



TECHNICAL GUIDE 1/2024 ON AUDIT  
COMMITTEES AT PUBLIC-INTEREST ENTITIES

Madrid, 27 June 2024

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## Legislative references, acronyms and definitions

<b>Legislative references</b>	
Directive (EU) 2022/2464 of the European Parliament and of the Council (CSRD)	Directive (EU) 2022/2464 of the European Parliament and of the Council, of 14 December, amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, on corporate sustainability reporting
Law 2/2023, of 20 February	Law 2/2023, of 20 February, regulating the protection of persons reporting on anti-corruption and regulatory breaches
Regulation (EU) No. 537/2014 of the European Parliament and of the Council (EU Regulation)	Regulation (EU) No. 537/2014 of the European Parliament and of the Council, of 16 April 2014, on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC
Spanish Auditing Act (LAC)	Law 22/2015, of 20 July, on auditing
Spanish Corporate Enterprises Act (LSC)	Spanish Corporate Enterprises Act, whose Recast Text was approved by Royal Legislative Decree 1/2010, of 2 July
Spanish Securities Markets and Investment Services Act (LMV)	Law 6/2023, of 17 March, on Securities Markets and Investment Services
<b>Acronyms</b>	
ACGR	Annual corporate governance report
ARDR	Annual report on directors' remuneration
CNMV	Spain's National Securities Market Commission (the "CNMV")
ESMA	European Securities and Markets Authority
ICAC	Spanish Accounting and Audit Institute
IOSCO	International Organisation of Securities Committees

<b>Definitions</b>	
Lead verifier responsible for sustainability	<p>Pursuant to the CSRD and Directive 2006/43/EC:</p> <ul style="list-style-type: none"> <li>a) Verifier or verifiers that sign the sustainability information verification report individually or on behalf of an assurance firm.</li> <li>b) In the case of assurance firms, the verifier or verifiers appointed, where appropriate, by the assurance company as persons primarily responsible for verifying the sustainability information on behalf of the assurance firm.</li> <li>c) In the case of verification of consolidated sustainability information, the lead verifier or verifiers responsible for sustainability appointed, as appropriate, as persons primarily responsible for verifying sustainability information in significant subsidiaries.</li> </ul>
Main auditor responsible for statutory audit	<p>Pursuant to Article 3.6 of the Spanish Auditing Act:</p> <ul style="list-style-type: none"> <li>a) Auditor that signs the audit report individually or on behalf of an audit company.</li> <li>b) In the case of audit firms, the auditor or auditors appointed, as appropriate, by the audit firm as persons primarily responsible for carrying out the audit work on behalf of the audit firm.</li> <li>c) In the case of audits of consolidated accounts or of other consolidated financial statements or accounting documents, the auditor or auditors appointed, where appropriate, as the main auditor or auditors responsible for auditing the entities that are significant in the consolidable group.</li> </ul>
Non-financial information	<p>For the purposes of this Guide, non-financial information is generically referred to as any periodic corporate information, published by public-interest entities, other than annual or interim financial statements, such as the management report and the different reports it contains (sustainability information, the annual corporate governance report and the annual report on directors' remuneration), information of prudential relevance or solvency, in the case of credit institutions and insurance companies, respectively, etc.</p>

	<p>Non-financial information includes sustainability information. The latter is a more specific term (see definition).</p>
<p>Non-financial risks</p>	<p>The term is used in this Guide in the same generic sense as non-financial information and comprises risks that are not of a direct financial nature, notwithstanding their eventual financial impacts, and includes political, strategic, legal, reputational, cybersecurity and other risks, in addition to sustainability risks.</p>
<p>Public-interest entities (PIEs)</p>	<p>They are defined in Article 3.5 of the Spanish Auditing Act which, in turn, is implemented by Article 8 of Royal Decree 2/2021, of 12 January, which defines them as follows:</p> <p>“1. Public-interest entities (PIEs).</p> <p>For the purposes of the provisions of Article 3.5 of Law 22/2015, of 20 July, the following shall be considered public-interest entities:</p> <p>a) Credit institutions, insurance companies and entities issuing securities admitted to trading on official secondary securities markets subject to the supervision and control attributed to the Bank of Spain, to the Directorate-General for Insurance and Pension Funds, to regional government bodies with powers of organisation and supervision of insurance companies, and to Spain’s National Securities Market Commission, respectively, together with entities issuing securities listed on the expanding business segment of the alternative stock market. To this end, official secondary securities market shall be understood to be any regulated market of an EU Member State, as provided for in Article 2.1 of Directive 2006/43/EC of the European Parliament and of the Council, of 17 May, on statutory auditing of annual accounts and consolidated accounts, amending Directives 78/660/EEC and 83/349/EEC of the Council and repealing Directive 84/253/EC of the Council.</p> <p>b) Investment services companies and collective investment companies that, for two consecutive financial years, at their corresponding closing date, have at least 5,000 clients, in the case of the former,</p>

or 5,000 unitholders or shareholders, in the case of the latter, and the management companies that administer these institutions.

- c) Pension funds that, for two consecutive years, at their corresponding closing date, have at least 10,000 unitholders and the management companies that administer these funds.
- d) Banking foundations, credit finance establishments, payment institutions and electronic money institutions.
- e) Entities other than those mentioned in the preceding paragraphs whose revenue and average workforce for two consecutive years, at their corresponding closing date, is greater than €2 billion and 4,000 employees, respectively. for two consecutive years, at their corresponding closing date, is greater than €2 billion and 4,000 employees, respectively.
- f) Groups of companies in which the parent company is one of the entities mentioned in the preceding letters.

The entities mentioned in letters b), c) and e) of the preceding paragraph will lose their status as public-interest entities if they fail to meet the requirements established in these letters for two consecutive years, at their corresponding closing date.

The entities to which the letters of the preceding paragraph refer shall have the status of public-interest entities if they meet the requirements to be so at the close of the financial year of its incorporation, alteration of legal form or merger and of the immediately following financial year. However, in the event that one of the entities participating in the merger or the entity altering its legal form has the status of public-interest entity in the financial year prior to the transaction, the resulting entities shall not lose said status if they meet the requirements established in said letters at the close of that first financial year”.

Sustainability information	Information established by articles 19.a) and 29.a) of Directive (EU) 2013/34, of 26 June, on financial statements, according to the amendment made by Directive (EU) 2022/2464, of 14 December (CSRD), and refers to information on social and human rights, environmental and governance aspects regulated by the CSRD and its implementing regulations in Spain.
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## Introduction

One of the most significant and novel recommendations of the Olivencia Code – Spain’s earliest good corporate governance code, published more than two decades ago – was that listed companies should create, within the Board of Directors, an audit committee composed exclusively of external directors responsible for the supervision of information, scrutiny of accounting and relations with external auditors. Since that time, as in other countries, audit committees have acquired increasing importance in the corporate governance of the commercial companies and other entities forming the Spanish business fabric.

In 2002, the recommendation to have an audit committee in place became a statutory duty for issuers of listed securities<sup>1</sup> and, in 2015, Law 22/2015 on Auditing, which gave the CNMV general supervisory powers in this domain, extended the duty – with some exceptions – to all public-interest entities (PIEs), a concept that mainly includes listed companies, certain financial institutions subject to supervision and enterprises that exceed a certain size.

Both the Spanish Auditing Act (LAC) and the Spanish Corporate Enterprises Act (LSC)<sup>2</sup> establish rules on the composition, functioning and duties of audit committees, which are supplemented, as regards listed companies, by a range of recommendations, contained in the 2020 Good Governance Code of Listed Companies. These rules and recommendations jointly form a relatively detailed framework. However, experience of how audit committees work in practice and ongoing dialogue between CNMV and companies, financial institutions, audit firms, professionals and other Spanish and foreign supervisory bodies, have enabled the identification of certain criteria and good practices that should be made widely known, which justifies bringing them together in a technical guide.

