Seventh Annual Directors Forum

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I would like to thank KPMG, IESE and El País for inviting me, once again, to participate in this Annual Director's Forum, which has become an important event for those of us in our country who are interested in good corporate governance, and which today is holding its seventh edition.

It is understandable why there is so much interest in these types of events. In an ever-changing environment such as the one in which we live today, the role of a director has become increasingly important; more and more is demanded of directors, not only from the perspective of investors and shareholders, but also from the viewpoint of other corporate stakeholders, including employees, clients and suppliers, as well as society in general, who demand more transparency and responsible corporate behaviour.

My speech is going to focus on three issues:

- Firstly, I would like to briefly refer to the Technical Guide on Nomination and Remuneration Committees, which we published in February this year.
- Secondly, I am going to comment on the updating and amendment work that the CNMV intends to carry out on the recommendations contained in the Good Governance Code.
- Finally, I shall make some comments on certain aspects that have been included in the Spanish Preliminary Draft Law transposing the 2017 Directive on shareholders' rights not specifically related to transposition. This draft law was subjected to a public hearing until last Friday and, therefore, now is a good time to make some reflections on such matter.

TECHNICAL GUIDE ON THE NOMINATION AND REMUNERATION COMMITTEE

With regard to the Technical Guide on the Nomination and Remuneration Committee, allow me to begin by recalling that when I began my term as Chairman of the CNMV - (November 2016), it was clear to me that, rather than changes or new reforms, in the area of good corporate governance, what I had to do was properly apply and expand the existing rules and recommendations.

The reform of the Spanish Corporate Enterprises Act of 2014, which enshrined much of the 2006 Unified Good Governance Code of Listed Companies, and the new 2015 code,

into law, were still too recent. I have always thought that regulatory stability in itself is an important value.

Likewise, from the very beginning it was clear to me that one of our focal points, in order to promote that effective validity, that expansion, had to be the delegated committees of the Board, the Audit Committee and the NRC.

The proper functioning of these committees is key to good governance producing what is expected of it: more reliable financial and non-financial information, internal control, rigour and orderliness in the actions of listed companies and their management, and priority attention to corporate interest and, in short, to the interests of dispersed or minority shareholders.

At the CNMV we thought that we could make use of the instrument of technical guides, introduced in the Spanish Securities Market Act (LMV) in 2015 and designed to disseminate interpretative criteria and guide market participants, to help improve the functioning of these committees.

In June 2017, following an extensive public consultation, the CNMV published Technical Guide 3/2017 on Audit Committees. The aim was to encourage best practice in this area to be extended to as many listed companies as possible and I believe that, two years later, the Guide has undoubtedly been useful in this respect.

And with a similar purpose, on 20 February, also after the corresponding public consultation period, we published Technical Guide 1/2019 on NRC, an initiative, incidentally, which is somewhat more original because, unlike what happens with audit committees, documents relating to NRC with a similar scope are still scarce at international level.

In the area of corporate governance it is customary to place the emphasis on the supervision of management and controlling shareholders. The aim is to ensure that their actions are geared at all times to the pursuit of corporate interests and to protect minority shareholders from the risks inherent in agency conflicts. Of course, the NRC's function pursues this objective - it must help ensure that the company has truly independent directors and that all directors really have the priority of promoting corporate interests - but the NRC must also help ensure that the company attracts and retains the appropriate talent and must place emphasis on the knowledge and skills of the directors and, to the extent appropriate, of the senior management as factors for optimising the strategy and operation of the company for the benefit of all shareholders and, in short, for the creation of sustainable value in the long term.

The Technical Guide, in line with this vision, also seeks to increase the visibility and relevance of NRCs, promotes rigour and professionalism in their actions and highlights the importance of having sufficient resources and analytical capacity.

In any case, the criteria and good practices included in the Guide, the purely indicative nature of which is stressed in its introductory part, are subject to the principle of proportionality: they must be adapted to the specific circumstances of each entity, its size, the level of complexity of its activities and the sectors in which it operates.

