entity's contribution.
28. Each entity's total liabilities excluding own funds less covered deposits as a percentage of the total for all entities are taken into consideration to calculate contributions. This result is then adjusted based on each entity's risk profile<sup>15</sup>.
29. Regarding the NRF, pursuant to Act 11/2015, FROB is authorised to set for each year the total contribution that institutions required to pay into the Fund have to make, along with their individual contributions.
30. Regarding the SRF, pursuant to Regulation (EU) 806/2014, FROB is only authorised to collect contributions comprising this fund and to transfer them. Consequently, the annual contributions to the fund and the ordinary contributions of each entity are set by the SRB.
31. Within this framework, as in the prior year, FROB's activity in 2019 primarily focused on carrying out the steps needed to effectively determine and collect contributions and, specifically:
  - Identify the entities required to contribute to the SRF and to the NRF.
  - Obtain from entities the data needed to calculate the contributions for each entity.
  - Perform an initial assessment of the quality of the data reported by institutions by comparing it with the information reported in previous years and the information collated by the Bank of Spain, the CNMV and the Deposit Guarantee Fund (DGF).
  - Declare and collect the contributions of Spanish credit institutions and investment firms that are subsidiaries of such entities, transferring the contributions to the SRF.
  - Calculate, notify and collect contributions from the entities required to contribute to the NRF.

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<sup>15</sup> Details of the calculation method are provided in [Commission Delegated Regulation](#) (EU) 2015/63 of 21 October 2014.

- Act as point of contact for any queries or requests from entities required to make contributions. The task involves complex calculations that have to be exhaustively explained to contributors, which FROB has done since the first cycle of contributions.
- Monitor the legal claims institutions may lodge against FROB or the SRB in relation to the calculation and collection of contributions to the SRF and the NRF.

**Table 5. Contributions of Spanish entities and branches in Spain of entities established outside the European Union to the NRF and the SRF.**

EX-ANTE CONTRIBUTIONS	2019				2018			
	SRF		NRF	Total	SRF		NRF	Total
	CIs <sup>(*)</sup>	IFs	IFs and Non-EU branches		CIs <sup>(*)</sup>	IFs	IFs	
<b>No. of entities</b>	92	9	32	<b>133</b>	99	11	28	<b>138</b>
<b>Amount of Contribution</b> (thousand euros)	707,705	52	784	<b>708,541</b>	735,882	51	58	<b>735,991</b>

Source: FROB.

32. According to information provided by the Bank of Spain and the CNMV, in 2019 133 entities were required to contribute, 92 of which were credit institutions<sup>16</sup>, 28 investment firms<sup>17</sup> and three non-EU branches<sup>18</sup>.
33. In June 2019, FROB collected total contributions of EUR 709 million<sup>19</sup> (EUR 708 million for the SRF and EUR 0.8 million for the NRF). The SRF therefore has a balance of EUR 33 billion provided by approximately 3,200 European entities. EUR 3.5 billion of this amount was contributed by Spanish entities<sup>20</sup>

<sup>16</sup> It should be noted that two of the 92 aforementioned entities are considered central bodies of institutional protection schemes. In accordance with Commission Delegated Regulation 2015/63 of 21 October 2014, these two entities contribute on a consolidated basis for a total of 23 entities that are affiliated to the aforementioned institutional protection schemes and which are exempted from prudential requirements under national law. These 23 entities are not counted in the aforementioned figure of 92 entities.

<sup>17</sup> In 2018: 138 entities, 99 of which were credit institutions and 39 investment firms.

<sup>18</sup> On 24 November, Royal Decree-Law 19/2018 of 23 November on payment services and other urgent financial measures, the Eighth Final Provision of which amends, *inter alia*, Articles 1.2.e) and 53.1.a) of Act 11/2015 of 18 June on the recovery and resolution of credit institutions and investment firms (hereinafter, "Act 11/2015"), was published in Spain's Official State Gazette. Entry into force of the amendment to Act 11/2015 imposes an obligation on FROB to collect contributions from the branches in Spain of credit institutions and investment firms established outside the European Union. In fulfilment of this requirement, FROB has therefore started calculating and collecting the ex-ante 2019 contribution that these entities must make to the National Resolution Fund.

<sup>19</sup> Available at: [http://www.frob.es/es/Lists/Contentidos/Attachments/603/2019\\_07\\_18.FROB.Contrib.exante19.pdf](http://www.frob.es/es/Lists/Contentidos/Attachments/603/2019_07_18.FROB.Contrib.exante19.pdf)

<sup>20</sup> Available at: <https://srb.europa.eu/en/node/804>

34. Meanwhile, at the start of November, work started to gather information for calculating 2020 contributions. Entities had to furnish FROB with this information by 19 December 2019. The resulting amounts must be paid by the end of June.

#### **1.4. INTERNATIONAL ACTIVITY**

35. As the Spanish authority acting as contact for and coordinator with the international authorities and other European Union Member States regarding resolutions, FROB has continued to play an active role in defending Spain's position. It has worked in close collaboration with the Spanish preventive resolution authorities in the various international discussion forums that discuss, prepare and, where applicable, amend the resolution framework and rules.

##### **1.4.1. Single Resolution Board**

36. The Spanish representative on the SRB is FROB's chairman, who attends both the SRB plenary session and the extended executive sessions in which Spain is involved and that are attended by the Bank of Spain as an observer. Spain's participation (FROB and the Bank of Spain) also extends to the various sub-committees and working groups set up under the auspices of the plenary session. They focus on enhancing the resolvability of all banks and establishing a robust resolution framework, effectively managing crises, and launching the SRF, all with a minimum impact on the real economy, financial system and public coffers.
37. In 2019, the SRB plenary session concentrated on bolstering the resolvability of institutions, managing effectively the various cases of resolution that have arisen, ensuring a robust resolution framework is in place, pushing forward with configuring and collecting SRF contributions, and establishing an optimal and efficient structure at the SRB.
38. The plenary session has three committees, which are dependent hierarchically and on their expert groups: i) the Resolution Committee, responsible for resolution planning and execution matters, and for the monitoring performed by the SRB of the activity of the NRAs concerning entities in their countries; ii) the Administrative and Budgets Committee; and iii) the SRF Committee.
39. The remit of these committees is to help the SRB devise policies that develop the various technical measures to enhance the planning and execution of resolutions and achieve a greater degree of harmonisation in the Banking Union.
40. A crucial part of the SRB's work to review the resolution plans focuses on ensuring a higher degree of harmonisation between them and greater depth of content. The SRB prepares manuals and guidelines to help the IRTs during this process. FROB has participated in the various working groups set up to look at

the different technical aspects that help to improve entities' resolvability and make the plans easier to implement.

