

THE CNMV SUBMITS FOR PUBLIC CONSULTATION THE AMENDMENT OF CERTAIN RECOMMENDATIONS OF CORPORATE GOVERNANCE CODE FOR LISTED COMPANIES

15 January 2020

- The reform, whose scope is limited, adapts the Code to the legal changes that have occurred since 2015 and clarifies, elaborates on and supplements the content of some recommendations.
- The proposals reinforce the recommendations relating to the monitoring and handling of situations that may affect the reputation of directors and companies themselves, and update the Code's approach to sustainability.
- It is proposed that companies have a general policy in place for communicating economic, financial and corporate information through dissemination channels (media, social networks or other channels).
- It is also proposed that the least represented gender on boards of directors account for at least 40% and that senior management positions be made more accessible for women.

The Spanish National Securities Market Commission (CNMV) has today launched a [public consultation on the proposal to amend certain recommendations of the Corporate Governance Code for listed companies](#), into force since 2015.

The objectives of the reform, inter alia, include the following:

- update some of the content of the current Code to adapt it to legal changes that have occurred since its entry into force or to clarify or supplement its scope;
- strengthen the control aspects to prevent possible irregular practices;
- adopt a more modern approach to sustainability; and
- update the Code's approach to diversity on boards, following the setting of a time limit by the previous recommendation on gender to achieve its 2020 target.

Irregular practices

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Most notable among the modifications proposed are those related to mechanisms for the control and handling of situations that may affect the reputation of directors and companies themselves, an aspect referred to in the statement issued by the CNMV on 25 November 2019, following various cases of alleged irregularities which have come to light in recent months and which have affected some listed companies.

In this respect, it is proposed that recommendation 22 be reformed to encourage the board to examine as soon as possible situations affecting a director, whether or not they are related to his or her actions in the company, including cases of corruption, which may damage the company's credibility and reputation, without waiting, as is currently envisaged, for the director to be prosecuted or for the trial to be held. In addition, as regards possible measures, the opening of an internal investigation is mentioned, as well as the possibility of requesting the resignation or proposing the removal of the director concerned.

The strengthening of the powers of the audit committee by also assigning to it the supervision of control and management systems for non-financial risks, with specific mention to those related to corruption (recommendation 42), is also under discussion. This committee must also ensure that internal control policies and systems are effectively implemented in practice.

It is also specified that, when directors leave their position before the end of their mandate, they must sufficiently explain the reasons for their resignation or, in the case of external directors, their opinion on the reasons for their removal, and that the company must report on this as soon as possible to the extent that the information is relevant for investors.

Gender diversity

Regarding the composition of boards, recommendations 14 and 15 have been revised as the current diversity target has a temporary threshold ending in 2020. The new proposal directly recommends that the number of directors of the least represented gender should account for at least 40% of the total number of Board members.

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Furthermore, having noted that the number of female executive directors is particularly low, which is related to the scant presence of women in senior management, it is proposed that the selection policy of companies encourage a sufficient number of women in senior management positions.

Other proposals

The amendments also affect recommendation 2, such that measures to report and resolve possible conflicts of interest also apply in general when the listed company is under the control of an entity that maintains business relations or carries on activities related to those of the listed company, regardless of whether it is listed or not.

Additionally, the document, made public today, envisages the reform of recommendations 53, 54 and 55 to include expressions such as "sustainability" and "environmental, social and corporate governance issues" (ESG), and proposes that companies may establish a specialised committee on this matter made up solely of external directors, at least two of whom are independent.

Furthermore, the reform of recommendation 4 is foreseen in order to propose that companies have a general policy for communicating economic, financial and corporate information through the channels that they consider appropriate (media, social networks or other channels), which will help to maximise the dissemination and quality of the information available to the market, investors and other stakeholders.

Recommendation 37 has also been made more flexible, such that the Executive Committee must include at least two external directors (at present it is recommended that it proportionally replicates the categories of directors present on the board), with at least one being independent. It is also proposed that recommendation 64 be amended to expressly provide that the termination payments to be taken into account for the purposes of the two-year limit on remuneration should include severance pay and amounts paid as a result of termination under non-competition agreements, pension schemes and others.

This proposed amendments to the Code are open to public consultation until 14 February 2020. Interested parties may address their comments to modificacioncbg2020@cnmv.es.

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