Taking into account the nature of the obligations of the audit committees, inherently linked to the corporate governance framework of the Board of Directors and its specialised committees, this Guide defines a set of recommendations and good practices – most of which do not directly arise from legal obligations – which are considered reasonable and useful to contextualise and illustrate ways of substantially improving the quality of the audit committees and their operational performance, in the interests of the company and minority shareholders. In this regard, the Guide does not, therefore, determine criteria or methodologies or procedures of a specific nature implementing the legal obligations of corporate governance.

The Guide establishes a set of principles that form the general framework that is recommended as a guide for the actions of the members of audit committees, as well as the criteria for their appropriate composition, for the purpose of facilitating compliance with their legal obligations.

In part two, a set of criteria has been established to facilitate compliance with the obligations that the regulations require of audit committees, in aspects such as the supervision of financial and non-financial information, including sustainability information, of risk control and management systems, and internal audits; in their dialogue with the auditor or the verifier of sustainability information; and in the performance

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1 Law 44/2002, of 22 November, on Measures to Reform the Financial System, which adds additional provision 18 to Law 24/1988, of 28 July, on the Securities Market.

2 Audit committees of listed companies are regulated in Article 529 *quaterdecies* of the Spanish Corporate Enterprises Act.



of other additional functions, also assigned to these committees, such as reporting on the related-party transactions of listed companies.

One of the new features introduced by the Guide consists of expressly including the supervision, by the audit committee, not only of financial risks, but also non-financial risks, with express reference to sustainability risks. It should be noted that these risks, classified as non-financial depending on their nature or source of risk, may have a material financial impact, as much or more than risks of a financial nature, which would in itself justify this update.

In any case, taking into account the diversity of the group of entities targeted by this Guide, it is important that public-interest entities adapt the principles and recommendations to their particular circumstances and characteristics, in accordance with their size, complexity and sectors in which they operate. Additionally, some of these entities, particularly financial institutions, are subject to specific sectoral requirements. Such entities are expected to maximise the compatibility of such requirements with the criteria of this Guide unless, in any specific aspect, there may be a head-on conflict, in which case the application of the Guide would not envisage the contravention of mandatory sectoral requirements.

At the time of approval of the Guide, Directive (EU) 2022/2464 of the European Parliament and of the Council, of 14 December, on corporate sustainability reporting (CSRD) had not yet been implemented in Spain. However, the provisions of the aforementioned Directive, currently in force, have been taken into account in the preparation of the Guide, in addition to, on certain occasions, the Draft Bill regulating the corporate reporting framework on environmental, social and governance issues, aspects in which the legal text is not expected to undergo significant changes.

## Purpose and scope

This Guide is aimed at all public-interest entities that, pursuant to the third additional provision of the Spanish Auditing Act, are obliged to have an audit committee in place and, therefore, fall under the supervisory competence of the CNMV, as established by said additional provision.

The Guide establishes a set of criteria relative to the recommended functioning of audit committees, as well as the recommended characteristics of their members in order to be able to properly carry out such functions. Additionally, this Guide adopts a principled approach, in accordance with the proportionality criterion, such that it is considered adequate that the different entities to which they are aimed adapt the principles, recommendations and good practices to their particular circumstances and characteristics.

Notwithstanding the foregoing, the Guide establishes some specialities for listed companies, due to being subject to more stringent legal obligations than other public-interest entities, as in the case of the disclosure regime for related-party transactions that may be performed by such entities, pursuant to Chapter VII *bis* of Title XIV of the Spanish Corporate Enterprises Act.

## One. Key principles

1. Within the framework of the responsibilities assigned to the audit committees by the Spanish Corporate Enterprises Act, it is recommended that they take into account, in the performance of their functions, the basic action principles set out below.

### Sceptical stance

2. It is recommended that audit committee members should take a sceptical stance, properly questioning the data, assessment processes and preliminary conclusions of the entity's managers and executives. This calls for a critical approach that does not automatically accept executives' opinion, taking note of arguments for and against, and with members forming their own opinion, both individually and as a whole.

### Constructive dialogue that encourages members to speak freely

3. To promote a diversity of opinions that enhance the analysis and quality of proposals, the audit committee must nurture a climate that gives rise to constructive dialogue among members and encourages them to speak freely and take a critical approach.

It is recommended that the chairperson of the audit committee should ensure that its members freely take part in deliberations, unaffected by any internal or outside pressures, to which end it is advisable that they have adequate leadership capacity and appropriate communication skills.

### Ongoing dialogue with the internal audit unit, the statutory auditor, the verifier of sustainability information and management

4. To perform its role properly, it is advisable for the audit committee to establish an effective and regular two-way communication channel with its usual interlocutors, mainly, among others:
  - a) With the management of the entity and, in particular, with the general directors and the financial, risk control and sustainability management.
  - b) With the officer or unit responsible for internal audit.
  - c) With the main auditor responsible for statutory audit.
  - d) With the lead verifier responsible for sustainability, where appropriate.
5. This task is normally assigned to the chairperson of the audit committee but must also involve the rest of committee members to a greater or lesser extent, without posing a threat to the committee's necessary independence. In this regard, it is recommended that the presence of managers or other executive or non-executive directors at audit committee meetings be limited to invitation from the committee chairperson and be strictly circumscribed to those items of the agenda for the purpose of which they were convened. Similarly, it is recommended that their presence should not be a regular practice, but an occasional event that occurs only when necessary. It is recommended that the minutes

of the committee's meetings record the arrival and departure of the various invitees and that, except in specific cases, for which it is advisable that adequate justification be given in the minutes, the invitees do not attend the deliberation and voting phases.

### **Adequate analytical capability (recourse to experts)**

6. Although it is recommended that audit committee members, as a whole, should have the necessary knowledge and experience to properly perform their role, sometimes – especially in companies that engage in highly complex transactions – the need may arise to address certain aspects in which it is advisable to seek expert advice from third parties, which may assist the committee in the analysis process.

Consequently, it is recommended that the audit committee, following previous proposal to the Board – individually or, in general, by any of the means provided for in the following paragraph – should have the power to seek and obtain expert advice, legal opinions or reports when it deems appropriate.

In this regard, although not expressly established by the laws and regulations, it is recommended that the Board of Directors, at the audit committee's proposal, should establish appropriate mechanisms to facilitate and expedite the committee's access to resources with which to engage, when it deems appropriate, external advice, being one of the possible good practices that it be provided with an annual budget for this purpose. In such cases, it is advisable that its use and the correlative costs incurred be duly justified, with the aim of avoiding the abuse and unnecessarily resort to this type of resources, that the Board of Directors be informed and they be subject to review, with the assistance, where appropriate, of internal audit or of an external expert engaged for such purpose, whichever is deemed more convenient.

## Two. Performance of its role

7. To properly and effectively perform its supervisory and advisory functions, in addition to submitting proposals and reports to the Board of Directors, it is recommended that the audit committee should take into account the criteria set out below. However, the application and monitoring of these criteria may be modulated by the principle of proportionality, in accordance with the characteristics, scale and complexity of each entity, its business and the specific sectors in which it operates.

### 1 Composition

#### 1.1 Diversity

8. Diversity in the composition of the audit committee – taking into consideration the constraints imposed by its smaller size compared to the Board of Directors – particularly in relation to a balanced presence of men and women, their professional experience, their skills and sector-specific knowledge and, in the case of entities with a strong international presence, their experience and international competences, favours the scepticism and critical attitude and analyses, in addition to the expression of differing points of view and positions.
9. As to the diversity of professional profiles and expertise, given the significant and growing weight of sustainability information, it is recommended that they should have, as a whole, adequate understanding and experience in this field, both in relation to the identification and management of risks, opportunities and related impacts, and in relation to reporting obligations.