41. The most notable matter dealt with in 2019 concerned the development of the new MREL policy, which aims to incorporate the changes of the banking package which will apply as from December 2020 (BRRD2/CRR2). This policy introduces changes in the adjustments in the loss-absorbing capacity and recapitalisation amount, appropriate level of subordination, individual MREL, transitional periods, MREL for multiple point of entry strategies and MREL for cooperatives.
42. Particularly noteworthy in addition to the work on MREL was the drafting of the "Expectations for Banks" document, which was submitted to public consultation between November and December 2019 and which sets out the general capabilities the SRB expects banks to demonstrate in order to show that they are resolvable. They fall into seven broad areas that are analysed in order to determine whether there are impediments to resolvability: (i) governance; (ii) loss absorbing and recapitalisation capacity; (iii) liquidity and funding in resolution; (iv) operational continuity in resolution and access to financial market infrastructure services; (v) information systems and data requirements, to make it possible to obtain the information necessary for the valuation and to prepare the resolution; (vi) communication; and (vii) separability and restructuring<sup>21</sup>.
43. There are two other publications that are worth highlighting. Firstly, the framework for valuation<sup>22</sup>, published in February 2019, which aims to provide independent valuers and the general public with an indication of the expectations of the SRB regarding the principles and methodologies for valuation and, secondly, the SRB approach to the public interest assessment<sup>23</sup>. Also noteworthy is the work performed in relation to the SRB's resolution planning manual and the national resolution manuals on financial stability and access to financial market infrastructures and for developing a methodology for the separability analysis.
44. Throughout the year, FROB has been involved in all SRB plenary session meetings, and in all the written procedures, contributing FROB's experience in a proactive and collaborative manner regarding organisational matters and resolution policy issues.
45. As well as participating in the groups responsible for developing the techniques for the IRTs, FROB has also played an active role in the other working groups set up to draft operational crisis management manuals and other key aspects to improve entities' resolvability and the SRB's work in the future.

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<sup>21</sup> Available at: [https://srb.europa.eu/sites/srbsite/files/efb\\_main\\_doc\\_final\\_web\\_0.pdf](https://srb.europa.eu/sites/srbsite/files/efb_main_doc_final_web_0.pdf)

<sup>22</sup> Available at: <https://srb.europa.eu/en/content/framework-valuation>

<sup>23</sup> Available at: [https://srb.europa.eu/sites/srbsite/files/2019-06-28\\_draft\\_pia\\_paper\\_v12.pdf](https://srb.europa.eu/sites/srbsite/files/2019-06-28_draft_pia_paper_v12.pdf)

#### 1.4.2. Other international forums

46. FROB actively participates in other discussion forums in Europe and around the world.
47. At European Union level, FROB is a member of the Resolution Committee (ResCo) of the European Banking Authority (EBA). This committee draws up the reports, manuals and technical guidelines related with the Bank Recovery and Resolution Directive. Some of these rules are subsequently enacted as level-two EU law. FROB is a member of the sub-group for resolution execution (SGREs) and the sub-group for resolution planning and preparation (SGRPPs). Key work carried out in 2019 included the preparation of a handbook on valuation aimed at Resolution Authorities; overseeing and monitoring compliance with MREL; analysing the links between recovery and resolution plans; analysing supervisory and regulatory authorisations and interaction in resolutions and compliance with securities market laws.
48. Internationally, FROB is a member of the Resolution Group (ResG) of the Financial Stability Board (FSB), which not only debates the resolution of banks but also examines the possible resolution of financial market infrastructure and insurance firms.
49. It is a member of the Cross-Border Crisis Management Group for banks (CBCM) and the Cross-Border Crisis Management Group for financial market infrastructures (fmiCBCM), as well as their respective sub-groups in which it actively participates.
50. In 2019, the CBCM focused on monitoring implementation of TLAC (a concept similar to MREL, but with differences in the way it is calculated and applied) and in the different FSB jurisdictions documents were published for public consultation on public disclosures and closure of an area of business. Work has also continued on bail-ins and maintaining access to financial market infrastructures for entities under resolution.
51. As a member of the fmiCBCM, work has continued to ensure the adequacy of the funds available for the resolution of a central counterparty clearing house (CCP), the way in which a CCP's own funds may incur losses in resolution, and the establishment of CCP Crisis Management Groups (CMGs), with the CMG of BME Clearing, of which FROB is part, being set up in Spain.
52. Lastly, in 2019 FROB continued advising the Spanish delegation led by the Spanish General Secretary of the Treasury and International Financing in meetings arranged by the European Commission and the Council of the European Union concerning resolutions and especially, regarding the review of the European Bank Recovery and Resolution Directive and the Single Resolution Mechanism Regulation, which were approved in May, and negotiations for drafting a Regulation on the recovery and resolution of CCPs.

53. FROB also supports the General Secretary of the Treasury and International Financing in other tasks, such as those relating to interaction with the European Commission to check that the BRRD is being correctly transposed and discussions on legislative adaptations or negotiations of the European Commission working groups on the common backstop and possible liquidity measures.
54. Moreover, FROB continues to work with the Ministry of Economy and Business as part of the ordinary regular analysis by the International Monetary Fund of the Spanish financial system.

## **2. RESTRUCTURING AND RESOLUTION PROCESSES**

### **2.1. ENTITIES SUBJECT TO RESTRUCTURING OR RESOLUTION**

#### **2.1.1. Credit institutions in which FROB holds a stake**

55. After the merger of Bankia and BMN, FROB contributed to BFA the Bankia shares received following the exchange of BMN shares. Consequently, at 31 December 2018, BFA (and therefore, indirectly, FROB) owned 61.385% of Bankia's shares.
56. In 2019, the enforcement of the unfavourable court judgements for mis-selling hybrid instruments and the capital reduction in Bankia through the write-down of treasury shares meant that, as at 31 December 2019, BFA (and therefore, indirectly, FROB) held 61.798% of Bankia's shares.
57. At year-end 2019, the BFA Group (which includes Bankia) posted earnings attributable to the Group of EUR 311 million, in a year that was heavily affected by interest rates and the additional provisions that had to be set aside as a result of the sales of non-performing portfolios in order to continue improving the quality of the assets on the entity's balance sheet.

#### ***Prudential requirements and management of capital***

58. With regard to the prudential requirements for regulatory capital for 2020, on 5 December 2019, Bankia reported by means of a relevant event that, following the results of the 2019 supervisory review and assessment process (SREP), the ECB maintains stable the minimum prudential capital requirements: 9.25% of CET1 and 12.75% of total capital.
59. At 31 December 2019, the CET1 capital ratio stood at 14.33%, while the total capital ratio stood at 18.10% (both in Phase In terms). These levels represent a surplus over CET1 of 508 basis points and a surplus at the level of total solvency of 535 basis points over the minimum prudential requirements.

60. In 2019, Bankia performed debt issues for an aggregate amount of EUR 4.135 billion, of which EUR 3.5 billion were senior preferred, senior non-preferred and subordinated debt issues that allowed the bank to increase the base of instruments with loss-absorbing capacity in anticipation of the future minimum requirement for own funds and eligible liabilities (MREL).
61. With regard to this regulatory requirement, on 16 May 2019, the Bank of Spain communicated to Bankia the MREL decided on by the SRB, which was set at 23.66% of RWAs at 31 December 2017 and which Bankia must achieve as from 1 July 2021.

### ***Relationship agreement***

62. At its meeting on 22 January 2019, FROB's Governing Committee approved "FROB's Ownership Policy on entities receiving public financial support", adapting it following completion of all the entities' restructuring plans. In accordance with the approved ownership policy, on 25 January 2019, FROB, BFA and Bankia signed and made public the "Agreement regarding the management of the indirect stake of FROB, through BFA Tenedora de Acciones, S.A.U., in Bankia, S.A."<sup>24</sup>. This agreement provides for responsible and informed monitoring of FROB's stake in the BFA Group, with a view to ensuring that management of the latter is conducted in a professional, transparent and efficient manner.
63. In view of the above, FROB exercises its rights as shareholder and its powers as resolution authority in a responsible, proportionate and diligent manner, monitoring the relevant information under the premise of not intervening in the administration of the credit institution and carrying out the divestment from Bankia by encouraging the recovery of public support through procedures that ensure competition and promote best practices in the securities market.

