

SPAIN

Public Internal Control

Summary of the major changes in 2011-2013:

The changes introduced into our public internal control system are a result of the deep reforms that have been approved in the field of economic and financial activity in the Spanish public sector, which is subject to internal controls by the General State Comptroller (Intervención General de la Administración del Estado, hereinafter: IGAE).

The reform process implemented during the last two years in Spain originated from the reform of the Spanish Constitution, approved in September 2011, which introduced into the regulation on public financial activities two fiscal rules which limit both structural public deficit and the volume of public debt.

This process of reform, beginning with the reform of the Constitution and affecting the area of internal control, continued with the approval of subsequent laws introducing changes to the exercise of control over public economic and financial activities.

These changes highlighted the need to strengthen existing control mechanisms to adapt to the changes and needs arising from the reforms. Reforms which affect the IGAE's actions are the following:

- The application of Organic Law 2/2012 on budgetary stability and financial sustainability requires that internal control bodies monitor compliance with certain rules and instruments created by the law.*
- The IGAE is authorised to implement controls over territorial administrations which have had access to additional funding mechanisms.*
- The approval of Law 19/2013 on transparency introduces the obligation to publish account audit reports together with annual financial statements, which will improve the transparency of our internal control measures.*
- Organic Law 9/2013 on the control of commercial debt in the public sector states that the internal control body of local councils will be responsible for monitoring compliance with the deadlines for issuing payments to suppliers.*
- Continuing at local level, the local internal control system is also reformed through Law 27/2013 on rationalisation and sustainability of local administration, reinforcing its role, introducing the auditing technique and strengthening the independence of the internal inspector/auditor, providing that the Spanish State is responsible for their recruitment and training and holds disciplinary powers over such officials.*
- Law 25/2013 on electronic invoicing and creation of the accounting register for invoices in the public sector will enable the IGAE and other internal control bodies to carry out controls over the invoice accounting register and to evaluate compliance with rules on late payments.*

- *Regarding subsidy control, the subsequent repayment procedure is to be integrated into the control procedure.*
- *And, finally, a Council of Ministers Agreement has introduced mechanisms for facilitating the periodic monitoring and correction of weaknesses identified in the role of permanent financial control and internal auditing carried out by the IGAE.*

1. Introduction: Basic principles and goals of the Spanish Internal Control System

The State Internal Control System in Spain was developed by the General Government Audit Office (*Intervención General de la Administración del Estado*, hereinafter the IGAE), an institution that has been established for 140 years. The control model takes as its starting point a series of constitutional principles, which include the following:

- a. The principles of legality and budgetary specification (in a qualitative, quantitative and temporal sense) and the principles of budgetary unity and universality.
- b. The guiding principles governing both aspects of public spending: an equitable allocation of public resources and the planning and implementation of public spending in accordance with criteria of efficiency and economy.
- c. The principle of the effectiveness of the public administration.

In September 2011, the Spanish Constitution was reformed to introduce, at the highest regulatory level of our legislation, a fiscal rule which limits our country's structural public deficit and limits public debt to the target value indicated in the Treaty on the Functioning of the European Union.

Budgetary stability assumes an entirely structural value and determines the State's capacity for action, limiting and orienting (with the broadest regulatory scope) the intervention of public powers and supporting new measures incorporated into our control system.

The evolution of the internal control regulation has been influenced by the goal of making legality control compatible with a management of services and public expenditure that follows criteria of efficiency and economy and which, more recently, satisfies the related principles of budgetary stability, financial sustainability and transparency, allowing the IGAE to monitor their compliance.

Law 47/2003 of 26 November on the general budget (hereinafter: LGB) has been the basic legislation on internal controls for the state public sector since January 2005. The LGB lays down a systematic and comprehensive regulation of control in three independent different forms: preliminary control of legality, financial permanent control and public auditing. The LGB views the control — implemented by the IGAE — as an internal control exercised with full autonomy with respect to the authorities and entities whose economic/financial management is under scrutiny. Among its aims are verification that such management is legal and complies with the principles of good financial management, as well as with those set forth in Organic Law 2/2012 of 27 April 2012 on budgetary stability and financial sustainability, particularly in the control of compliance with the principles of budgetary stability, financial sustainability and transparency. Additionally, and in-line with the relevance assigned to target-based budgeting, control is also perceived as an additional instrument for ensuring its effectiveness.