#### 1.2 Appointment

10. As for the appointment process, the regulations of the Board or of the audit committee itself should establish the criteria governing the appointment of members and the requirements they must satisfy, especially for the purpose of securing the utmost independence for the committee.
11. At listed companies, depending on the size and shareholder structure, those criteria might relate to the presence or otherwise of proprietary directors in the committee and, in particular, their number and characteristics (based on whether the proprietary directors are linked to the controlling shareholder or minority shareholders).

#### 1.3 Expertise and training

12. Audit committee members are also Board members, and therefore must have relevant experience and expertise in fields such as economics, finance and business and management.
13. Although the law requires only one audit committee member to have previous accounting or auditing expertise, it is advisable that all members should have the necessary training and expertise in financial and sustainability reporting, in addition to auditing or verification. It is therefore advisable that the members of the audit committee, as a whole, should have the necessary knowledge and expertise not only in accounting and auditing but also in finance, sustainability, internal control, financial and non-financial risk management, and business.

14. This knowledge and expertise, as a whole, in relation to sustainability, accounting, verification and auditing normally imply:
- a) Knowledge of accounting, sustainability, auditing and verification regulations and standards.
  - b) Ability to evaluate and interpret the application of the foregoing regulations and standards.
  - c) Experience preparing, auditing, reviewing, analysing or evaluating financial statements and sustainability information of some complexity, comparable to that of the entity itself, or experience supervising one or more people engaging in those tasks.
  - d) Understanding of the mechanisms of internal control relating to the financial and non-financial reporting process.
15. Furthermore, risk management and control is a key element in certain regulated sectors, such as finance and insurance, which are subject to specific and complex laws and regulations that call for specialist expertise. Moreover, these matters are increasingly relevant in most sectors and extend to both financial and non-financial risks.
16. Due to the increase in digitisation and the growing importance of virtual processes in entities, it is advisable – in accordance with the complexity, size and, in particular, sector of activity of the entity – that the audit committee as a whole should have experience or adequate understanding of information technologies (IT). Among other reasons, in order to ensure efficient monitoring of internal risk control and management systems that generally use complex computer applications, and adequately evaluate new emerging risks, such as cybersecurity.
17. It is advisable to establish an “induction programme” for new committee members. It makes it possible to ensure that all members have a minimum homogeneous knowledge of the company and facilitate their active participation from the start. It would be advisable for this programme to cover, at least, the following:
- a) Role of the audit committee, its responsibilities and objectives.
  - b) Operation of other specialist committees set up by the entity.
  - c) Expected time of dedication of each of the members (commitment to the degree of dedication).
  - d) Global view of the entity’s business and organisational business models and its strategy; main activities and business segments; financial structure; most significant risks, both financial and non-financial, including those related to sustainability, and the entity’s most important policies, including its code of ethics (which should include meetings with key entity personnel).
  - e) The entity’s financial and non-financial reporting obligations.
18. Similarly, in a context of ongoing change, a recurring training scheme should be in place to ensure that expertise is updated as to developments in accounting laws, regulations and standards; the specific regulatory framework for the entity’s activity; internal and external audit; sustainability-related

information, including its verification; risk management; and internal control and technological developments of interest to the entity.

## **2 Functioning**

### **2.1 Rules and regulations**

19. It is recommended that the audit committee should have a set of rules and regulations, approved by the Board of Directors, setting out the following, among other aspects: its composition; requirements for appointing its members; rules of procedure; responsibilities and functions assigned, including those relating to financial, non-financial and sustainability information; necessary resources; rules on the interaction between the audit committee, the Board of Directors and shareholders; rules on communications with the statutory auditor, the verifier of sustainability information and the internal auditor; regular committee assessments; and the different reports to be issued.
20. It is advisable that the rules and regulations should support the independence of the audit committee in performance of its role and should be regularly reviewed so that any suitable improvements can be made.
21. It is recommended that the rules and regulations of the audit committee should be published on the public-interest entity's website so that it is available to shareholders, investors, regulators and other stakeholders.

### **2.2 Access to information**

22. It is recommended that the entity's Board of Directors and management should ensure that the audit committee has adequate, timely and sufficient access to information.

To ensure that the process of gathering information is properly implemented, it is recommended that:

- a) The Board set clear rules for the Board members (executive and non-executive) and management of the entity and its employees to ensure smooth cooperation with the audit committee and ensure that the committee is supplied with all information required for the performance of its role.
- b) The chairperson of the audit committee and, if requested or deemed appropriate for any other circumstance, the other committee members should maintain regular contact with the key personnel involved in the governance and management of the entity.
- c) The chairperson of the audit committee, with the cooperation of the Board secretary, shall channel and supply the necessary information and documentation to the rest of committee members sufficiently in advance for such information to be considered prior to committee meetings.

### **2.3 Dedication and meetings**

23. The importance, complexity and volume of duties assigned to the audit committee recommend:
  - At least four annual meetings.

- That attendance at formal meetings of the audit committee be preceded by sufficient dedication by its members to analyse and assess the information received.
24. As for attendance at meetings, in addition to the participation of all the audit committee members, it may be expedient, as mentioned earlier, that other persons be present (executive directors, managers – including the internal auditor –, employees, auditors, verifiers and other experts, etc.), but only by invitation from the committee chairperson and only to address the specific items on the agenda for the purpose of which they were called to attend, not participating in the deliberation and voting phases.
25. It is recommended that the audit committee should in any event meet frequently and, at least, on the occasion of each annual or interim financial and sustainable reporting publication date and, in such cases, the presence of the internal auditor should be requested and, if any review report is issued, the statutory auditor and verifier of the sustainability information, to address the items on the agenda for the purpose of which they were invited to attend.
- And that at least part of these meetings with the internal auditor, the statutory auditor and the verifier should take place without the presence of the management of the entity, so that the specific issues emerging from the reviews carried out can be discussed exclusively with those persons.
26. It is recommended that the chairperson of the audit committee should act as its spokesperson at meetings of the Board of Directors and, where applicable, at the entity’s General Shareholders’ Meeting.

#### **2.4 Resources**

27. It is recommended that entities should provide their audit committee with sufficient resources to perform its role. In addition, the committee must have a secretary (normally, the secretary of the Board of Directors) and be provided with the necessary assistance for planning meetings and agendas, drafting documents and meeting minutes, and compiling and distributing information, among other tasks. Lastly, resource requirements should be communicated through the secretary of the Board of Directors of the entity.
28. Similarly, considering the recommendations of the principle on analytical capacity to this end, sufficient financial resources must be provided for audit committee members to obtain, where appropriate, external advice on legal, accounting, sustainability, valuation and risk related matters and any other issues deemed appropriate.

#### **2.5 Remuneration**

29. The members of the audit committee and, particularly, the chairperson, carry out relevant work that calls for a considerable dedication of time. It is therefore reasonable that they be adequately rewarded in a manner consistent with their responsibility and dedication. Remuneration to the chairperson may differ from that due to other members.

However, it is recommended that the level of remuneration for this concept should not compromise the independence and objectivity of the members of the audit committee.



## 2.6 Suitable planning

30. Suitable planning helps ensure that the intended purposes are effectively fulfilled. To this end, it is recommended that an annual work programme should be established covering at least the different activities within its scope.
31. It is recommended that meetings should be planned by the audit committee chairperson, with the help of the committee secretary, and notified to the directors so that all its members receive the documentation and information sufficiently in advance.
32. It is recommended that the planning process should take into account the nature of the duties of the audit committee members, without intervening in the execution or management, for which the company's management and executive bodies are responsible.

