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The CNMV's new Technical Guide on Audit Committees at Public-Interest Entities

The CNMV has published [Technical Guide 1/2024 on audit committees at public-interest entities](#) (“PIEs”) (the “Guide”), in which it updates its first version, from 2017;¹ introducing important new features regarding the treatment of information on sustainability and its associated risks, in accordance with the regulations that have been approved in this area in recent years.

Below, we analyse the main new features introduced by the Guide.

1. Objective and scope

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 the audit committees at PIEs,² as well as the criteria for their appropriate composition, for the purpose of facilitating compliance with their legal obligations. In addition, a set of criteria has been established to facilitate compliance with the obligations that the regulations require of audit committees, in aspects such as (i) the supervision of financial and non-financial information; (ii) their dialogue with the auditor or the verifier of sustainability information, and (iii) the performance of other additional functions, also assigned to these committees, such as reporting on the related-party transactions of listed companies.

In any case, it should be noted that:

- The principles, recommendations and best practices introduced by the Guide do not arise from legal obligations but are considered reasonable and useful for PIEs and must be interpreted under the criterion of proportionality, with PIEs being able to adapt them to their particular circumstances and characteristics.
- Although the criteria, for the most part, are addressed to all PIEs, some specific requirements have been established for listed companies.
- The CNMV notes that it expects PIEs that are subject to specific sectoral requirements (in particular, financial institutions) to maximise their compatibility with the criteria of the Guide, unless, in some particular aspect, there may be a direct conflict, in which case the application of the Guide would not cover non-compliance with the mandatory sectoral requirements.

2. Main new features

The main new features introduced by the Guide are related to the sustainability regulations approved both at national and European Union levels in recent years.

In this regard, the audit committee has been assigned the role of supervising not only financial risks but also non-financial risks, with express reference to sustainability risks. In view of this important new development, and to ensure proper compliance with it, (i) the roles of the audit committee and of any sustainability committees

¹ Technical Guide 3/2017 on Audit Committees at Public-Interest Entities.

² The Guide is addressed to all public-interest entities which, under the Third Additional Provision of the Audit Law, are obliged to have an audit committee and, therefore, are under the supervisory competence of the CNMV.

that may be established have been clarified; and (ii) it is recommended that appropriate mechanisms be established to ensure proper coordination between committees, in particular, between the risk committee and the sustainability committee, in matters of sustainability-related risks.

In addition, whereas the previous version of the Guide recommended that audit committee members should, as a whole, have the necessary expertise in accounting, auditing, finance, internal control, and business and risk management, it is now recommended that they should also have sustainability-related expertise. This change may be of great relevance, as it may be a determining factor in assessing the suitability of any member of the committee to sit on the committee.

In the same vein, among the topics recommended to form part of the periodic training plan for audit committee members, sustainability is included.

Also in this area, it is noteworthy that, although the legislation transposing the CSRD Directive has not yet been approved,³ the terminology of the Guide has been adapted to it. In particular:

- the term “information on sustainability” is used to refer to environmental, social and governance (ESG) information;
- the reference to corporate social responsibility has been replaced by the term “sustainability”;
- the term “non-financial information” is used as a more general term, which would include information on management, corporate governance, directors’ remuneration, or risk management and control systems; and
- the term “non-financial risks” is used in a broad sense, which would expressly include sustainability-related risks and other additional risks, such as legal, reputational and tax risks, those resulting from competition or consumer preference, as well as cybersecurity risks.

In any case, it is noted that, once the law transposing the CSRD has been approved and published, the CNMV will analyse the advisability and timeliness of including any changes or technical adjustments in the Guide.

In addition, the practices recommended by the Guide regarding auditors are extended to verifiers of sustainability information. In particular, it is recommended that the audit committee should be responsible for the selection process, reinforcing the criteria recommended to be taken into account to select suitable candidates to carry out these functions, as well as to ensure their independence.

Finally, a series of recommendations have been made regarding the functions of the audit committee regarding the information on related-party transactions that listed companies may carry out.

3. Application

Although the document does not expressly state it, it can be concluded from public statements made by the CNMV that this Guide will be applicable as of 1 January 2025.

³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

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