The General Budgetary Law places particular emphasis on the principle of autonomy of internal control bodies with respect to the authorities and entities whose

economic/financial management they are controlling. Along these lines, government workers who exercise control shall be functionally independent from the owners of the entities whose operations they are controlling and shall adjust their activities according to the relevant instructions given by the IGAE. This functional independence is achieved through accountability to inspectors/auditors of the Ministry of Treasury, independent of the ministry or body in which they carry out their control activity.

There are three forms of control exercised by the IGAE: preliminary control of legality, financial permanent control and public auditing.

Preliminary control of legality comprises a control exclusively of legality which is carried out prior to approval of any act that results in the application of obligations or which involves expenditures. Preliminary control of legality is carried out during the different phases of execution of expenditure for the act in question, during which the process may be suspended by way of an objection until the contested points are remedied.

Financial permanent control, unlike preliminary control of legality, is carried out after the approval and execution of expenditures and income in order to continuously monitor all aspects of legality, budgetary application and attainment of the targets set for each budget schedule, as well as to analyse the entity's operations and management procedures, with a view to evaluating its economic/financial rationality and its adherence to the principles of economy, efficacy, efficiency and sustainability. The Law assigns an essential role to financial permanent control in the monitoring and control of the principle of budgetary stability.

In turn, auditing — unlike financial permanent control, which is conducted on a continuous basis by control offices permanently set up in the entity being controlled — involves individual control measures identified based on an annual plan and implemented by deployed control teams, applying selective, sampling-based auditing procedures in accordance with the auditing rules and instructions provided by the IGAE. These procedures may assume various forms, as follows: Accounts Audit, Compliance Audit and Operational Audit. The incorporation of audit measures has led to a fundamental advancement in the control of public management, significantly helping to improve its transparency, legality, economy and sustainability.

We are living in times of substantial restrictions and pressure on public finances at all levels in Spain and in Europe. More than ever, public authorities and society as a whole are expected to ensure that common resources are used efficiently and target the essentials. In a period when the management and control of public finances are at the centre of national and international attention and scrutiny, it is important to ensure adequate control and audit systems that can contribute to good governance and greater transparency. There is a general perception that government must adapt to the society's needs, and that public management is crucial.

If one of the strategic variables for economic development is increasing competitiveness, an organisation which is equivalent to around 44 % of Spain's GDP has to be competitive.

The role of government in a modern society is clearly very important. A healthy well-being is one of the pillars of the social system in European economies. The services needed by the public must be provided, and with maximum efficiency and quality. The evolution of the control system has involved strengthening, alongside the traditional control of legality, other forms of control with a view to improving efficiency when providing public services, enhancing the function of control with operational and financial auditing.

In the context described above, the IGAE, as an institution which has operated continuously over the last 140 years and which has a profound recognition, qualification and fortitude in public treasury management, is tackling the challenge thrust upon it by public institutions and, through them, the Spanish society to help improve efficiency in the management of public services under the premise of continuing to provide the same service, of equal or better quality, at a lower cost. At the same time, the Spanish society demands that we continue to help generate greater transparency and trust in public management by strengthening control and account record mechanisms.

The IGAE is immersed in the general process of public administration reform which is currently being implemented in Spain, with the primary goal of ensuring efficiency and transparency in the management of public services. The area of control is not unusual to this reform impetus and highlights the need to strengthen and improve existing control mechanisms so that they may be adapted to the changes and necessities which can arise unexpectedly in the Spanish public sector. There is a need to introduce a flexibility into the design of the control model which, through a selective application of the different types and techniques of control and based on a careful risk assessment, makes it possible to adapt the intensity and the object of control to the changing needs and requirements that arise, irrespective of the public or private nature of the entity and going beyond the present configuration which allocates control types to those applicable to an entity based on its legal/institutional nature.