## 3 Oversight of financial and non-financial reporting

### 3.1 Understanding of the system for internal control of financial and non-financial reporting and assessment of its effectiveness

33. Transparency and financial and non-financial reporting requirements form a complex set of laws, regulations and standards that oblige entities to use systematic preparation and control processes to ensure quality and integrity, the appropriate delimitation of the scope of consolidation and reporting, and the correct application of the corresponding standards, criteria and principles.
34. It is advisable that the audit committee should have adequate knowledge and understanding and monitor the effectiveness of the internal control system of both financial and non-financial information.<sup>3</sup>
35. In this context, it should be noted that the design and management of the internal control system naturally correspond to the management of the entity. In this regard, the audit committee's responsibility is the supervision of the system, which should include receiving reports from internal control and internal audit officers and gaining sufficient understanding and reaching a general conclusion on the standard of confidence and reliability provided by the system coupled, as appropriate, with proposed improvements.

### 3.2 Review, analyse and comment on the financial statements and other relevant non-financial information in discussions with management, the internal audit unit, the external auditor and the verifier of sustainability information

36. Proper performance of this role calls for delimiting responsibilities as to financial and non-financial reporting.

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3 In relation to Internal Control over Financial Reporting (ICFR), the CNMV published, in June 2010, a set of recommendations – prepared by a group of experts – that the audit committee must take into account: [https://www.cnmv.es/DocPortal/Publicaciones/Grupo/Control\\_interno\\_sciifenen.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Grupo/Control_interno_sciifenen.pdf). These criteria and recommendations apply, with the appropriate adaptations, to sustainability information, also considering the guides and material published by COSO ([www.coso.org](http://www.coso.org)) for such purposes (ICSR).

37. The management of the entity is responsible for preparing annual and interim financial statements and the management report – which includes, in turn, annual corporate governance reports (ACGR), annual report on directors’ remuneration (IARC) and sustainability information – and ensuring that they provide complete, clear, relevant and reliable information that is consistent with applicable standards and other regulations. The responsibility of the audit committee, however, is to determine, based on the available information sources (both internal, such as internal audit reports and company executives’ analysis and opinion, and external information, including expert reports and reports about the outcome of the statutory audit process and review of the sustainability information), whether or not the entity has correctly applied the accounting policies, use its own judgement and reach its own conclusion. This convenience of coming to one’s own conclusion is particularly relevant in case of discrepancy between the entity’s management and the auditor or verifier, to which end the assistance of other experts must generally be sought and even, according to its relevance and upon previous notification and proposal to the Board, that of public supervisors.
38. In this regard, considering the audit committee’s new functions in relation to sustainability and its associated risks introduced by the CSRD, it should be noted that, notwithstanding the audit committee’s powers over the supervision of sustainability reporting and the effectiveness of the related risk management and control systems, it seems reasonable that the definition of environmental, social or governance (ESG) or sustainability strategies, plans, policies and objectives – which correspond to the Board – be made at the proposal, in the event of having been set up and having such powers, of the sustainability committee (or other equivalent committee to which the Board has delegated such powers, such as the nomination and remuneration committee). It is usual and reasonable that these sustainability or equivalent committees also generally be empowered to evaluate the progress and degree of advancement of the established sustainability plans and objectives, both operational and strategic, and whether new measures must be adopted, or the previously adopted objectives, plans and strategies modified.
39. It is recommended that the audit committee should review the quality, clarity, consistency and integrity of all the financial and non-financial information reported by the entity in its annual or interim financial reports, and any other related information, such as the annual or interim financial statements, including presentations of results, the management report, sustainability information, reports on related-party transactions, reports on internal risk management and control systems, corporate governance reports, directors’ remuneration, etc., prior, as appropriate, to their approval by the Board, notwithstanding the previous verifications that may be made by other committees in accordance with their content, such as the review of the remuneration report by the remuneration committee. In this regard, it is recommended that the audit committee should assess in which cases it is appropriate to involve the statutory auditors or verifiers of the sustainability information in the review of any previous reports other than the financial statements or sustainability information.
40. It is advisable that the audit committee’s supervisory role should be performed both continuously and, when so requested by the Board, on specific occasions, when it is necessary to address unforeseen events, when the committee deems it appropriate or at the Board’s request.
41. For the proper performance of its supervisory role, it is recommended that the audit committee should be aware of and understand management’s decisions on the application of key criteria and the outcome of reviews conducted by the internal audit unit, by means of individual meetings with both. Moreover, it is recommended that smooth communication be maintained with the external auditor and the

verifier in order to be apprised of their opinion on the financial and sustainability information, respectively.

Communications and meetings with the internal auditor, the verifier of the sustainability information and the external auditor – with special emphasis on the latter two – must be respectful of their independence and must address the following matters, among others:

- a) Appropriateness of the scope of consolidation and reporting.
  - b) Judgements, criteria, assessments and estimates made, to the extent that they have a material effect on the financial statements and sustainability information.
  - c) Relevant changes in significant criteria applied.
  - d) Analysis of the reasons why the entity should disclose in its public reporting certain alternative performance measures (APMs)<sup>4</sup> instead of the measures directly defined by accounting standards, the extent to which APMs provide useful information to investors and the degree of compliance with ESMA Guidelines<sup>5</sup> in this respect.
  - e) Significant internal control weaknesses identified, where appropriate, for remediation and strengths for their adequate reinforcement.
  - f) Significant modifications or adjustments identified by the statutory auditor or verifier of the sustainability information or resulting from internal audit reviews and management's position on such adjustments. Likewise, it is recommended that the audit committee should address, respond to and properly take into account any requests or demands issued in the current or previous years by the supervisory authority, ensuring that the same types of incidents previously identified in such requirements are not repeated.
42. It is recommended that the audit committee should at all times bear in mind the general principle of independence of the statutory auditor and of the verifier of the sustainability information and its duty not to participate in any way in the management of the audited entity or in the decision-making process of any of its bodies, including the audit committee itself. In this regard, it is recommended that neither the statutory auditor nor the verifier be invited to participate in the decision-making part of audit committee meetings.
43. Furthermore, it is advisable that the audit committee should ensure that the financial and non-financial information included in the annual and interim financial reports published on the entity's website is always up to date and is consistent with the information authorised for issue by the entity's directors and published, as appropriate, when so required, on the CNMV's website.

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4 Alternative performance measures.

5 2015-esma-1057\_final\_report\_on\_guidelines\_on\_alternative\_performance\_measures.pdf (europa.eu). The guidelines and recommendation indicated in this paragraph apply only to the extent that they concern entities with securities listed on regulated markets or subject to the publication of a prospectus.

44. If, following the various reviews of the financial and non-financial information, the audit committee is dissatisfied with any aspect, it is recommended that it duly informs the Board of Directors and puts forward the corresponding proposals, which may include, as appropriate, informing the public supervisors.

### **3.3 Establish and supervise a system for the communication of irregularities to the audit committee, especially those having financial, accounting or sustainability-related implications**

45. In recent years it has become a widespread practice to create specific whistleblowing channels or procedures so that entities – and particularly their management bodies – can receive reports that alert them as to potential irregularities or breaches of regulations and their internal codes of ethics. Furthermore, technological advances now enable the immediate submission of reports via multiple channels.

46. It is recommended that whistleblowing systems should be adequately defined in terms of their nature, scope and characteristics; have clear procedures for use; have templates that expedite the process of notification and internal communication to the officers in charge of the areas affected; adopt a training plan on the existence of the channel; and raise awareness on the importance of suitable use. Law 2/2003, regulating internal reporting systems, establishes a material and personal scope different to that of this Guide, although it is recommended that, in general, its content be taken into account in the internal reporting or whistleblowing systems established by public-interest entities. It is also recommended that these information systems should take the characteristics of the whistleblowing channels envisaged by international standards into account.<sup>6</sup>

It is recommended that its scope should be aimed not only at employees, directors and executives, but also at other relevant stakeholders, such as clients and suppliers, shareholders and other financial investors, or representatives of affected associations and affected communities, etc. Similarly, it is recommended that the appropriate measures to preserve information confidentiality and, where applicable, whistleblower anonymity should be adopted to prevent any form of harm or reprisals against persons using the whistleblowing channel in good faith.