In order to highlight a specific aspect, the Guide, which contains criteria on the desirable composition of the NRC in an attempt to foster diversity of knowledge and training, is also in favour of proprietary directors who represent shareholders without control or significant influence and who

can carry out their functions without being conditioned by the relations of their shareholder with the company, its directors or the rest of the significant shareholders. This is a type of director who tends to act naturally in the pursuit of the Company's interests and who tends to feel especially aligned, in terms of interests, with minority shareholders.

Likewise, the Guide refers favourably, although placing emphasis on the need to monitor possible conflicts of interest, to the use by the NRC of external experts, especially in processes for selecting directors.

The Guide, on the other hand, recognises and promotes the role of the NRC in relation to senior management, albeit on the basis of a principle of respect for the scope of action of the chief executive (there was particular sensitivity on this aspect in the responses to the public consultation). Thus, the Guide proposes that the NRC be informed of such matters as the succession and career plans for senior management, the determination of their accrued remuneration and the annual evaluation process.

Other matters dealt with in the Guide are the methods for evaluating and selecting directors, recommending the use of competency matrices; the proposal of independent directors (including who should propose and their possible outsourcing, as indicated above), or the role of the NRC in determining the policy and the remuneration and contractual conditions of directors and senior management.

We at the CNMV are convinced that the Guide, which is quite detailed, although not as detailed as its predecessor on Audit Committees, is already proving to be a useful instrument for disseminating the best operating practices of the NRCs and, in short, for improving the quality of the governance system of Spanish listed companies.

REVISION OF CERTAIN RECOMMENDATIONS OF THE GOOD GOVERNANCE CODE

As for the updates or modifications that we are thinking of introducing into the Good Governance Code four years after its publication, consistent with that profession of faith that I have made at the beginning on regulatory stability, our preference would have been not to touch it yet. However, the regulatory changes and the experience accumulated by the CNMV have highlighted the need to update some of the recommendations.

In any case, there are going to be few modifications, as we also explained last February when we published our Activity Plan for 2019. Specifically, we intend to revise the following recommendations of the Code (although we do not rule out any further tweaks):

- Recommendation 2, which refers to the advisability, in the event that both the parent company and the subsidiary are listed companies, of publicly defining their relationships and the mechanisms provided for resolving possible conflicts of interest.

  We believe that this recommendation should also apply to the case where the parent company and subsidiary are listed in different countries and also to the case where the parent company is not listed but it or other companies in the group have business relationships or engage in significant activities that are sensitive from the point of view of the listed subsidiary. These are cases in which, with the same scope as that of the parent company and listed subsidiary in Spain, there may be conflicts of interest that deserve the same degree of transparency and care in their treatment.

- The changes will also affect recommendations 6 and 55 in relation to the publication of the corporate social responsibility report. Spanish Law 11/2018 requires listed companies above a certain size to publish a sustainability report or a non-financial information statement and, therefore, it no longer makes sense for the Code to recommend the preparation and publication on the issuer's website of a report on corporate social responsibility.

  It is true that smaller listed companies are not obliged to publish it, but if the legislator considers it acceptable that they should not produce it because it is of lesser importance, there is also little point in maintaining the recommendation.

- Something similar happens with recommendation 39 (majority of independent directors in the audit committee), which has also lost relevance as this majority is legally mandatory under Spanish Law 22/2015.

- Finally, we are also proposing to amend recommendation 64, which refers to the two-year compensation limit.

  In this case, it is a matter of making it clear that the two-year limit is applicable to any payment made to the director on the occasion of his departure, removal or resignation. The recommendation should, in our opinion, include the severance payments themselves, and also those linked to post-contractual non-compete agreements, long-term savings systems that cover the contingency of termination of management functions, etc. When the two-year limit is exceeded, considering also these special concepts, the company cannot say that it complies with the recommendation.