2. Public internal control environment

The operating framework for internal controls is determined by the main rules governing the economic and financial activities of the public sector. The following rules should be emphasised:

- Organic Law No 2/2012 of 27 April 2012 on budgetary stability and financial sustainability, satisfying the constitutional mandate of implementing the new Article 135 of the Constitution into an Organic Law. This law repeals Royal Legislative Decree No 2/2007 of 28 December 2007 approving the consolidated text of the General Law on Budgetary Stability, incorporating for the first time financial sustainability as a guiding principle for the economic and financial actions of all public administrations and reinforcing the of stability not only at the present moment in time, but on a permanent basis. Introducing this principle of financial sustainability by Organic Law is a means of reporting the control measures implemented by the IGAE, focusing on the analysis of medium- and long-term planning on specific public bodies with a view to evaluating their solvency and permanent financial conduct. The new Organic Law retains the four principles from the expired law - budgetary stability, the multiannual principle, the principle of transparency and the principle of efficient allocation and use of public resources - while strengthening in some areas and introducing three new principles: financial sustainability (as already mentioned), responsibility and institutional loyalty.
- The fundamental aspects introduced by this new law are its application to all public administrations, improvement of transparency at all levels of government and of its capacity for control in budgetary implementation in new instruments and preventive and corrective measures.
- Organic Law No 2/1982 of 12 May on the Court of Auditors and Law No 7/1988 of 5 April on the Functioning of the Court of Auditors, implementing the provisions of the constitution, establish that the Court of Auditors is the supreme body responsible for auditing the accounts and financial management of the state and those of the public sector and makes it directly accountable to the Spanish Parliament. The Court of Auditors is to exercise its functions in examining and

verifying the general state accounts. The accounts of the state public sector are to be submitted to the Court of Auditors and are to be audited by the latter.

- The rules governing the financial relationships between the state public sector and the Autonomous Communities and local authorities, that is Organic Law No 8/1980 of 22 September on the Financing of the Autonomous Communities (the LOFCA), recently amended by Organic Law No 2/2012 of 7 April, and Royal Legislative Decree No 2/2004 of 5 March approving the consolidated text of the Law Governing Local Authority Finances.
- Law No 47/2003 of 26 November, the LGB, which is intended to govern the budgetary, economic, financial, accounting, auditing and financial control system of the state public sector. Accordingly, it identifies which bodies carry out the controls on the financial and economic management of the state public sector by drawing a distinction between two types of controls — one external control, carried out by the Court of Auditors, which is accountable to the Spanish Parliament, and one internal control, carried out by the IGAE, a body that is accountable to the council of ministers, to which it submits general reports on such economic and financial management, and that has ultimate responsibility for taking decisions concerning any discrepancies detected, in the course of controls, between the IGAE and management bodies of the state public sector.

It also provides that entities forming part of the state public sector must apply the accounting principles set out in the applicable accounting plans, undertaking to provide records on all types of transactions to the Court of Auditors by way of the IGAE:

The framework of internal controls also comprises the rules contained in the LGB on the budget system for the entities which make up the state public sector as well as the annual budget laws.

- Law No 38/2003 of 17 November on general subsidies, which, in accordance with the principles of transparency and effectiveness in the allocation and use of public resources, governs the management instruments for public subsidies and assistance and the system of monitoring by means of controls and evaluation of both the procedures and the recipients of such public resources.
- Together with these, other rules, such as Royal Legislative Decree No 3/2011 of 14 November approving the consolidated text of the Law on Public Sector Contracts, Law No 6/1997 of 14 April on the organisation and functioning of the National State Administration and Law No 33/2003 of 3 November on the assets of the government bodies, lay down requirements which influence and govern the system of internal controls in Spain.

3. The concept of public internal controls in the Spanish administration

3.1. Managerial accountability/responsibility

There is a connection between accountability and internal controls, although that link does not coincide with the elements defined by the International Organisation of Supreme Audit Institutions (INTOSAI), since the information management process and internal controls are carried out by an independent body, the IGAE.

High-level decisions in public management are adopted by political decision makers, that is, public management is headed by a political decision maker. The various public policies are established by the government, which has ultimate responsibility and is also

responsible for their implementation and, therefore, there is no separation of responsibilities in the development and implementation of policies.