### ***Legal contingencies***

64. With regard to the minority shareholder tranche in Bankia's stock market flotation, as a result of the Supreme Court Judgement of 27 January 2016, the institution agreed an out-of-court settlement to reimburse its minority shareholders. This settlement entailed pay-outs of approximately EUR 700 million for 135,000 claims. Added to this are the reimbursements by the BFA-Bankia Group as a result of a number of court rulings that went against it. The charge against equity for the Group totalled EUR 1.883 billion until 31 December 2019.
65. With regard to contingencies resulting from the mis-selling of hybrid instruments: between 2013 and 2019, the BFA-Bankia Group set aside provisions for this contingency of EUR 2.987 billion (EUR 1.136 billion for the arbitration

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<sup>24</sup> Available at:

[https://www.frob.es/es/Lists/Contenidos/Attachments/566/7AcuerdorelacionalBFA\\_Bankia\\_FROBvf3.pdf](https://www.frob.es/es/Lists/Contenidos/Attachments/566/7AcuerdorelacionalBFA_Bankia_FROBvf3.pdf)

proceedings initiated by the institution and EUR 1.851 billion for unfavourable court judgements), EUR 2.882 billion of which had been used at 31 December 2019.

### **Divestment**

66. Pursuant to Act 9/2012, FROB must finalise the divestment of its stake in Bankia within five years from the public bailout. Nonetheless, Royal Decree-Law 4/2016, of 2 December, extends this period to seven years and establishes a deadline of December 2019. It also offers the Council of Ministers the option of extending this period further to facilitate better fulfilment of the resolution objectives.
67. Given the large stake still held by FROB at the end of 2019 and the difficulty and impact on the price of selling off all the shares before the end of the established period, Spain's Council of Ministers agreed on 21 December to extend the divestment period by a further two years to December 2021.
68. With regard to the divestment strategy, FROB has continuously analysed the state of the market, also drawing on the analysis of the investment banks that are on a panel selected for this purpose and the expert opinion of its advisor. The conclusion of this analysis is that given the prevailing market volatility and poor valuations of banks at a time of low interest rates, the conditions are not right for performing a new sell-off of shares.

## **2.2. MONITORING OF GUARANTEES GIVEN IN DIVESTMENT PROCESSES**

69. As part of the credit institutions' sale and resolution processes, FROB granted a series of guarantees securing certain contingencies, with a view to maximising sales prices and preventing the application of large haircuts on sales prices. The guarantees extended cover very different contingencies: some merely cover the volume of losses to be assumed by the buyer with regard to certain loan books, while others are intended to hold the buyer harmless or assume jointly with the buyer the cost of certain lawsuits or future events<sup>25</sup>.
70. FROB constantly monitors the status of these guarantees, confirming that the claimed disbursements are justified and within the parameters agreed with the buyer.

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<sup>25</sup> Main guarantees extended: Asset Protection Scheme (APS) to cover any losses on a certain asset portfolio (only in the Banco de Valencia process); Sareb guarantee, covering a number of potential contingencies deriving from the transfer of the entities' assets to Sareb; tax credits, through which FROB will ensure these credits can be used by the entities in the future; mis-selling, in light of possible liabilities that could arise from lawsuits for mis-selling of hybrid instruments, floor clauses or interest-rate hedge agreements; legal/damages, holding the entity harmless of any damages stemming from final legal rulings; equity stakes, compensation for amounts due for price of stake or any possible future claims concerning the early cancellation of significant contracts, based on a change in control of the acquired entity, to finance certain payment obligations of entities; and liquidity, to finance certain payment commitments assumed by the entities.

71. The main guarantees and the status thereof in 2019 are set out below:

### **2.2.1. APS arranged in sale of Banco de Valencia**

72. On 27 November 2012, FROB arranged an Asset Protection Scheme (APS) for the buyer of Banco Valencia (CaixaBank), maturing on 30 September 2022, covering 72.5% of any losses on a closed loan book, which initially totalled EUR 6.424 billion, with a first-loss threshold of EUR 402 million. As a result of two write-downs and a correction of scope in April and August 2013 and October 2016, respectively, these amounts were reduced to EUR 5.192 billion and EUR 212 million, respectively.
73. Net losses for EUR 27 million were settled in 2019. As the first loss threshold was breached at the end of 2017, these incurred losses mean that FROB must pay CaixaBank, as per the Protocol on Financial Assistance Measures in the Banco de Valencia, S.A. Resolution Plan (document regulating the terms and conditions of the APS) EUR 20 million before 30 June 2020. This amount will be in addition to the EUR 93 million that, at 31 December 2019, FROB had paid to CaixaBank for the APS guarantee.
74. In the year, FROB collected around EUR 3 million for the annual APS commission.

### **2.2.2. Other guarantees**

75. Other guarantees cover certain contingencies that are mostly related to existing litigation or that which is foreseeable in the near future at the time of divestment. Contingencies related to hybrid product contracts, including mortgage floor clauses and interest rate hedges, materialised in 2019. When an entity benefiting from any of these guarantees makes a claim, FROB's technical services conduct an itemised and detailed review of the items for which compensation is requested, as well as the amount corresponding to each of them in order to ensure that the requested amounts are compensable in accordance with the provisions of the contracts. FROB also monitors the evolution and status of all of the guarantees in force on an ongoing basis.

## **2.3. Sareb**

76. The Asset Management Company for Assets Arising from the Banking Sector Reorganisation (Sareb) was incorporated on 28 November 2012 as a limited company for a finite period to November 2027.
77. Its original own funds totalled EUR 4.8 billion, EUR 1.2 billion of which was capital and EUR 3.6 billion, deriving from two issues of unsecured subordinated debt contingently convertible into shares subscribed by shareholders. FROB subscribed 45% of the shares and 45.9% of the subordinated debt (EUR 540 million and EUR 1.652 billion, respectively). The current shareholder structure is

practically unchanged from the original structure, with some insignificant differences in terms of percentages held (due to the conversion of subordinated debt in 2016). FROB holds 45.9% of capital and outstanding subordinated debt.

78. The total value of assets transferred to Sareb was EUR 50.781 billion. Payment for the transfer was effected through the delivery of six senior debt issues by Sareb with an irrevocable State guarantee, signed by the recipients of bailouts. The bonds received as payment are non-transferable and may be redeemed on expiration in cash or through the delivery of newly issued bonds, as Sareb so decides.

### Sareb's performance and financial figures at 31 December 2019

79. The 2019 budget was set in accordance with the new strategic approach taken by the company, whereby its short-term efforts would focus on the transformation of financial assets into real estate assets in order to maximise the return through the sale of the latter. It was therefore decided to protect the business margin by making fewer sales of financial assets (as these require the largest haircuts) and boosting sales of real estate assets.
80. The key financial figures for 2019 are as follows:

**Table 6. Key financials of Sareb at year-end 2019 (EUR million).**

2019 results	
Total income	2,308
<i>Income from financial assets</i>	946
<i>Income from real-estate assets</i>	1,328
<i>Other</i>	34
Total net income (*)	372
<i>Net income from financial assets</i>	221
<i>Net income from real-estate assets</i>	116
<i>Other net income</i>	35
Operating expenses	(582)
Amortisation and depreciation charges and others	(68)
Finance costs	(586)
Taxes	(83)
<b>Loss for the year</b>	<b>(947)</b>

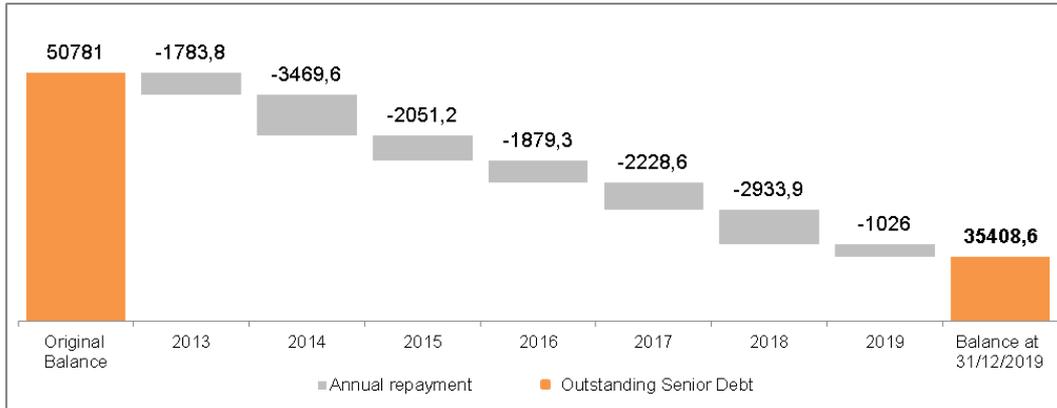
(\*) Includes marketing costs of EUR 85 million.