47. Independently of the responsibility of the relevant executive bodies by reason of the subject matter of each complaint, it is advisable that general supervision of the functioning of the whistleblowing channel should be assigned to the audit committee. To this end, it is recommended that the audit committee should regularly receive information on the functioning of the whistleblowing channel, including, at least, the number of complaints received, their source and type, the outcome of investigations and proposed actions – which should be broken down individually, whether in the most significant cases or at the audit committee’s request –, together with the measures and courses of action proposed or adopted.

Having assessed that information, it is recommended that the audit committee should, if deemed necessary, propose appropriate actions to improve the functioning of the channel and reduce the risk of future irregularities. To this end, it is advisable to involve, in the supervision and evaluation of the system, the internal audit function or an external auditor when, due to its importance or complexity, the committee deems it convenient; in particular, it is advisable to involve the internal auditor when

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6 Such as, for example, the UN Guiding Principles on Business and Human Rights, particularly Principle 13 relative to the so-called “out-of-court complaint mechanisms”.

the reported aspects may have a significant impact on the entity's governance, internal control and risk management systems.

## **4 Supervision of financial and non-financial risk management and control**

### **4.1 Risk management and control function adapted to the organisational structure of the entity**

48. It is advisable that the audit committee should regularly evaluate the question of whether an independent financial and non-financial risk management and control area is needed. If it is decided that such an area need not be created, it is advisable that the audit committee should ensure that alternative processes have been put in place so that management, the audit committee itself and the Board of Directors can ascertain whether the risk management and control system has worked as intended under the policy adopted by the Board.

49. In any case, to assess the effectiveness and integrity of the system, it is recommended that the audit committee should in any event receive regular reports from management on the functioning of existing systems and on the conclusions of any tests conducted on such systems by internal auditors or any other external professional specifically engaged for this purpose, and on any significant internal control shortfall detected by the external auditor or verifier in the course of their statutory auditing or sustainability information verification work. If the entity has a specialised risks committee as part of its risk control and management model, it is advisable that the role of the audit committee in connection with risk management and control should be suitably coordinated with the specialised committee and with the person responsible for the system or the risk control function.

### **4.2 Comprehensive overview of the entity's internal control and risk management**

50. The audit committee's supervisory responsibility in the domain of risks targets the effectiveness of internal control and risk management systems as a whole, embracing both financial and non-financial risks. However, the power to adopt a risk strategy and policy shall rest with the Board at the proposal, as appropriate, of the risk committee or sustainability committee, in relation in the latter case specifically to the sustainability risks under its competence.

In this type of situations, both the risk committee and sustainability committee may, as appropriate, be empowered to propose or submit the identification of risks to the Board and the determination of the level of aversion to these at the entity, in addition to determining the extent to which any risk must be eliminated, mitigated or managed, including financial and sustainability risk. In this respect, it is recommended, in accordance with Principle 20 of the Code of Good Governance of 2020 and notwithstanding the necessary coordination between the two committees, that the audit committee should be ultimately responsible for the effectiveness of the financial and non-financial risk control and management systems.

It should be noted, for illustrative purposes, that coordination mechanisms include the common membership of a member to both committees or the possibility of holding one or more joint meetings in each financial year, in addition to coordinating the Board meeting, through the reports submitted by each committee and the discussions held in this regard. In any case, it is advisable that there should be smooth communication between the chairpersons of the aforementioned committees, with the support of the secretary of the Board and the secretaries, where appropriate, of the respective committees.

51. The following practices are recommended for appropriate performance of the audit committee's role in this domain:

- a) Risk supervision should be included in committee meeting agendas as a rule and proactively so that all significant financial and non-financial risks can be analysed over the course of the year, including emerging risks, both financial and non-financial, the latter relating not only to sustainability but also to aspects such as taxation, cybersecurity and regulatory compliance.
- b) The Board and the audit committee itself should be encouraged to adopt a culture in which risk is a factor that is considered in all the entity's decisions and at all levels.
- c) Emerging risks should be identified and understood, such as risks inherent to technological, climate and environmental change in general, social and regulatory changes or reputational risk and existing alert mechanisms, regularly assessing their effectiveness.
- d) Reliable information should be obtained as to whether the key risks are managed, controlled and kept within the tolerance values specified by the Board, based on the information provided by management, the internal audit officer and, where applicable, the risk management and control unit officer; the list of the most significant financial and non-financial risks should be reassessed at least annually; and the different tolerance levels established by the Board should be assessed and any appropriate adjustment proposed.
- e) A meeting should be held at least annually with the officers heading up business units, at which those officers can explain business trends and the related risks. The idea should be reinforced that business unit heads are responsible for directly and effectively managing risk, and the principle that an officer should be assigned to each identified risk.

## **5 Supervision of internal audit**

### **5.1 Regular analysis of the internal audit function**

52. At entities where no distinct internal audit area exists, the audit committee must annually consider the question of whether such an area should be created. If an internal audit function is finally not set up, the audit committee must ensure that alternative processes have been put in place to provide management, the audit committee itself and the Board of Directors with sufficient assurances as to the functioning of internal control and the risk management systems and must appropriately report to the Board on this point.

53. In those cases where an internal audit area exists, it is advisable that the audit committee should approve its role, action plans and resources, or propose their approval to the Board, and ensure that it is regularly evaluated by the committee, with the aim of ensuring their adequacy to the entity's real needs and, where appropriate, propose the appointment or dismissal of the area head. To safeguard their independence, it is advisable that the internal auditor should not be dismissed in the absence of a prior proposal from the audit committee. In addition, the audit committee must ensure that internal audit staff profiles are suitable, that senior staff have qualifications widely recognised in the market and that the hierarchy and position of the entity's audit officer is such that they can carry out their work objectively and independently.

54. In this respect, the audit committee may take the requirements set out in the Institute of Internal Auditors' Global Internal Audit Standards and the recommendations of the Code of Good Governance of Listed Companies as a reference, recommending the following aspects, among others:

- a) Its members must not have personal or business interests in the area being audited and must take an impartial stance in all tasks.
- b) They must have access to the necessary documentation and staff and be provided with appropriate research techniques without hindrance.
- c) The internal audit area must be under the direct supervision of the audit committee and report functionally to the non-executive chairperson of the Board or of the audit committee itself.

### **5.2 Adoption of the annual internal audit plan, ensuring that it focuses on key issues and risks and is supported by the necessary resources for its implementation**

55. As to the supervision of the annual internal audit plan, the audit committee must check that the plan covers the main financial and non-financial risk areas and clearly identifies and delimits responsibilities as to suitable coordination with other existing assurance functions, such as the risk management and control or regulatory compliance units, in addition to external audit and the verifier of the sustainability information.

56. Coupled with the audit committee's adoption of the annual internal audit plan, or its adoption proposal to the Board, besides identifying audit objectives and the tasks to be completed such adoption must address the resources required for implementation, encompassing (internal and external) human resources and financial and technological resources.

### **5.3 The supervision of internal audit by the audit committee must be supported by monitoring the annual plan defined based on the most significant key risks and on frequent interaction with the external auditor, the verifier and the other assurance functions**

57. It is recommended that, in the course of plan monitoring, the audit committee should verify, at least, the following:

- a) That the key risk areas of the business identified in the plan are properly addressed in practice. This includes supervision of the internal controls over the method of calculation of any APMs and key performance indicators (KPIs) used by the entity in its regular reporting.
- b) That there is adequate coordination with the other assurance functions, such as risk management and control or regulatory compliance, and with the external auditor and the verifier of sustainability.
- c) That the originally approved resources – including human, technological and financial resources and the engagement or use of experts for audits requiring special qualifications – are available.
- d) That the head of internal audit has direct and effective access to the audit committee.
- e) That reports on the progress and conclusions of its work, prepared in response to annual scheduling or to specific requests made or approved by the audit committee, are being submitted with the



planned regularity. That such conclusions must include both any weaknesses or irregularities detected, action plans for their resolution, and follow-up of the implementation of those plans.