In the Spanish administration a distinction is drawn between, on the one hand, political representatives, who draw up the various public policies, and managers, who implement those policies. In the latter case, positions are normally held by public servants with high levels of technical skills, who provide support and advice for the various actions and decisions of senior managers. Public servants must diligently perform their assigned tasks and safeguard the general interest subject to and in compliance with the Constitution and other legislation, and must act in accordance with, inter alia, the following principles: objectivity, integrity, neutrality, liability, impartiality, confidentiality, dedication to the public service, transparency and effectiveness.

The different centres of management are involved in determining budgetary policies and budget objectives and are responsible for drawing up multiannual budget programmes.

Our General Budget Law requires that spending management centres draw up and design a system of objectives which they must achieve in their respective fields. This target-based system is based on the allocation of budgetary resources in order to achieve set objectives. This budgeting system is supplemented with the necessary introduction of public spending management and control systems created to ensure that the final budget objectives are attained and to provide information on their attainment, as well as any discrepancies that may have occurred including their causes, with the Ministry of Treasury and Public Administrations - in collaboration with the ministries - responsible for promoting and coordinating the ongoing evaluation of spending policies to ensure that they achieve their strategic objectives and have their intended socioeconomic impact.

Spending policies and budget programmes are the core element of allocations of resources, evaluation of management and attainment of objectives. It is envisaged that budget allocations to spending management centres are based on the level of attainment of targets from previous financial periods.

Subsequently, during the implementation state of these policies and at a later stage, these centres of management are subject to controls by the IGAE and by the external control body, the Court of Auditors. Thus, the entities within the state public sector are accountable in respect of their operations, whatever their nature, to the Court of Auditors through the IGAE.

The Court of Auditors is a constitutional body of the state, as provided in Article 136 of the Spanish constitution. It is viewed in the Spanish Carta Magna and Organic and Functioning Laws as the country's supreme auditing body for the accounts and economic management of the state and the public sector, without prejudice to its own jurisdiction, holding legislative power and being directly accountable to the Spanish Parliament - even though it is not a body of the National Parliament. The Spanish Parliament appoints its twelve members - Accounts Ministers, six of which by the Congress of Deputies and six by the Senate - and the Constitution grants them the same rules of independence, tenure and disqualification as those applicable to the judges and magistrates of the judiciary. The Spanish Constitution assigns it two very clear functions: auditing and judicial review.

The auditing function, which is external, ongoing and complete, ensures that the economic and financial activity of the public sector is subject to the principles of legality, efficiency and economy and addressed to the Spanish Parliament (or, within their fields of competence, the legislative assemblies of the Autonomous Communities); thus, the Court of Auditors carries out external controls in its field as the technical body which it is, and the Spanish Parliament (or, where applicable, the Parliaments of the Autonomous Communities), on the basis of the results from such audits, implement political or

parliamentary control. The judicial function consists in bringing proceedings in relation to accounting liability incurred by those who are responsible for managing public property, funds or assets, with the purpose of indemnifying the public funds affected by way of misappropriation, incorrect, incomplete or lack of justification or due to other causes or conduct.

Apart from the controls exercised by the bodies referred to, the information provided by the accounts of state public sector entities is essential, since it represents a system of economic, financial and budgetary information on the activities carried out by those entities. This information is provided to their governing and management bodies, to policy-making bodies, to external and internal control bodies and to international agencies with the aim of determining the costs of the public services and facilitating management and decision making. For all the above reasons and for the purpose of their subsequent consolidation, the accounts of those entities must be filed in accordance with the applicable accounting principles using a standardised form. Once the information is generated, the heads of the entities and bodies, known as *cuentadantes* (reporting officers), that is the authorities and officials who are responsible for managing revenues and carrying out expenditure and the other operations of the general state administration, submit their accounts to the IGAE for subsequent consolidation and reporting to the Court of Auditors.

With regard specifically to the issue of liability, public managers may incur three types of liability when carrying out their activities: disciplinary, criminal and financial. The LGB is concerned with the latter, in conjunction with the rules contained in the legislation of the Court of Auditors concerning accounting liability.

Financial liability relates to the obligation to compensate the public treasury for injury caused to it, while accounting liability relates to liability resulting from the accounts which must be filed by those who manage public funds (*cuentadantes*).

