

Manuel Bernárdez and María Cabello

Draft law on corporate sustainability reporting

On 15 November, the Official Gazette of the Spanish Congress published the text of the Draft Law on Corporate Sustainability Reporting, which amends the Commercial Code, the Companies Act and the Accounts Auditing Act (the “**Draft Law**”).

The objective of this Draft Law is to transpose 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 (the “**Directive**”).

The implementation of this Draft Law should be complemented by the mandatory sustainability reporting standards contained in Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.

As the Draft Law itself indicates, the main amendments are to Royal Legislative Decree 1/2010, of 2 July, approving the revised text of the Companies Act (the “**CA**”), the Royal Decree of 22 August 1885 publishing the Commercial Code (the “**CC**”) and Law 22/2015, of 20 July, on Account Auditing (the “**AAA**”). This legal briefing addresses the main amendments that the Draft Law intends to make to these laws.

1. Amendments to the CA

1.1. Sustainability Report

A new Article 262 bis has been added to the CA, requiring certain companies to include in the management report what is now known as a "sustainability report", replacing the term "non-financial information" previously used by the legislator, the content of which will be that set out in Article 49 of the CC. This new report will primarily include the information required to understand the impact of the company on sustainability issues, as well as the information needed to understand how sustainability issues affect the company's performance, results and situation¹.

Companies are required to include the sustainability report in the management report if one of the following conditions is met:

- i) They must be considered "large companies", which for these purposes only are those that, at the closing dates of two consecutive financial years, meet at least two of the following three criteria²:
 - a) Total assets exceed €25 million.
 - b) Annual net turnover exceeds €50 million.
 - c) The average number of employees employed during the financial year is more than 250.

A company will no longer have this obligation if it ceases to meet two of the above criteria for two consecutive financial years.

¹ Listed companies must also include, in accordance with Article 529 bis of the CA, information on the representation of the lesser-represented sex on the company's board of directors, distinguishing between executive and non-executive directors, as well as information on the measures adopted to achieve the target of parity or, in the event this target is not met, the reasons and a full description of the measures adopted or planned to be adopted to achieve this target.

² In the first two financial years after incorporation, the company will be obliged to draw up the sustainability report if at least two of the above criteria are met at the end of the first financial year.

- ii) It has the status of "small or medium-sized enterprise" in accordance with the thresholds set out in the legislation on auditing of accounts, and issues securities admitted to trading on regulated markets in any Member State, with the exception of "micro-undertakings"³.
- iii) Credit institutions that fall within the scope of Law 10/2014 of 26 June 2014 and meet the above criteria.
- iv) Insurance and reinsurance companies that are within the scope of application of Law 20/2015 of 14 July 2015 and meet the above criteria.
- v) Subsidiaries and branches in Spain whose parent companies are not subject to the laws of a Member State or EEA Member State and which meet certain requirements (size, turnover, etc.).

Notwithstanding the above, paragraph 6 of the new Article 262 bis of the CA provides for an exception allowing small and medium-sized enterprises to submit more limited information. Small and medium-sized enterprises making use of this exception will report in accordance with sustainability reporting rules applicable to small and medium-sized enterprises to be adopted by the European Commission by means of delegated acts and which will be proportionate to the capabilities and characteristics of these enterprises and the scale and complexity of their activities.

In addition, paragraphs 8 and 9 of the aforementioned article provide for certain cases in which companies may be exempt from the obligations relating to the sustainability report, for example when the company is included in the consolidated management report of a parent company and the report is prepared in accordance with the provisions of Articles 49 and 49 bis of the CC.

1.2. Sustainability reporting verifier

A new figure has been created, the "sustainability reporting verifier". The function of this verifier consists mainly of verifying (i) compliance of the sustainability information with the sustainability reporting rules contained in the new Article 49 bis of the CC and the new Article 262 bis of the CA; (ii) the process carried out by the company to determine the information submitted in accordance with said rules; (iii) compliance with the requirement to prepare the information electronically to present and mark sustainability information in accordance with the aforementioned articles; and (iv) compliance of the information with the reporting requirements provided for in Article 8 of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020.

The introduction of this new figure makes it necessary to amend various provisions of the CA, mainly Chapter IV of Title VII thereof, relating to their appointment, revocation, remuneration, etc. Without going into detail, their regime is similar to that of auditors.

2. Amendments to the CC

2.1. Corporate groups

The main amendment that the Draft Law intends to make to the CC is the introduction of a new Article 49 bis, relating to the sustainability report.

Companies preparing consolidated accounts will need to include the sustainability report in the consolidated management report when they are a parent company of a "large" group. In this respect, a group will be considered to be "large" when, at the closing dates of two consecutive financial years⁴, it meets at least two of the following criteria:

- i) Total consolidated assets exceed €25 million.
- ii) Consolidated annual net turnover exceeds €50 million.

