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Legal action against Bank of Spain already seeing results, claims lawyer

Lawyer representing shareholders in failed Spanish bank Bankia claims he has a 'very strong' case against the regulators, though the courts are expected to take a 'cautious line'

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The lawyer acting for a group of small shareholders suing the Bank of Spain over the flotation of failed bank Bankia in 2010 has told *CentralBanking.com* the "landmark" case is already affecting the behaviour of the country's financial regulatory regime.

Alberto Ruiz Ojeda, a partner at Málaga-based law firm Cremades & Calvo-Sotelo, acting for Spain's small shareholders association AEMEC, said the decision to allow Bankia to list itself on the stock market through an initial public offering (IPO) in 2010 was a "very clear case of regulatory failure", not only on the part of the central bank but also the securities regulator, CNMV, and the Spanish economy ministry.

The lawsuit was served on all three of those institutions last week. Ruiz Ojeda said he has no hope that the Bank of Spain will respond within a statutory six-month period, following which the plaintiffs will take the case to the Audiencia Nacional, a court in Madrid dealing with cases brought against public bodies in Spain.

René Smits, a legal expert specialising in central banking, points out that "courts usually take a cautious line" when it comes to financial regulators, "accepting a large room of manoeuvre for the supervisor and not easily assuming liability on its part".

"Many jurisdictions", says Smits, "have adopted specific provisions excluding liability except in cases of gross negligence or wilful misconduct" – adding that "the supervisor's dilemma plays a role here: early intervention leads to actions by shareholders; late interventions to actions by depositors".

Ruiz Ojeda, however, says his case has a firm basis in Spanish law, not least, he says, because of Bank of Spain internal reports that have come to light showing officials knew that Bankia was effectively bankrupt even before its IPO. Following a government bail-out in 2012, shares in the bank are now effectively worthless.

Another Spanish bank, Liberbank, is due to launch on the stock market tomorrow, having been put on a surer footing by the injection of Spanish and European recapitalisation funds. Ruiz Ojeda said this shows now how regulators "know very well that things cannot be done in the way they did Bankia". But the different structuring of the Liberbank deal compared with Bankia could be due to changed financial market conditions and a more general learning experience rather than directly connected to any outstanding lawsuits.

Ruiz Ojeda is "not optimistic" that regulators are capable of learning from their mistakes, but says the current governor of Spain's central bank, Luis Linde, has "more experience and a better background" in the field of financial regulation than did his predecessor, Miguel Fernández Ordoñez, who presided over the Bankia IPO.

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