Accordingly, the Spanish rules provide that the authorities and other staff in the service of entities comprising the state public sector who intentionally or through gross negligence adopt decisions or perform acts in infringement of the provisions of that law are required to compensate the state public treasury or, where appropriate, the relevant entity for the damage resulting therefrom, irrespective of any criminal or disciplinary liability which they may incur. Thus, the legislative provisions provide that the following constitute offences:

- bringing about a deficit or making a misappropriation in the administration of public funds;
- managing resources and other interests of the state public treasury without complying with the provisions governing their assessment, collection or receipt in the treasury;
- incurring expenditure, settling obligations and ordering payments without sufficient credit to carry them out or in infringement of the provisions in that law or in the applicable budget law;
- generating recoverable payments;
- failing to substantiate the payment of funds intended for cash advances, payments to be substantiated and subsidies; or
- any other act or decision in infringement of that law.

In regard to the responsibility of public managers, significant new elements are introduced by the recently approved Law on Transparency, Access to Public Information and Good Governance, which, together with increasing and strengthening transparency in public activities and guaranteeing access to information, lays down obligations of good

governance applicable to public managers, as well as the judicial consequences deriving from their non-fulfilment. In brief, its aim is to reinforce the principle of responsibility and its enforceability among all those entrusted with activities of public interest.

With respect to good governance, a regulation with the force of law incorporates programmatic principles for interpreting the enforcement of a penalty regime which is applicable to all public managers on the basis of their individual liability.

Thus, it lays down a penalty regime in the area of economic and budgetary management to ensure that all actions of public managers are in compliance with the principle of responsibility. The regulation also provides for violations deriving from non-compliance with Organic Law 2/2012 of 27 April 2012 on budgetary stability and financial sustainability.

A fundamental control mechanism has been introduced to ensure accountability in the decisions of public managers. The law provides that commission of the aforesaid violations shall result in the application of penalties such as dismissal from public posts, denial of pensions, the obligation to reimburse any amounts illegally received and the obligation to indemnify the public treasury. It also lays down that those found guilty of very serious violations may not be appointed to certain public posts for a period of 5 to 10 years.

This penalty procedure, laid down in the law on good governance, can be filed alongside the asset liability procedure pursuant to the LGB.

Finally, it is necessary to highlight the features of the internal controls of the public sector in Spain and the objectives of the controls carried out by the IGAE, which are laid down in the LGB. With regard to features, the following should be highlighted:

- a. They are carried out with full independence from the authorities and bodies which are subject to controls.
- b. They are carried out by means of the preliminary control of legality, permanent financial control and public auditing control.
- c. They are carried out in a decentralised manner in accordance with the powers of the body which is subject to controls.
- d. They take as an overall frame of reference both the legal aspect, or compliance with the legislation, and other fundamental principles relating to public sector activities, such as economy, efficiency, effectiveness, sustainability and balanced budget.

As regards objectives, the following should be highlighted:

1. Checking compliance with the rules applicable to the management, subject to controls. This relates to compliance with the law, in the traditional form of controls, based on the fact that all the activities of the administration are subject to the legal system. This is a control objective set out in the LGB, the attainment of which is provided for in the three forms of controls: preliminary control of legality, financial permanent control and public auditing.
2. Ensuring the appropriate recording and accounting of transactions made and accurate and regular recording in the accounts and statements, which, under the applicable provisions, must be drawn up by each control body or entity. This seeks to establish the reliability of accounting documents relating to economic and financial management that is undertaken. The LGB requires state public sector entities to record their transactions in accounts and to file accounts with the Court of Auditors through the IGAE.

3. Assessing whether the activities and procedures subject to controls are carried out in accordance with the principles of sound financial management and, in particular, those provided for in the General Law on Budgetary Stability. This means that the activity must be subject to the principles of effectiveness, efficiency and economy, verification of which is carried out using the two forms of subsequent controls.
4. Verifying compliance with the objectives assigned to expenditure management centres in the general state budget. This relates to achieving the objectives assigned to the management centre in the general state budget, in accordance with the provisions of the LGB.

Over the last two years, the Spanish treasury has implemented funding mechanisms supporting liquidity for territorial administrations to mitigate the effects deriving from restrictions placed on Autonomous Communities and councils in obtaining resources on the financial markets, which has resulted in an accumulation of commercial debt.