Source: FROB.

81. The year ended with income of around EUR 2.3 billion and a net margin amounting to EUR 370 million.
82. Most of the income (around 60%) comes from the sale of real estate assets, at over EUR 1.3 billion, which contrasts with a net margin of EUR 116 million (accounting for 30% of the total net margin). This means that the income from financial assets, which accounts for 40% of the total, provides around 60% of the margin. The lower requirements in sales of financial assets made it possible to select certain transactions with a positive result in terms of income and margin generated.
83. Compared with the 2018 results, income was down 35%, while the net margin fell by 30%, which would indicate an improvement in the quality of the sales. There was therefore a significant fall in income from financial assets of over EUR 1.2 billion, while the sale of real estate assets grew slightly. During the year, Sareb sold nearly 17,000 properties, a fall of 20% on 2018. Just over 13,000 of these properties belong to Sareb, while the rest resulted from agreements with developers. It is noteworthy that the fall in properties sold was concentrated in the agreements with developers, as the number of its own properties that Sareb sold was virtually the same.
84. Application of operating costs, which given the particular nature and activity of Sareb are very high, led to negative EBITDA of EUR 213 million, a figure that is 45% worse than that recorded in 2018. Sareb's operating profit remained negative at EUR 278 million.
85. The loss for 2019, which is heavily influenced by finance costs (EUR 586 million), amounts to EUR 947 million, 8% higher than in 2018, after the deactivation of tax credits amounting to EUR 83 million.
86. This loss puts Sareb's own funds at the end of the year at EUR 230 million. EUR 1.430 billion of subordinated debt needs to be added to this amount, taking the company's total own funds to EUR 1.660 billion. Equity was negative at slightly over EUR 7.5 billion, given the marking to market of interest-rate hedging derivatives (a negative EUR 922 million) and the impairment of financial and real estate assets (a negative of EUR 323 and 496 million, respectively).
87. Despite the company's negative equity position, from a trading perspective and as per Article 36 of Spain's Code of Commerce, the valuation adjustments to the hedging derivative and valuation allowances for asset groups are not factored in with regard to the distribution of profit, mandatory reduction in capital or mandatory wind-up due to losses.
88. Although after year-end 2019, and therefore outside the time scope of this report, it is important to note that Royal Decree Law 6/2010 of 10 March exempting Sareb from complying with Article 363.1.e) of the Capital Companies Act, relating to grounds for winding up due to accumulated losses, was approved on 10 March 2020.

89. The remaining senior debt amounted to approximately EUR 35.4 billion at the 2019 year-end (70% of the initial total), following repayment of a little over EUR 1 billion in 2019. Consequently, at 31 December 2019 a total of EUR 15.372 billion of the senior debt had been repaid since the start.

**Table 7. Changes in Sareb's senior debt (EUR million).**

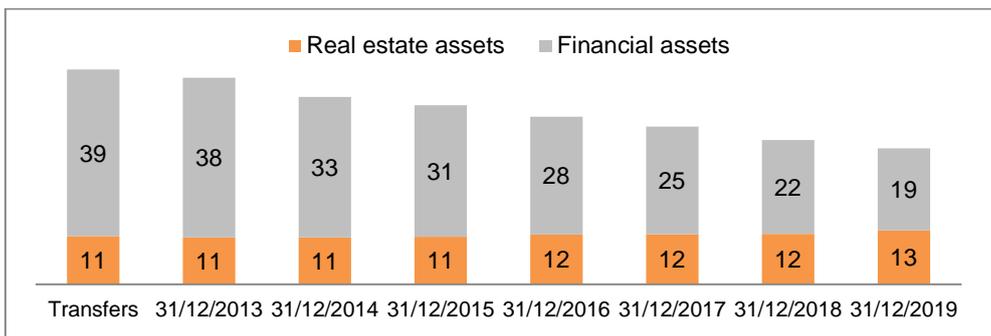


(\*)The balance at 31/12/2019 does not include the repayments made in January and February 2020 for a combined amount of EUR 300 million.

Source: FROB.

90. The balance of assets originally transferred to Sareb and pending divestment at year-end 2019 stands at around EUR 32.1 billion, approximately 60% of which are financial assets and the remainder, real-estate assets. Changes in the carrying amounts of the financial and real-estate assets on Sareb's balance sheet (excluding the estimated impairment losses at each time) were as follows:

**Table 8. Changes in the financial and real-estate assets on Sareb's balance sheet (EUR thousand million).**



Source: FROB.

91. In addition, Sareb continued its usual social responsibility activities. This primarily entailed:
- Improving the lives of groups at risk of social exclusion, granting financial support for social housing and emergency funds, distributed through agreements with local councils and regional governments;

- Providing alternative affordable rented accommodation, with a view to offering especially vulnerable groups alternatives to asset repossession processes; and
  - Providing support to entrepreneurs, in partnership with local councils, to tackle unemployment.
92. In this context, on 9 March Sareb announced the extension of its social housing programme from the stock of 4,000 homes it had made available to the various public institutions to a total of 10,000 homes. This extension will seek to facilitate access to Sareb's housing stock for smaller cities.
93. The company has signed agreements with several local and autonomous governments. At year-end, the company had signed or was close to signing agreements involving 2,400 dwellings. Close to 6,000 individuals have already benefited from the plans to provide affordable rented accommodation.

## **2.4. LEGAL MATTERS**

94. FROB continues to actively participate in and monitor legal proceedings related with recovery and resolution processes and any action associated therewith. FROB's activity can, in this regard, be classified in the four major blocks of law comprising Spanish legislation: criminal law, administrative appeals, civil-commercial law; and lastly, corporate law.
95. Also included is the work related with the various administrative cases being handled, such as pecuniary liability claims and other administrative appeals, as well as information requests under the Transparency Act.
96. FROB is also actively involved in several international arbitration cases, defending the Kingdom of Spain.

### **2.4.1. Penal**

97. This year, FROB has forged ahead with its drive to pursue and penalise anyone involved in irregular conduct in property transactions and internal remuneration practices detected in the various credit institutions receiving State support during recovery and resolution processes, all in accordance with the legal mandate laid down in Article 64.1.ñ of Act 11/2015.
98. The origin for these cases are diverse: nine claims were lodged against the provisional administrators appointed by FROB in a failed institution; 11 were opened as a result of several forensic reports that FROB commissioned from various independent expert consultants to investigate a number of suspicious transactions and, where irregularities were detected, the Special Prosecutor for Corruption and Organised Crime was notified so it could carry out its own

inquiries and initiate the appropriate proceedings; and four derived from claims made by third parties in which the presiding judge summonsed FROB to appear before the court.