SPANISH PRELIMINARY DRAFT LAW TRANSPOSING THE 2017 DIRECTIVE ON SHAREHOLDERS' RIGHTS

Finally, I am going to briefly comment on three aspects of the Spanish Preliminary Draft Law which transposes the 2017 Directive on shareholders' rights, a Draft Law which has been prepared by the Ministry of Economy and Business Affairs, which has just been submitted for public consultation, and which proposes relevant amendments to the Spanish Corporate Enterprises Act and some financial regulations such as the Spanish Collective Investment Scheme Act.

The CNMV has been actively collaborating with the Ministry, giving its opinion and providing technical assistance in the work related to this Preliminary Draft Law and will continue to do so.

Generally speaking, we believe that the Preliminary Draft Law correctly incorporates the essential aspects of the Directive (right of issuers to know the identity of their shareholders, involvement of institutional managers and investors, voting advisers, etc.), although we believe that it still requires some polishing, particularly with regard to the related-party transactions regime.

However, today I wanted to refer only briefly to three things which, with our full support, are included in the Preliminary Draft Law and which are in no way related to the directive: the removal of the duty to publish quarterly information, the so-called loyalty shares and the requirement that the directors of listed companies must in any event be natural persons.

Removal of the obligation for listed companies to publish quarterly information

In 2013, in a context of great sensitivity as a result of the financial crisis, seeking to encourage management that is more long term, as opposed to short term, the 2004 European Directive on the transparency of listed companies was amended to remove the obligation for listed companies to publish quarterly financial information.

The Directive, however, allowed Member States to maintain such obligation, rather than obliging them to remove it, and in Spain we opted to maintain it. An explanation had to be given to the European Commission about the reasons for such maintenance and it was provided: our companies were used to publishing it and the cost was low; after all, the only obligation was to report on significant events during the period and on the evolution of results.

But it transpires that five years later we have been left practically alone. As far as we know, the only European countries that maintain the mandatory publication of quarterly information are Poland and Romania.

We at the CNMV are in favour of the publication of quarterly information, which is also generally appreciated by analysts and investors. This is an orderly way of disseminating information, which reduces the risk of information asymmetries (and insider trading). And we would like it to remain obligatory throughout Europe. But we cannot be the only country among the five most important in Europe in which it remains mandatory. Our market has to offer the same options as the others.

Loyalty shares

I have something similar to say with regard to the figure of loyalty shares, or additional loyalty vote, that is to say, to the possibility that the listed companies that so wish, only those that so decide, establish in their articles of association that any shareholder that holds their shares uninterruptedly for two years has the right to a double vote.

Once again, what is desirable is the one share, one vote principle, and that the formulas for shielding at the disposal of the shareholding nuclei (of which, by the way, there are already many) are as few as possible. But we cannot live outside the current international trend - in spite of critical voices always emerging - of greater tolerance for multiple or privileged voting systems; a trend that has been especially visible in some of the recent major IPOs in the United States and that has even reached markets, such as Hong Kong, where the one share, one vote principle was especially sacrosanct. A trend that has to do with the greater relative weight that in many companies, especially technology-based ones, have in the twenty-first century the inventiveness and vision of its founders and human capital versus physical or financial capital.

We have to have loyalty shares on our menu,

- like in France (where the loyalty vote is applied by default, except for "opt out", and is held by many listed companies),
- or Italy (where it was introduced in 2015 following Fiat's move, at the time of its merger with Chrysler, to the Netherlands, where it is also admitted, as in Belgium and other countries).

(Another very topical case is the recently-announced merger between Mediaset Italia and Mediaset España into a Dutch company in which a loyalty voting mechanism is planned to be applied which goes beyond the double vote for holding shares for two

years that is allowed in France and Italy and which the Preliminary Draft Law proposes in Spain.)

Although they may also be presented as a possible tool to counteract short-termism, I believe that reinforced or multiple voting mechanisms such as loyalty shares are not ideal from a market perspective, but we live, and compete, in the world in which we live. We cannot insist on being the spiritual reserve of the West.