These additional funding mechanisms are subject to a specific fiscal condition consisting in an adjustment plan which lays down specific conditions on monitoring and adoption of extraordinary adjustment measures for achieving the objectives of budgetary stability, public debt limits and obligations on payments to suppliers intended to limit delinquency on commercial markets.

Alongside the regular internal control competencies, the internal inspectors/auditors of these territorial administrations are required to submit a report on the execution of adjustment plans to the Ministry of Treasury.

The Ministry of Treasury, as part of its monitoring of adjustment plans and in order to ensure reimbursement deriving from the amounts specified in debt operations, may arrange, depending on the risk of default, for these to be subject to controls by the IGAE. These control measures within the Autonomous Communities are to be implemented in cooperation with their internal control bodies.

3.2. Internal audit

The subsequent financial controls are defined in the LGB in their twofold form of financial permanent control and public auditing, which constitute the internal audit system, together with the financial controls of public subsidies and aid.

However, in the Spanish system, great importance is attached to an ex ante form of control called the preliminary control of legality. The preliminary control of legality covers the control, prior to their approval, of acts of the state public sector resulting in the recognition of rights or the incurring of expenditure, and the revenues and payments arising therefrom, and the investment or general application of its public funds, in order to ensure that their management complies with the provisions applicable in each case.

With regard to application, the LGB states that preliminary control of legality is to be exercised with respect to acts of the Spanish State administration, including social security and its independent bodies.

The preliminary control of legality is exercised in the forms of formal and material control. Formal control consists in verifying compliance with the legal requirements necessary for adopting a decision, by examining all the documents which, compulsorily, must be included in the file. The material control involves checking the actual and effective application of the public funds.

The exercise of the preliminary control of legality includes:

- a) the preliminary control of acts which recognise economic rights, approve expenditure, enter into spending commitments or agree to the movement of funds and securities;
- b) the control of recognition of obligations and of verification of investment;
- c) formal control of the authorisation of payments;
- d) the material control of payments.

This preliminary control may be full or limited, depending on the type of file. Full control involves checking the compliance of all processes and requirements established by the legislation in examining the documents and reports included in the file. Limited control, or preliminary control and audit of basic requirements, involves checking a number of details specified by Resolution of the Council of Ministers.

Meanwhile, if in accordance with the law the preliminary control of legality were mandatory and were not carried out, neither the payment obligation nor the processing of the payment would be permitted until the omission is rectified within the terms of the LGB, with the Council of Ministers responsible for adopting the pertinent resolution.

If during the preliminary control or audit the inspectors/auditors should be in disagreement with the manager's activity, they shall file an objection which will suspend processing of the file until it is resolved. If the managing body does not accept the objection, it must submit a written disagreement to the IGAE, initiating a contradictory proceeding which shall be resolved, depending on the case, by the IGAE or the Council of Ministers.

For its part, the financial permanent control forms part of the subsequent control and includes the following measures:

- a. verification of compliance with the rules and procedures applicable to the aspects of economic management which the preliminary control of legality does not cover;
- b. monitoring of budget implementation and verification of compliance with the objectives assigned to the management centres' spending programmes and checking the balance sheet of results and the management report;
- c. reporting on the proposed distribution of the revenues referred to in the LGB;
- d. checking cash planning and management and the cash position;
- e. the measures provided for in the remaining titles of that law and in the other budgetary rules and rules governing the economic management of the state public sector, attributed to the delegated controls.
- f. Analysis of operations and procedures in order to provide an assessment of their financial and economic rationale and their observance of the principles of sound management, with the aim of identifying possible shortcomings and proposing recommendations in order to correct the latter.
- g. In the ministerial departments and managing entities and common services of social security, use of audit methods to check whether the economic data and information provided by the managing bodies in support of accounting information reasonably reflect the operations deriving from their activity. The IGAE shall establish the procedure, scope and frequency of the measures to be implemented.

The financial permanent control measures to be implemented in each financial year and the specific scope determined for them is to be established in the annual financial permanent control plan prepared by the IGAE, which may be amended where the prevailing circumstances so warrant.

The aforementioned measures are documented in reports which are submitted to the body directly managing the activity subject to controls.