99. Consequently, at the start of this year FROB was party to 24 criminal cases against numerous former directors of several entities and three procedures were finalised during the year, while the other 21 cases are still being heard. In these cases, FROB is the aggrieved party defending public interests and recovering the contested sums through any fines imposed on the guilty parties for public liability offences.
100. All these cases are at different stages, although most of the pre-trial periods have ended with the exception of four processes that have been extended due to the complexity of the cases. Many are at the oral trial stage, while some guilty verdicts have been handed down and up to EUR 20.3 million plus statutory interest and costs have been recognised in final court judgements.

#### **2.4.2. Administrative appeals**

101. A decision was issued in 2019 on the final procedure that remained outstanding from the appeals deriving from claims filed contesting actions performed by FROB during restructuring and resolution processes within the framework and as authorised under the now repealed Act 9/2012, of 14 November. In this particular case, against the transfer of assets from a particular entity to Sareb, the appeal on judicial review was declared inadmissible. Therefore, all legal rulings obtained in this regard have confirmed the legality and compliance with the law of the administrative actions that were carried out by FROB under the framework established in Act 9/2012 (and, in particular, with regard to subordinated liabilities exercises for hybrid instruments, capital increases or decreases without preferential subscription rights and transfers of assets to Sareb).
102. Special mention should be given to the appeals for judicial review lodged to contest FROB's administrative actions within the framework of its new remit as national resolution authority as established in Act 11/2015. Specifically, work continues to process the numerous appeals against the 7 June 2017 resolution of FROB's Governing Committee on the measures needed to execute the SRB's decision on the resolution scheme for Banco Popular Español, S.A.
103. At the date of this report, the 262 appeals for judicial review accepted by the National High Court remain suspended until the final ruling is issued on the actions for annulment taken against the SRB's decision at its 7 June 2017 extended executive session adopting the resolution scheme for Banco Popular Español, S.A., which is pending at the General Court of the European Unión (GCEU).
104. Also suspended is the case concerning the appeal lodged by FROB against a ruling of the Good Governance and Transparency Council in which the Council

partially approved access to certain information in accordance with Act 19/2013 of 9 December on transparency, access to public information and good governance. The hearing of this appeal was suspended by the competent Central Judicial Review Court until the GCEU issues its final decision on the matters being heard by it, ruling that the SRB had respected the right to decide.

#### **2.4.3. Civil-commercial law**

105. In this area, the lawsuits involving FROB have been in connection with FROB's actions under the powers bestowed upon it initially by Article 63 of Act 9/2012 (now repealed and replaced by the same article of Act 11/2015 currently in force). These include cases in which petitions were filed to annul agreements to buy and sell the shares of entities subject to restructuring or resolution to a third party as well as the transfer of business agreements. These are all lawsuits that were filed in previous years. Most of these lawsuits already have final favourable rulings with regard to which the recovery of costs is being processed although there are still two lawsuits pending admission and, as the case may be, a ruling by the Supreme Court.
106. Another significant area of civil law in which FROB is party to several court cases concerns the scope and interpretation of the guarantees given by FROB to acquirers in the corresponding resolution processes, and the effect of the ensuing decision rendering floor clauses null and void in these acquisitions. Although rulings have initially been handed down in favour of FROB in these lawsuits, there are several appeals pending that are expected to be decided on over the coming year.
107. Lastly, with regard to those civil lawsuits brought against FROB for which appeals were filed on judicial review to re-examine the cases and involving the so-called "Review Mechanism" used by FROB in the resolution of Banco CEISS, the results of which were disputed by a number of this entity's customers who decided to submit their case to the courts, it is worth noting that all the legal rulings issued have confirmed the legality and compliance with the law of the administrative actions of FROB. The last of these lawsuits that remained pending was finalised with the appeal against FROB ruled inadmissible by the Supreme Court.

#### **2.4.4. Corporate law**

108. In relation to its work to prosecute irregular conduct detected in the entities receiving State support, FROB has remained steadfast in this, also looking to assign liability in those cases involving remuneration practices that could comprise irregularities, submitting them to the courts.
109. In this respect, some cases concerning corporate law that had been temporarily suspended awaiting a prior ruling from the criminal courts have been reopened

either following rulings exonerating the defendant from criminal liability or to decide on matters not affected by the criminal judgement.

110. Specifically, a ruling has been issued in one of them in favour of all FROB's claims and is currently in the enforcement stage for collection of all of the amounts recognised in favour of the entity and FROB. Another case has been partially decided on by means of an agreement with the entity which included meeting all of FROB's claims, so that the lawsuit is pending a decision only with regard to the former executives that did not sign up to this agreement.

#### **2.4.5. Pecuniary liability claims**

111. Notable is the large number of pecuniary liability claims (1,070 to date) received in relation to FROB's work concerning the 7 June 2017 resolution of FROB's Governing Committee on the measures needed to execute the SRB's decision on Banco Popular Español, S.A.
112. By virtue of these claims and other similar claims filed with other authorities (the Ministry of Economy and Business, the Bank of Spain and the CNMV), those Banco Popular shareholders who lost their investment due to the bank's resolution have called for compensation on the understanding that the State administration was subject to pecuniary liability. At the date of preparing this report, these cases are still being processed with decisions issued with regard to a total of 299 claims.

#### **2.4.6. International arbitration**

113. No international arbitration claims were lodged against FROB in 2019. However, although FROB is not formally a defendant in any cases, given that it is the Kingdom of Spain that is formally liable in international arbitrations, it continues cooperating in defence of the Kingdom of Spain together with the other affected government bodies in the international arbitration claim brought against the Kingdom of Spain by a group of Mexican investors in connection with Banco Popular's resolution (following the joinder of the two initially lodged claims into one single claim during the year).

#### **2.4.7. Transparency requests processed in 2019**

114. Six requests for access to information pursuant to Act 19/2013 of 9 December on transparency, access to public information and good governance were resolved in 2019.
115. It is worth mentioning that the claims filed with the Good Governance and Transparency Council in accordance with Article 24 of Act 19/2013 of 9 December on transparency, access to public information and good governance disputing the decisions taken by FROB's Governing Committee in relation to requests for access to information on the implementation of the resolution

scheme for Banco Popular Español, S.A. that have not yet been resolved are still suspended by the Council pending the conclusion of the appeal for a judicial review (mentioned beforehand) on this matter. This appeal is also suspended pending a ruling by the GCEU.

### 3. 10th ANNIVERSARY OF THE CREATION OF FROB

116. On 27 June 2009, the legislation creating the Fund for Orderly Banking Restructuring (FROB) was published in the Official State Gazette (Spanish acronym: BOE)<sup>26</sup>. On the occasion of the institution's 10th anniversary, over 2019 FROB carried out a series of activities to commemorate the event with the organisation's different stakeholders and to keep the debate on bank resolution alive.