In any case, it seems to me intelligent and positive that the Preliminary Draft Law, evoking what the Americans call the "sunset clause", requires the favourable vote of a very high proportion of the voting quorum to establish the loyalty vote (two-thirds or 80%, depending on the case) and that it facilitates its abolition once introduced (requiring only an ordinary majority to remove it).

Requirement that directors of listed companies must always be natural persons

Thirdly, at the CNMV we are in favour of amending the Spanish Corporate Enterprises Act to require that the directors of listed companies must always be natural persons, i.e. that in the sphere of listed companies the figure of the legal person director is not used, a figure which in Spain has a certain tradition but which is contrary to the law, or simply very unusual or even seen as something extravagant in many countries.

In 2014, as a result of the reform of the Spanish Corporate Enterprises Act, the treatment of the figure from the point of view of good corporate governance was improved by making it clear that the duties and eventual responsibilities of the director are also applicable to the permanent representative of the legal person director. But, in my opinion, the figure still represents an anomaly, at least in a field such as that of listed companies, which by definition must be demanding in terms of governance practices.

The duties of loyalty, diligence and confidentiality of the director are duties that correspond to natural person directors, or at least they refer to such person in a particularly natural way.

In addition, a board composed only of natural persons is somewhat more intelligible and simple, more transparent and, in the case of proprietary directors, more respectful of their duty to pursue the corporate interest of the company.

The representatives of a legal person director may be removed at any time by the party that appointed them; on the other hand, natural person directors, who have simply been appointed by a significant shareholder, may only be removed by the shareholders at the company's general shareholders' meeting and, consequently, are more structurally protected to resolve the possible dilemma in which, at any given time, they may find themselves in terms of fulfilling the instructions or interests of the party that appointed them, which they can of course take into account, and the interests of the company, which they ultimately have to serve, as do all directors.

Some, in giving their opinion on this reform, say that they are in favour of it but only in relation to executive and independent directors, not with respect to proprietary directors.

In my opinion, this is a reform that makes sense specifically with regard to proprietary directors (the fact that an executive director or an independent director of a listed company is a legal person is something so exotic that it should not even be necessary to prohibit it).

In any case, I acknowledge that we do not consider the issue crucial either in view of the fact that the Spanish Corporate Enterprises Act was reformed in 2014 to make it clear that, in terms of duties and responsibilities, the natural person representative appointed by the legal person is at the same level as the natural person director.

Finally, I would like to take the opportunity afforded to me by this forum to convey a very specific message, just as I did last year, sensitised by certain situations that had arisen in some listed companies (then I expressed the CNMV's full willingness, which I reiterate today, to protect independent directors, evoking, although marking distances, the protection that the General Council of the Judiciary grants to judges whose independence is impaired).

I would like to ask listed companies today, this time made aware of some events that have occurred in recent months, to use clear language and to be loyal to the market and the CNMV, both in terms of price-sensitive information and when they respond to our requests for explanations of situations that affect them.

In this securities market sphere, as in all fields, but even more so in this one, the rules must be complied with both to the letter of the law and in spirit. A lot of the time - I am referring especially to the price-sensitive information published following a leak - it is not necessary to report everything or give details, but we do not like calculated language, language that is deliberately ambiguous so as not to incur risks,drafted with the intention of transmitting an impression not corresponding to reality.

In conclusion, good corporate governance is key to transmitting confidence to investors, to reinforcing the credibility of the company itself and to fostering long-term growth and value creation.

In recent years we have witnessed, both nationally and internationally, a notable increase in the level of demand in this area and I believe that in Spain we are at a good level in comparative terms and that we have to make it count. Spanish companies have made a very considerable effort, which is bearing fruit.

I would like to reiterate once again the CNMV's willingness to collaborate through its work in this field, with the aim of reinforcing the good image and reputation of the Spanish financial market and of Spain as an investment destination.

Thank you very much.