- f) That any significant changes to the execution and implementation of the plan are properly communicated to the audit committee and that, when said changes entail the need to update the plan itself, the update is approved by the same procedure whereby the initial plan was approved.
- g) That the conclusions drawn by internal audit are reasonable, the action plans are being implemented in accordance with the original commitments and within the planned timetable, and the audit committee is informed on their progress on a timely basis.
- h) That any discrepancies that might have arisen with the entity's management have been resolved or, failing this, has been submitted to the consideration of the audit committee itself.
- i) That an activity report is produced annually containing, at least, a summary of activities carried out and reports issued over the year, explaining the work specified in the annual plan but not implemented and the work implemented but not originally planned, and setting out an inventory of weaknesses, recommendations and action plans contained in the various reports.

58. Lastly, that in the course of its supervisory process, the audit committee must assess the functioning of the internal audit unit and the performance of its leading officer.

As part of the assessment process, it is recommended that the audit committee of large entities or entities with securities admitted to trading on regulated EU markets should evaluate and, where applicable, promote that the internal audit function be periodically subjected to assessment processes by an independent third party; that it ensures compliance with the Global Internal Audit Standards and seeks the opinion of other specialised committees and of the senior management; and that the assessment be constructive and also include an evaluation of the extent to which pre-established objectives and criteria have been fulfilled for the purpose of determining the variable components of the remuneration that would have been accrued by the head of internal audit. Such determination must involve the audit committee.

The conclusions of the audit committee's assessment must be communicated to the head of internal audit and also be taken into account by the entity when finally determining their annual variable pay.

## **6 Relations with the statutory auditor and with the verifier of the sustainability information**

### **6.1 Selection process and appointment proposal**

59. Pursuant to the applicable laws and regulations, the audit committee is responsible for the selection process of the statutory auditor, in which account must be taken, among others, of factors such as: the scope of the audit; the knowledge of the sectors in which the entity's economic activities are carried out, including its associated risks and specific legislation; the qualification, experience and resources of the auditor or audit firm, the fees, the auditor's independence and the effectiveness and quality of the auditing services to be provided.



Notwithstanding the recommendations set out in this Technical Guide, the main duties and obligations relating to the selection process are set out in the Spanish Corporate Enterprises Act, the Spanish Auditing Act, Directive 2006/43/EC, of 17 May, and Regulation (EU) 537/2014, of 16 April 2014 (EU Regulation), compliance with which is mandatory.

In relation to the verifier of the sustainability information, it is also recommended that the audit committee be responsible for their selection process, similarly applying the same foregoing criteria and principles, with the aim of ensuring their professional competence and independence, in addition to adequate verification quality. In this process it is also advisable for the audit committee to consult or involve the sustainability committee, if one exists in the entity, in some way.

60. It is recommended that the entity's audit committee define a policy, an internal protocol and a selection procedure applicable both to the auditor and to the verifier, which give due priority to the quality of the audit or verification in comparison to the remuneration-related aspects. In them it is advisable to specify the criteria or parameters to be considered among a sufficient number of auditors and audit firms – or of verifiers or assurance firms – invited to participate by the audit committee itself.

The criteria and parameters to be considered in the selection process must at least include:

- a) The resources and experience of the auditor or audit firm, including those related to sectoral aspects relevant to the audited or verified entity and the geographical coverage of the network of firms of which it is a member, in line with the diversification of the audited entity and its group.
- b) Availability of staff having the necessary skills and capabilities, included in relation to: i) the sectoral aspects of the audited or verified entity; ii) technical systems or resources specialised in addressing complex issues in accordance with both the size and complexity of the auditing or verification activity to be carried out of the entity and the industry in which it operates or the activities it carries on; and iii) the provision of specialists with specific knowledge of the applicable regulations and processing standards including, where applicable, the International Financial Reporting Standards (IFRS) and the European standards applicable to sustainability reporting.

It appears reasonable that the candidates not be interrogated about their opinions on specific elements, judgements or criteria, of a potentially contentious nature, with the aim of avoiding the “opinion shopping” effect. This does not preclude, but rather on the contrary will generally be relevant, asking them questions on general issues to assess their technical competence and knowledge of the industry in which the audited or verified entity operates.

- c) The independence of the auditor or audit firm, in particular in connection with their personal situations or in relation to the provision of non-audit or verification services to the entity, in accordance with the laws and regulations governing statutory auditing or verification of sustainability, and any other circumstance arising from the independence regime to which they are subject.
- d) Non-discrimination of candidates of a lesser size, including them on the list of potential candidates to the extent that they meet the target criteria established in the terms of the bid.
- e) Service quality and effectiveness culture. It is advisable that the audit committee should take into account the reported results of inspections of auditors and audit firms published by the Spanish

Accounting and Audit Institute (ICAC) in accordance with Articles 16.3.e) and 26.8 of the EU Regulation and Article 54 of the LAC. In this regard, it should be taken into consideration whether the culture of the auditor or verifier attaches sufficient importance to the quality of the audit or verification and to the internal controls and reviews carried out for such purpose, for example, through the incorporation, by the audit or assurance firm, of remuneration incentives associated with service quality for the majority shareholders responsible for the audit or verification and for their work team. Similarly, it is useful to explore how the audit or verification firm deals internally with any communication received from public supervisors, including the results of any review or inspection.

61. It is also recommended that the choice of auditor and, as appropriate, of verifier, should be the outcome of an appropriate weighting of the different criteria, without giving preponderance to quantitative criteria such as the proposed fees, ensuring that the capacity to provide other additional non-audit or verification services does not appear as an assessment criterion.
62. In order for the quality of the auditing or verification service to stand out among the selection criteria, it is recommended that the committee includes limitation criteria in the valuation of economic offers, such as excluding bids that might be regarded as disproportionate or abnormal. It is also advisable to establish, specifically, in the conditions of the selection process, that the aspects relative to audit or verification quality be subject to consideration prior to the subsequent evaluation of the economic conditions of the service.
63. Additionally, and to the extent that the audit committee – as specifically provided for in Article 16.3.c) of the EU Regulation for auditors, which must be considered applicable in a similar way to verifiers – decides to negotiate directly with the candidates, it is advisable to specify a priori which aspects may be subject to negotiation, in the terms permitted by law, and to stipulate that remuneration will not be the decisive factor in the selection process.
64. In a similar way to what the laws and regulations establish for the statutory auditor, it is advisable that the audit committee should submit a proposal to appoint or re-elect the verifier and that the proposal, in both cases, both respect to the statutory auditor and verifier, consider the preceding paragraphs.<sup>7</sup>

## 6.2 Protecting the independence of the statutory auditor and of the verifier

65. In the performance of its role, the audit committee must, in accordance with Article 529 *quaterdecies* of the Spanish Corporate Enterprises Act, “annually receive a confirmation or statement of independence in relation to the audited entity and its directly or indirectly related entities” and, subsequently, pursuant to letter f) of paragraph 4 of the same article, “annually issue, ... report expressing an opinion on whether the independence of the statutory auditors or audit firms is compromised”, prior to the issue of the verification or audit report. By analogy and in application of Directive 2013/34/EU and Directive 2006/43/EC, it is recommended that similar reports should be compiled and prepared in relation to the verifiers or assurance firms.

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7 In relation to the statutory auditor, pursuant to Article 16.2 of the EU Regulation, except in the case of the renewal of an audit assignment, the proposal shall be motivated and contain, at least, two alternatives for said assignment, and the audit committee will indicate and duly justify their preference for one of them.