117. A list of the main actions carried out is shown below:

- Meeting of the Single Resolution Board (SRB): the 22nd plenary session of the SRB was held in Madrid on 27 and 28 March 2019. This meeting, one of the first to be held outside Brussels, was organised jointly by the two Spanish resolution authorities for credit institutions (FROB and the Bank of Spain). The session was attended by all members of the Board (the Chair, Vice Chair and four further full-time Members), the national resolution authorities and representatives of the European Commission, the EBA and the ECB.
- "FROB 10th Anniversary Conference (2009-2019)": on 5 July 2019, a high-level international conference was organised to analyse the key moments in the restructuring of the Spanish financial sector over the last 10 years, as well as the future challenges of the Banking Union, particularly with regard to resolution. The conference was attended by leading panellists from the main agents in the public and private financial sector (ECB, Bank of Spain, SRB, EBA, Financial Stability Institute and Bankia, among others) and was closed by the Minister for Economy and Business. The conference generated a great deal of interest both among the financial sector (over 200 attendees) and the media, which gave it extensive coverage.
- Presentation of the report "10 years of FROB 2009-2019. A decade for financial stability"<sup>27</sup>: on 20 December 2019, FROB published a report aimed at bringing together in a systematic, complete and accessible manner the data and figures relating to FROB's activities over these 10 years. Although its content had already been published over the years, the report consolidated this data in an illustrative format, simplifying access to the data so that it might act as a reference text on the recapitalisation process of the Spanish banking sector.

<sup>26</sup> The legal name of FROB has been changed. If until entry into force of Law 11/2015, "FROB" was the acronym of *Fondo de Reestructuración Ordenada Bancaria* [Fund for Orderly Bank Restructuring], since then "FROB" has become the name given to the current Spanish Executive Resolution Authority, but now without any reference to the previous concept.

<sup>27</sup> The report is available at the following link:

[https://www.frob.es/en/Documents/10%20years%20of%20FROB\\_2009-2019.pdf](https://www.frob.es/en/Documents/10%20years%20of%20FROB_2009-2019.pdf)

## ORGANISATION OF FROB

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### 1. CONTROL AND GOVERNANCE BODIES

#### 1.1 Governing Committee

118. FROB is governed and managed by a Governing Committee of 11 members:

- Chairman of the Governing Committee: FROB Chairman;
- Vice-Chair: Deputy Governor of the Bank of Spain, standing in for the Chairman in the event of the latter's absence or illness or if the chairmanship becomes vacant;
- Three members of the Bank of Spain, appointed by the Bank of Spain's Executive Committee. These positions are currently held by the Director General of Banking Supervision, Director General of Financial Stability and Resolution, and the General Secretary of the Bank of Spain;
- Vice-Chair of the CNMV;
- Three representatives of the Ministry of Economy and Business, appointed by the ministry. These representatives are currently the Deputy Secretary of the ministry, the General Secretary of the Treasury and International Financing, and the Chairman of the Spanish Institute of Accountants and Auditors (ICAC); and
- Two representatives of the Ministry of Finance, appointed by the ministry. These representatives are currently the ministry's State Secretary for Finance and the Director General for Budgeting.

119. Sessions of the Governing Committee are also attended by a representative of the Auditor General and another of the Attorney General and another from the State Legal Service – State Attorney, Head of the Ministry of Economy and Business, who have speaking but not voting rights.

120. Irrespective of the aforesaid, decisions affecting the General State Budget are made by a reduced number of members of the Governing Committee:

- Chairman;
- Three representatives of the Ministry of Economy and Business;
- Two representatives of the Ministry of Finance.

121. The plenary session of the Governing Committee met on 20 occasions in 2019, while four meetings were held in its reduced format.

122. An Audit Committee has been set up under the auspices of the Governing Committee comprising three members of the Governing Committee: the Bank of

Spain's Director General of Financial Stability and Resolution (acting as chair), the Director General for Budgeting, and the representative appointed by the Auditor General of the Spanish Central Government.

**Table 9. Composition of the Governing Committee at 31 December 2019**

Name	Job position	GC position
Jaime Ponce Huerta	FROB Chairman	Chairman
Margarita Delgado Tejero	Deputy Governor of the BoS	Vice-Chair
Mercedes Olano Librán	Director General of Banking Supervision of the BoS	Committee member
Jesús Saurina Salas	Director General of Financial Stability, Regulation and Resolution of the BoS	Committee member
Francisco Javier Priego Pérez	General Secretary of the BoS	Committee member
Amparo López Senovilla	Under-Secretary of Economy and Business	Committee member
Carlos San Basilio Pardo	General Secretary of the Treasury and International Finance	Committee member
Enrique Rubio Herrera	ICAC Chairman	Committee member
Ana María Martínez-Pina García	Vice-Chair of the CNMV	Committee member
Inés María Bardón Rafael	State Secretary for Finance	Committee member
Jaime Iglesias Quintana	Director General for Budgeting	Committee member
Pablo Arellano Pardo	Auditor General of the Spanish Central Government	Auditor General of the Spanish central government (IGAE) representative
Julio José Díez Menéndez	State Attorney at the Ministry of Economy and Business	Attorney General representative

## 2. ORGANISATION

123. FROB has four divisions led by its Chairman. At the date of this report, these are:

- The Administration and Control Division, headed up by Sara Ugarte Alonso-Vega<sup>28</sup>;
- The Finance and Investees Division, headed up by Leopoldo Puig Turégano;
- The Legal Affairs Division, headed up by Alba María Taboada García; and
- The Resolution and Strategy Division, headed up by Paula Conthe Calvo<sup>29</sup>.

124. The divisions are split into departments for the purpose of exercising the powers and conducting the activities assigned to each of them.

125. There is also a unit reporting to the Chairman's office that is headed up by a director, Amaia Rivas Kortazar<sup>30</sup>, and is responsible for legal relations with investees.

**Table 10. Map of FROB's functions**

Resolution process phases						
Resolution functions	I Preparation of resolution	II Resolution	III Supervision of resolution	IV Exit strategy		
<b>Resolution management</b>	<ul style="list-style-type: none"> <li>• In-house planning and preparation to optimise resolution measures</li> <li>• Preparation and updating of crisis management manuals and action protocols</li> <li>• Performance of simulations</li> <li>• Collaboration with preparing and updating resolution plans</li> <li>• Reporting on resolution plans and exercising Spanish vote on the SRB</li> </ul>	<ul style="list-style-type: none"> <li>• Launching resolution process (less significant institutions) after declaration that an institution is no longer viable; analysis of alignment with public interest and lack of private sector solutions</li> <li>• Evaluation of need to begin viability analysis</li> <li>• Collaboration with the SRB to launch resolution schemes for significant institutions</li> <li>• Design and approval of resolution scheme for less significant institutions</li> <li>• Execution of resolution powers and instruments</li> </ul>	<ul style="list-style-type: none"> <li>• Supervision of implementation and fulfilment of commitments of resolution schemes</li> <li>• Supervision and control of banks placed into resolution</li> <li>• Supervision and management of guarantees given in divestments</li> <li>• Handling of legal disputes related with institutions placed into resolution</li> <li>• Supervision of bridge institutions or asset management vehicles (AMV) and business restructuring plans</li> <li>• AMV oversight</li> <li>• Updating of manuals</li> </ul>	<ul style="list-style-type: none"> <li>• Design of sell-off or divestment of institutions, bridge institutions, portfolios or business lines</li> <li>• Execution and supervision of sell-offs</li> <li>• Monitoring of markets and economy</li> <li>• Investor relations</li> </ul>	Coordination of analytical capabilities and supervision of institutions Design and implementation of <i>Resolution Policy</i>	
<b>Support functions</b>						
<b>Legal</b>	Legal advice on action by the FROB and Governing Committee Secretary		Acting on behalf of the FROB in legal proceedings to defend its interests		Supervision of and participation in drafting rules related with the FROB's work	
<b>Corporate resource management and control</b>	Training	Training	Administration and general services	Regulatory compliance and internal control (risks, In-house procedures)		Liaison with external control bodies
	Knowledge management	Contracting and outsource framework	ITC strategy and management			
<b>Financial</b>	Budget and finance management		Cash management		Management of Resolution Fund	
<b>Communications</b>	Design and implementation of in-house and external communications strategy		Management of image and institutional culture		Institutional relations and events	
<b>Reporting</b>	Coordination of institutional reporting	Quarterly reports to Congress	Submission accounts to Gov. Committee	Appearances of Chairman before Parliament		Reporting to investors
<b>Strategy</b>	Monitoring of strategic plan		Design of corporate strategy		Market scanning of market agents	

126. At 31 December 2019, FROB had 44 members of staff (26 women and 19 men), including the Chairman and directors. The following table show the distribution of its workforce by professional category and gender:

<sup>28</sup> Appointed on 4 December 2019.