³ Micro-undertakings are considered to be those that, at the closing dates of two consecutive financial years, at least two of the following circumstances apply: (i) total assets do not exceed €450,000, (ii) net annual revenue does not exceed €900,000, and (iii) the average number of workers employed during the financial year does not exceed 10. A company loses its status as a micro-undertaking if it ceases to meet two of the above criteria for two consecutive financial years.

⁴ In the first two financial years after the formation of a group of companies, the parent company is obliged to prepare a consolidated sustainability report, including all its subsidiaries and all the countries in which it operates, when at least two of the criteria are met at the end of the first financial year.

iii) The average number of employees employed during the financial year is more than 250.

A company will no longer have the obligation to prepare a sustainability report if it ceases to meet two of the above criteria for two consecutive financial years.

2.2. Content of the sustainability report

The content of the sustainability report is detailed in the new Article 49 bis of the CC, which states that it must include the information required to understand the impact of the group on sustainability issues, as well as the information needed to understand how sustainability issues affect the development, performance and position of the group. This information must be clearly identifiable in the management report by means of a specific section that will be designated as the sustainability report.

Sustainability issues include environmental, social, human rights and governance factors, including any information related to personnel, anti-corruption and anti-bribery.

The sustainability report must include, among other things:

- i) A brief description of the group's business model and strategy.
- ii) A description of the time horizon objectives related to sustainability issues set by the group.
- iii) A description of the management bodies' role in sustainability issues, and of their expertise and capabilities in relation to the performance of that role, or their access to such expertise and capabilities.
- iv) A description of the group's policies in relation to sustainability issues.
- v) Information on the existence of incentive schemes linked to sustainability issues and offered to members of management bodies.
- vi) A description of the main risks to the group related to sustainability issues, including the group's main dependencies in relation to these issues, and how the group manages these risks.

3. Amendments to the AAA

The amendments provided for in the Draft Law concern the rules by which the verification will be carried out, the content of the verification report, the conditions for access to the Official Register of Auditors and Sustainability Information Verifiers for the exercise of the verification activity, the independence regime applicable to verifiers, including aspects of appointment and fees, internal control and the internal organisation of the work, the duties of secrecy and conservation and custody, the particularities of the regime applicable to verifications of public-interest entities, the supervisory and disciplinary regime of the Institute for Accounting and Auditing and the fees payable for registration and other actions in relation to the Register and for the development of the competences of the Institute for Accounting and Auditing in relation to the activities of auditing accounts and verifying sustainability information.

4. Entry into force

The Draft Law provides that the regulation will enter into force on the day following its publication in the Official State Gazette and subsequently establishes that the amendments to the CC and the CA will be applicable:

- a) For financial years beginning on or after **1 January 2024**:
 - i) To large companies, as defined under Article 262 bis of the CA, which are public-interest entities in accordance with auditing legislation and which exceed, on the closing date of the financial year, the average number of 500 employees during that financial year.
 - ii) To public-interest entities, as defined in auditing legislation, which are the parent company of a large group, in accordance with Article 49 bis.1 of the CC, and which exceed, on a consolidated basis, the average number of 500 employees during the financial year on the closing date of that financial year.

- b) For financial years beginning on or after **1 January 2025**:
- i) To large companies, as defined under Article 262 bis.1 of the CA, other than those referred to in paragraph (a)(i) above.
 - ii) The parent companies of a large group, as defined under Article 49 bis.1 of the CC, other than those referred to in paragraph (a)(ii) above.
- c) For financial years beginning on or after **1 January 2026**:
- i) To small and medium-sized enterprises, as defined in accordance with auditing legislation, which are issuers of securities admitted to trading on regulated markets in any Member State, and which are not micro-undertakings.
 - ii) To small, non-complex credit institutions, provided that they are considered large in accordance with Article 262 bis.1 of the CA, or small and medium-sized enterprises in accordance with auditing legislation which have issued securities admitted to trading on regulated markets in any Member State, and that are not micro-undertakings.
 - iii) To captive insurance companies and captive reinsurance companies, provided that they are considered large under Article 262 bis.1 of the CA, or small and medium-sized enterprises in accordance with auditing legislation that have issued securities admitted to trading on regulated markets in any Member State, and that are not micro-undertakings.

The obligation for subsidiaries and branches to report sustainability information on third country companies provided for in the second additional provision of the Draft Law will apply for financial years beginning on or after **1 January 2028**.

For the purposes of the provisions of Articles 49 bis.1 of the CC and 262 bis.1 of the CA, the two consecutive financial years to be taken into account will be the first year for which the companies are bound by the application brackets set out in sections (a), (b) and (c) above, and the immediately preceding year.

Contacts



José María de Paz

Partner

jdepaz@perezllorca.com

T: +34 93 481 30 80



Eduardo Arbizu

Of Counsel

earbizu@perezllorca.com

T: +34 91 389 01 05

Offices

Europe ↗

Barcelona

Lisbon

Madrid

Brussels

London

Americas ↗

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Singapore

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