To this end, it is recommended that the audit committee should have in place a policy, a procedure and criteria specifying its course of action in the issue of the report, for which the following will be required:

- a) Awareness of the laws, regulations and standards on the independence of statutory auditors and verifiers.
- b) Approve, or propose its approval to the Board, and review the entity's internal policies with respect to: i) personal situations and the prohibition on the provision of certain services by the auditor and the verifier; and ii) approval of the provision of non-audit and verification services. In addition, the audit committee must ensure that the policies are known to the relevant officers of the entity so that they are correctly applied. In particular, the audit committee must issue guidelines if the services referred to in Article 5.3 of the EU Regulation are provided, in accordance with paragraph 4 of said article.

When the audit committee approves the provision of services other than audit or verification of sustainability information by the statutory auditor or verifier, respectively, or by entities related to them, it must evaluate:

- i) The nature, circumstances and context of the service; the status, position or influence of the person providing the service and other relations with the entity subject to audit or verification, in addition to their effects and whether or not such services might compromise the independence of the auditor or verifier and, if so, whether measures are in place to remove or reduce such threats to a level that does not compromise their independence.
  - ii) Whether the auditor or verifier, based on its expertise and experience, is the most suitable to provide those services.
  - iii) Remuneration for non-audit or verification services, individually or as a whole, in relation to remuneration for audit or verification services, respectively, and the criteria and parameters used by the audit firm to determine its own remuneration policy for the provision of such services and to assess the impact on its independence.
- c) Establish a guideline ceiling on total fees receivable by the statutory auditor or the verifier for non-audit or verification services, pursuant to Article 4.2 of the EU Regulation and articles 24 and 41.2 of the Spanish Auditing Act and Article 25 of Directive 2006/43/EC.
  - d) Establish sources of information internal to the entity that provide relevant information about the independence of the statutory auditor or of the verifier, stemming from the financial department, the sustainability area or other management functions, from internal audit or from other assurance functions such as the regulatory compliance or risks unit, or from external sources, such as the information that could be provided by the statutory auditor or the verifier.
  - e) Request the statutory auditor and the verifier an explanation of the internal quality control system it has in place as to independence and information on internal practices for the rotation of the audit or verification partner and their staff, and compliance of those practices with Article 17.7 of the EU Regulation, Article 40.2 of the Spanish Auditing Act and Directive 2006/43/EC.

- f) Discuss with the statutory auditor and the verifier of any circumstance that might compromise their independence and assessment of the effectiveness of the adopted safeguards, coupled with an understanding and assessment of the relations between the audited entity, or subject to verification, and its entities related to the statutory auditor or verifier and its network, entailing the provision of non-audit services and verification services or any other type of relationship.
- g) Ensure that the remuneration of the statutory auditor and verifier does not compromise the quality of its work or independence. In particular, in the case of the latter, the rules on fees established in the applicable statutory audit regulation shall be taken into account.
- h) Analyse any change that may occur in the total remuneration of the external auditor or verifier.
- i) Approve and review the entity's internal policies for compliance with the obligations established in the Spanish Auditing Act and in Directive 2006/43/EC on prohibitions subsequent to the completion of the audit or verification work.

### **6.3 Smooth communications with the statutory auditor and the verifier of the sustainability information**

66. Independently of the duties and obligations under Article 529 *quaterdecies* of the Spanish Corporate Enterprises Act and technical auditing standards, and Directive 2006/43/EC, it is recommended that communications between the audit committee and the statutory auditor and the verifier should be smooth and ongoing. It is also advisable that the audit committee should regularly seek information from the auditor and the verifier on their strategy and audit and verification plans, on their execution and on any issues relating to the verification or statutory auditing process, in particular, any disagreement that may arise between the verifier or the statutory auditor and the management of the entity, in addition to any possible significant indication or risk identified by the auditor or verifier with respect to any possible fraud or manipulation of the financial or non-financial information (among others, in relation to environmental laundering).

It should be recalled that, pursuant to the audit law, statutory auditors, specifically, must design their procedures to offer reasonable assurance that the annual accounts are free from material errors or omissions, including those due to error or fraud. Therefore, it is reasonable to consider that asking the auditor about the procedures established in this respect is part of the audit committee's role and if, in practice, it has identified any sign or indication that the committee should be aware of and in relation to which it should adopt any measure such as, for example, in the event that the risk of fraud has materialised with material scope, that of proposing to the Board that a forensic analysis be performed.

67. Communications between the statutory auditor and the verifier with the audit committee must be compliant with the obligations established in the regulations on these activities and must not undermine the independence of the auditor or verifier or the effectiveness with which they perform the audit or verification, or with which the audit or verification procedures are carried out (e.g. as to the timing or scope of performance).

68. Communications with the statutory auditor must be planned in a timetable of activities and an annual schedule of meetings, most of which should be held without the management of the entity being present, to address all matters that might influence the audit opinion or the independence of the statutory auditor. To support these communications it is advisable, although not mandatory under laws and regulations, that:

- a) The audit committee and the external auditor or verifier should inform one another of any relevant matter detected in relation to the accounts, the sustainability information, the internal control system or the audit and the verification or audit itself, including any aspect related to their independence.
- b) The audit committee should ask the statutory auditor and the verifier to explain: the key aspects of their strategy with respect to the audit and verification risks; the work plans in relation to the audit or verification of the entity, including the determination of the materiality figure or relative importance and, specifically, in the area of sustainability, how the double materiality has been determined; how the work procedures have been designed in response to the main identified risks of material misstatement; the resources allocated to implementing the work; the grounds for using specialists, if necessary; and the timetable of performance of the planned tasks, identifying the nature and scope of planned control and substantive tests.
- c) The audit committee should discuss with the statutory auditor and the verifier any significant judgements made as to the quality and applicability of the entity's accounting and sustainability principles, significant assumptions used for critical estimates – in particular those involving a high degree of uncertainty – and any significant changes to such assumptions.

The discussion should likewise extend to errors and breaches identified by the auditor or the verifier, to the matter of whether or not they have been corrected by the entity, and any difficulties encountered in the course of the audit.

- d) The audit committee should request from the statutory auditor or the verifier, in the course of the audit or verification work, any communications required to support the supervision of the process of preparation and production of economic, financial or sustainability information, including their opinion on the accounting treatment and breakdowns supplied by management on complex, high-risk or high-impact, or controversial transactions.
- e) The audit committee should request from the statutory auditor and the verifier information on: the materiality figures for the financial statements as a whole and, where applicable, for certain transactions, balances or disclosures; information on the manner in which qualitative issues are considered for determining those figures; and the materiality used for the performance of the audit or verification work and how the scope and level of said audit or verification work is to be determined.

It should be noted that it is important for the committee to discuss with the auditor and the verifier the suitability of the criteria and parameters used to determine materiality, or double materiality in the case of sustainability reporting, and whether lower figures have been established, based on qualitative parameters, in the analysis of certain transactions or sensitive areas of the financial or sustainability information, such as related-party transactions.

- f) The audit committee should discuss with the external auditor and the verifier the methods and assumptions used by management for significant accounting estimates, the effect of considering alternative methods or assumptions, and consideration by the auditor or verifier of information, hypotheses, methodologies or data that might contradict management's assumptions.

- g) The audit committee should evaluate, in conjunction with the external auditor and the verifier, whether the mutual relations have been appropriate and, if necessary, analyse whether the committee should take steps to improve them.
69. Upon completion of the audit and verification, the audit committee should review, in conjunction with the external auditor and the verifier, as well as the content of the sustainability information verification report, the audit report and the external auditor's additional report to the audit committee referred to in Article 36 of the Spanish Auditing Act.

Similarly, when the audit committee becomes aware or is informed that the statutory auditor considers that any of the three assumptions envisaged in Article 12.1 of the EU Regulation applies, it must propose to the Board of Directors the adoption of all appropriate measures to remove the causes conducive to such assumptions, to the extent that they are factors under the entity's control or, at least, mitigate their impact on the financial statements by providing all the information that supervisory bodies might request in this connection.