<sup>29</sup> Appointed on 9 April 2019.

<sup>30</sup> Appointed on 13 February 2019.

**Table 11. Distribution of personnel by professional category**

Category	Headcount
Senior Management <sup>31</sup>	6
Group II	17
Group III	13
Group IV	6
Group V	3
<b>Total</b>	<b>44</b>

Source: FROB

## FINANCIAL MANAGEMENT

### 1. TREASURY MANAGEMENT

127. FROB's Finance and Investees Division manages the resources that do not fall under the institution's ordinary activities as per the requirement to invest in highly liquid, low risk assets. This means holding current accounts with the Bank of Spain and acquiring short-term treasury bonds and bills.
128. In 2019, FROB's Treasury team handled a number of payments and collections, the most relevant being as follows:
- On 28 June 2019, FROB paid CaixaBank EUR 56 million for the annual settlement of losses deriving from the APS of Banco de Valencia.
  - On 30 October and 11 December 2019, FROB paid a total of EUR 25 million to FGD as settlement for the sale of NCG Banco and Catalunya Banc shares (EUR 15 million and EUR 10 million, respectively).
  - On 24 December 2019, FROB paid Abanca EUR 106 million for guarantees given during the sale of NCG Banco.
  - Also, FROB received over the course of the year, payments corresponding to the coupons on assets in the public debt portfolio, totalling around EUR 16 million.

<sup>31</sup> As defined in Royal Decree 451/2012 of 5 March, regulating the remuneration of senior executives and directors in State-owned companies and other entities.

- Lastly, FROB paid the Treasury the sum of EUR 97.8 million in interest, arrangement fees and other associated costs of the Loan that the Treasury granted FROB in 2012 and 2013 to channel the funds obtained by Spain from the ESM to the entities receiving public support.

129. At 31 December 2019, FROB's unrestricted cash reserves totalled EUR 824 million; sufficient to cover expected cash outlays in the short term.

**Table 12. FROB's cash reserves at year-end 2019**

PRODUCT	31/12/2019
	Nominal (EUR million)
Public debt portfolio	610
Bank of Spain account	214
Other bank accounts	-
<b>Total (*)</b>	<b>824</b>

(\*) Amounts corresponding to the commission are not included in this item (Transitional Provision Five of Act 11/2015).

Source: FROB.

## 2. FEE TO FUND FROB'S ACTIVITY

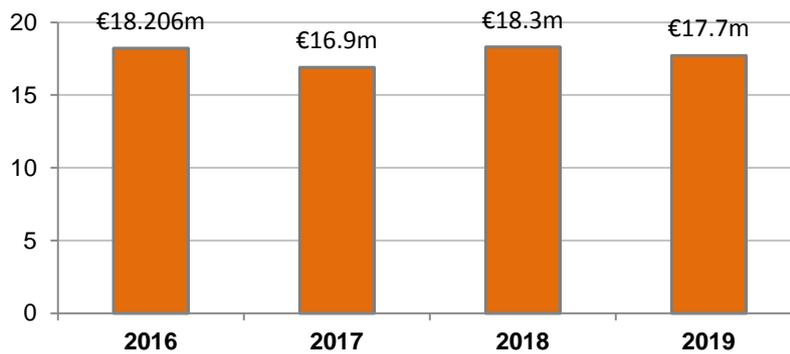
130. Article 53.4 of Act 11/2015 introduces the so-called "fee for activities performed by FROB in its capacity as a resolution authority". This fee is intended to cover the entity's operating costs and is charged to the entities required to contribute to either the SRF or the NRF.
131. This funding system is in line with that established for the SRB, the administrative expenses of which are also covered by the entities through the pertinent annual payments.

**Table 13. Main features of the fee collected by FROB**

- **Chargeable event** – Performance of supervisor and reporting functions and application of resolution tools during the preventive and execution phases of resolutions.
- **Accrual** – The fee is accrued on 1 January each year, except for the incorporation of entities, in which case it is accrued from the incorporation date.
- **Fee payers** – Credit institutions and investment firms established in Spain.
- **Calculation base** – The ordinary annual contributions payable by each entity to the National Resolution Fund or, where applicable, the Single Resolution Fund.
- **Tax liability** – Result of applying a rate of 2.5% to the taxable fee.

132. As per Royal Decree 1012/2015, FROB's Governing Committee approved in its 23 April 2019 meeting, the proposed fee breakdown for activities performed by FROB as resolution authority in 2019, and delivery of the corresponding payment form to the fee payers.
133. All the fee payers paid the fee within the stipulated deadline, with a total of EUR 17.7 million collected in 2019.

**Table 14. Changes in the fee to fund FROB's activity**



Source: FROB.

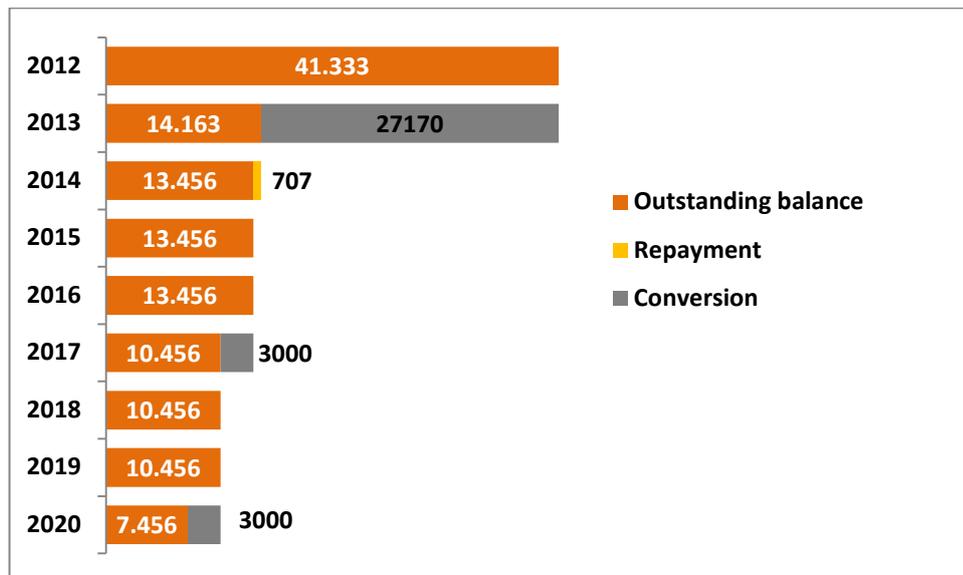
### 3. STATE LOAN FOR FINANCIAL SECTOR RECAPITALISATION

134. On 3 December 2012, the Spanish State granted FROB a loan to execute the European financial assistance programme for the restructuring of Spain's financial system. This loan acted as a vehicle through which funds from the European Stability Mechanism (ESM) could be channelled to the Kingdom of Spain and subsequently through FROB to Spanish credit institutions.
135. The loan was paid out in two tranches, the first in 2012 (EUR 39.468 billion) and the second in 2013 (EUR 1.865 billion), through the contribution of financial instruments (bills and bonds) issued by the ESM.
136. The key developments concerning the loan from the Spanish State/Treasury to FROB in prior years were as follows:
- Following the ESM's approval, part of the loan was converted on 9 December 2013 into a contribution to FROB's capital of EUR 27.170 billion.
  - In 2014, unused funds held by Sareb of EUR 307.54 million were returned by FROB. A voluntary repayment of EUR 399 million was also made.
  - Following the ESM's approval, part of the loan was also converted on 30 June 2017 into a contribution to FROB's capital of EUR 3 billion.
137. At 31 December 2019, the outstanding balance on the loan awarded to FROB by the Spanish State totalled EUR 10.456 billion: EUR 8.591 billion corresponding to

the first pay-out and EUR 1.865 billion to the second. The first repayment of the remaining loan principal corresponding to the first tranche will be on 11 December 2022, and annually thereafter until it matures in 2027, all for the same amount. The second tranche will fall due in two equal parts on 11 December 2024 and 2025, respectively.

138. Although after year-end 2019, and therefore outside the time scope of this report, it should be noted that on 20 February 2020 a partial conversion of the loan into a capital contribution to FROB was agreed for an amount of EUR 3 billion. Consequently, the current outstanding balance of the loan granted by the State to FROB amounts to EUR 7.456 billion (EUR 5.591 billion corresponding to the first pay-out and EUR 1.865 billion corresponding to the second).

**Table 15. Changes in the State loan for recapitalisation of the financial sector**



Source: FROB.

#### 4. 2019 ANNUAL ACCOUNTS

139. On 26 May 2020, FROB Governing Committee approved the entity's annual accounts for 2019, previously authorised for issue by the Chairman, in fulfilment of Articles 54.5 c) and 55.4 c) of Act 11/2015.
140. FROB's 2019 annual accounts show assets of EUR 10.456 billion, liabilities of EUR 11.207 billion and negative equity of EUR 751 million, including the loss for the year of EUR 282 million.
141. FROB's annual accounts are audited by an independent auditor. The auditor stipulates in its audit report on the 2019 annual accounts that, in its opinion,

FROB's annual accounts give, in all material respects, a true and fair view of the assets and liabilities and financial position of FROB at 31 December 2019.

**ANNEX**  
**Record of FROB bailouts**

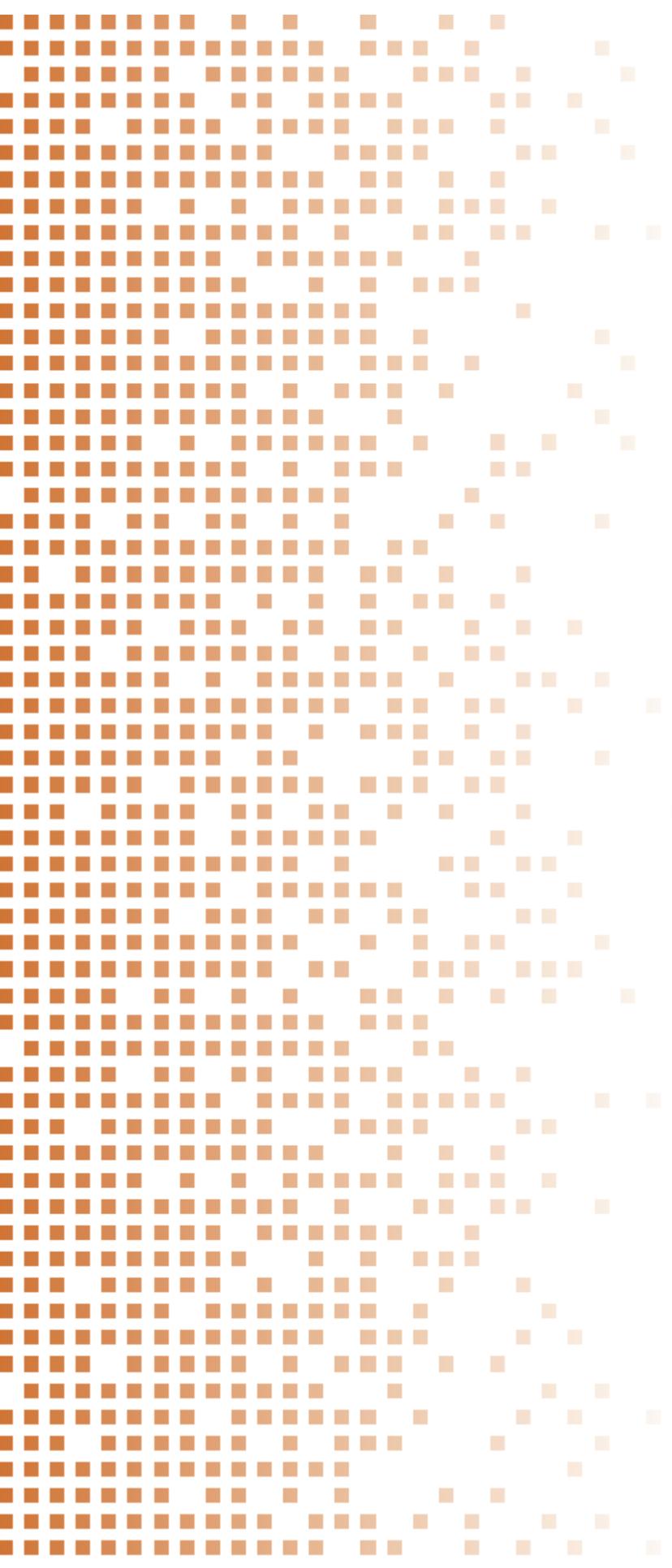
Entities involved	APS and guarantees	Shares, preference securities or CoCos	Recoveries (FROB) <sup>(*)</sup>
<b>Catalunya Banc</b> Catalunya, Tarragona, Manresa	547	12,052	782
<b>CEISS</b> Caja España-Duero	430	1,129	604
<b>Nova CaixaGalicia</b> Galicia, Caixanova	352	9,052	783
*Banco Gallego (spun off from NCG)	-	245	-
<b>BFA-Bankia</b> Madrid, Bancaja, Laietana, Insular, Rioja, Ávila, Segovia	-	22,424	-
<b>Banco Mare Nostrum</b> Murcia, Penedés, Sa Nostra, Granada	-	1,645	-
<b>Banca Cívica</b> Navarra, Cajasol-Guadalajara, General de Canarias, Municipal de Burgos	-	977	977
<b>Banco de Valencia</b>	605	5,498	-
<b>Liberbank</b> G. Cajastur, C. Extremadura, C. Cantabria	-	124	124
<b>Caja3</b> CAI, C. Círculo, C. Badajoz	-	407	407
<b>Caja Sur</b>	392	800	800
<b>Interest collected through coupons and others</b>	-	-	<b>1,434</b>
<b>FROB injection</b>	<b>2,326</b>	<b>54,353</b>	-
<b>Sareb</b>	-	<b>2,192</b>	-
<b>Total</b>	<b>2,326</b>	<b>56,545</b>	<b>5,911</b>

<sup>(\*)</sup>The bailouts that will ultimately be collected will depend on the performance and final divestment of FROB's investees (BFA/Bankia with BMN, and Sareb). This column does not include: EUR 1.304 billion from the sale of 7.5% of Bankia in January 2014; EUR 818.3 million divested through the sale of 7% of Bankia in December 2017; and EUR 962 million of dividends paid out by Bankia for 2014 to 2018, as the amounts received are retained in BFA.

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Spanish Executive Resolution Authority