70. In the supervision of the audit or verification work of the sustainability information, the audit committee is recommended the following:

- a) Review, in conjunction with the auditor and the verifier, the main incidents detected in the course of the audit or verification, seek management's opinion in this respect, verify that the issues have been resolved and, if not, understand why, and follow up the recommendations of the auditor or verifier.
- b) Verify compliance both with the audit and verification strategies and with the correlative audit and verification plans and, failing this, obtain some explanation of any changes that have occurred; in particular, the degree of involvement of the more senior levels of the audit or verification firm will be evaluated, including the majority shareholder and quality reviewer. In this regard, it is important that they discuss their internal quality policies and procedures, and the degree of the firm's effective commitment with the quality of the audit and verification, with the auditor and verifier, and the extent to which it has directly affected their evaluation of the firm's performance and the remuneration amounts accrued by the leading auditor or verifier and the rest of the work team involved within their audit or verification firm.
- c) Obtain an explanation from the auditor and the verifier on how they have addressed the risks and impacts encountered.
- d) Analyse the opinion of the auditor and the verifier in light of the evidence available on each relevant business area.
- e) Evaluate whether the relations and cooperation between the senior management and the finance and sustainability departments and the verifier and the statutory auditor have been adequate.

71. It is advisable that the audit committee should undertake a final assessment of the performance of the auditor and the verifier and of how they have contributed to the quality of the audit and verification, respectively, and to the integrity of the financial and non-financial information, including, among other parameters: their independence; their knowledge of the business, the financial and sustainability information; the composition and seniority of the work team involved in the reviews; the

frequency and quality of their communications; the information and, where applicable, opinion of the auditor and verifier both at the corporate level and within each business unit and other areas engaging in assurance work, such as the internal audit unit or the regulatory compliance unit, the public results of the quality controls or inspections conducted by the ICAC or other supervisory authorities, the auditor's transparency reports and any other available information.

72. If, as a result of the assessment of the auditor or the verifier, the audit committee believes that there are matters for concern or unresolved issues as to the quality of their work, the possibility should be considered of informing the Board of Directors and, if deemed appropriate, adequately record it and duly inform the supervisory authorities.

## **7 Monitoring of related party transactions**

73. If this role is assigned to the audit committee, it must gather and analyse all the necessary information and documentation to report to the Board of Directors on any related-party transactions that must be approved by the General Shareholders' Meeting or the Board itself, within the meaning set out in law.<sup>8</sup> To this end, it is advisable that the audit committee should be able to request expert reports when deemed appropriate, for example, because it has to decide whether a sufficiently complex transaction is fair and reasonable from the point of view of the company and of the shareholders that are not related parties.

In the case of listed companies, it is advisable that the audit committee should ensure that the related-party transactions it must report to the CNMV for public dissemination contain the information required by law and, in particular, to evaluate whether the transaction is fair and reasonable from the point of view of the company and of the shareholders that are not related parties.<sup>9</sup>

Lastly, it is recommended that the audit committee should also establish control mechanisms for related-party transactions whose approval has been delegated by the Board of Directors, so as to enable it to verify that the legal criteria for such delegation are met.

In this regard, it is recommended that the audit committee should propose to the Board the internal reporting and periodic control procedure, which will be aimed at verifying compliance with the legally established criteria, as well as the fairness and transparency of the transactions whose approval was delegated, and periodically review its suitability.

Additionally, it is recommended that the audit committee, with the assistance, where appropriate, of internal audit function, should periodically review the list of delegated transactions performed during the period, and may request such additional information and documentation as it deems appropriate to ensure compliance with the aforementioned requirements, including an individual assessment of the most significant transactions.

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8 In relation to listed companies, in compliance with Chapter VII bis of Title XIV of the Spanish Corporate Enterprises Act.

9 In relation to the information that must be included in the public notice, on 15 November 2021, the CNMV published the document (in Spanish) *Preguntas y respuestas sobre el régimen de comunicación de operaciones vinculadas reguladas en el Capítulo VII bis del Título XIV de la Ley de Sociedades de Capital*. This document provides clarification on the relevant information that must be disclosed for certain related-party transactions based on their type and circumstances and which it is advisable that the committees should take into consideration in the process of assessing published information.



## **8 Other responsibilities**

74. If the audit committee takes on the role of supervision of compliance with corporate governance rules or internal codes of conduct, it must include them in its rules and regulations and in its annual plan, and committee members must have the necessary training.

If this role is also assigned to the audit committee, the committee must assess its size and, where appropriate, propose an increase in the number of its members, incorporating new members with experience and expertise in such additional subject matter.

75. The monitoring tasks and procedures, as well as the recommendations that have been mentioned in the various sections throughout this Technical Guide appear to be equally applicable, in general and with the appropriate adaptations, to these other functions.

## **9 Assessment and monitoring**

76. As part of the Board's annual assessment, the audit committee must assess its own performance independently to reinforce its functioning and improve planning for the following year. For these purposes, it should seek the opinion of the rest of directors and, if deemed appropriate, the assistance of an external consultant. Whichever the chosen procedure, the Board must be informed of the matters assessed and the outcome of the assessment, so it is taken into account in the annual assessment undertaken by the Board.

77. To improve transparency, a public disclosure must be made on the extent to which the assessment has given rise to significant changes in the internal organisation and procedures of the audit committee. This disclosure must be included in the audit committee's annual activity report. It is recommended that the company publish the report on the occasion of convening the annual General Shareholders' Meeting.

78. It is recommended that, in the course of assessment of the effectiveness of the audit committee's performance, the matters addressed in this Technical Guide must be considered.

## **10 Information to other bodies of the entity and its shareholders**

79. It is recommended that the content of the audit committee's annual activity report, which is expected to be made available to the public in Recommendation 6 of the Good Governance Code, should be adequate and sufficient to enable shareholders and other stakeholders to understand the committee's activities in the previous closed financial year. Therefore, the publication should at least address the following aspects:

- a) The most significant aspects of the regulations to which audit committees are subject in general and, in particular, those specifically applicable to the entity in question.
- b) Composition of the audit committee throughout the year, including the category and length of service of each of its members, reference to information on members available on the entity's website, and significant capabilities in terms of expertise and experience contributed by each



member. An explanation must be provided of the criteria used to determine the composition of the audit committee and the reasons justifying them based on the specific circumstances of each entity, particularly in relation to the appointment of members who are not independent directors.

- c) Meetings held during the year and number of attendees, including whether other non-committee members have been invited, indicating, in such case, the number of meetings attended by such persons.
- d) Number of meetings held with the internal auditor, with the verifier and with the external auditor, and how many were not attended by managers or executive directors.
- e) The functions, tasks performed in practice and significant activities carried out in the period (reporting on any carried out, where applicable, with the assistance of external experts), describing any change in the activities during the year and specifically in relation to the regulation governing them, relative to, at least:
  - i) The entity's financial and non-financial information and associated internal control mechanisms.
  - ii) Related-party transactions, if the audit committee is entrusted with this function.
  - iii) Financial and non-financial risk management and control.
  - iv) Internal audit (and, if this area does not exist, the reasons for its absence).
  - v) Whistleblowing channel.
  - vi) External auditor.
  - vii) Verifier of the sustainability information.
  - viii) Follow-up of the audit committee's own action plans.
  - ix) Nature and scope of communications, if any, with regulators.
- f) Assessment of the functioning and performance of the audit committee, the methods used to evaluate its effectiveness and whether any significant changes were made during the year as a result.
- g) Information on the audit committee's opinion on the independence of the statutory auditor and the verifier of the sustainability information.
- h) Disclosure of the practical guides on audit committees being followed, as appropriate, identifying each guide and the extent to which it is followed.
- i) Conclusions.
- j) Date of authorisation for issue of the report by the audit committee and date of approval by the Board of Directors.