A comprehensive report on the results of the financial permanent control measures taken during the year is drawn up annually and sent by the Comptroller General to the heads of each ministerial department, to the Minister for Economy and Finance and to the State Secretary of Finance and Budget.

The public audit consists in the auditing (carried out subsequently and systematically) of the economic and financial activities of the state public sector, by applying the selective review procedures contained in the auditing rules and directions issued by the IGAE. Auditing rules in the public sector field are governed by the LGB, circulars, instructions and the Public Sector Auditing Rules.

The IGAE compiles an Annual Audit Plan which includes measures to be implemented during the corresponding financial year. Similarly, the Annual Audit Plan includes measures relating to public aid and subsidies.

Public auditing is carried out, on the basis of the provisions in the Annual Audit Plan, on all bodies and entities forming part of the state public sector and on the funds referred to in the LGB, without prejudice to measures relating to the exercise of the preliminary control of legality and financial permanent control and to the measures subject to private auditing under Law No 19/1988 of 12 July on the auditing of accounts, which are applicable to state-owned commercial companies under commercial legislation.

The following types of special public audits included in the law may be highlighted:

1. **Audit of annual accounts:** This is the method of auditing the regularity of accounts, which is intended to ensure that the annual accounts represent in all significant respects a true picture of the assets, financial position and results of the entity and, where appropriate, implementation of the budget in accordance with the applicable accounting and budgetary rules and principles, and that they contain the information necessary for their interpretation and proper understanding.
2. **Compliance audit:** The IGAE carries out a compliance audit on those bodies and entities of the state public sector that are included in the Annual Audit Plan, which audit includes selective checks on compliance with the legislation on budget management, procurement, personnel, revenues and subsidies management as well as any other aspect of the economic and financial activity of the audited entities.
3. **Operational audit:** The IGAE carries out an operational audit on those bodies and entities of the state public sector that are included in the Annual Audit Plan, and which has the scope laid down in that plan, through the procedures outlined below.
 - a. *Audit of budgetary programmes:* this consists in the analysis of the suitability of the objectives and the monitoring and self-assessment systems put in place by the management bodies, the verification of the reliability of the account balance sheets and management reports and the assessment of the outcome achieved, the alternatives considered and the effects produced in relation to resources used in the management of budgetary action programmes and plans.
 - b. *Audit of systems and procedures:* this consists in the thorough examination of a financial management administrative procedure in order to identify its possible shortcomings, or, where appropriate, its obsolescence,

and to propose appropriate corrective measures or the replacement of the procedure in accordance with general principles of sound management.

- c. *Audit of economy, effectiveness and efficiency*: this consists in the independent and objective assessment of the level of effectiveness, efficiency and economy achieved in the use of public resources.
4. **Audit of programme contracts**: in situations where, under programme contracts or other agreements between the state and entities referred to in the LGB, the amount of contributions to be made by the state is conditional on achieving certain objectives, on the amount of or change in certain financial indicators or on certain macroeconomic assumptions being met, the IGAE must carry out an audit which is intended to verify whether the settlement proposal made by the body set out in the agreement meets those conditions.
5. **Audit of state tax accounts**: the audit of state tax accounts and the resources of other administrations and public bodies managed by the State Tax Administration Agency (*Agencia Estatal de Administración Tributaria*) are to take place annually, in accordance with the procedure established by the IGAE for that purpose.
6. **Audit of privatisations**: the IGAE must audit each operation to dispose of securities representing the capital of state commercial companies that entails for the state public sector the loss of political control of such companies. This audit is to be carried out on the accounts of the financial and accounting results and the explanatory note concerning aspects of the operation, which must be issued for each disposal operation referred to above.

The IGAE may decide to carry out audits which combine auditing objectives relating to accounting regularity, compliance and operations. To carry out the controls resulting from this plan, the IGAE may seek the cooperation of private auditing firms that must comply with the rules and directions established by the IGAE.

The results of each public audit measure are recorded in written reports and prepared in accordance with the rules approved by the IGAE, which must determine the content, the addressees and the procedure for the preparation of those reports. The public audit report is sent to the direct head of management of the relevant body.

Final public audit reports are sent both to the direct head of management of the body subject to the control and to the head of the ministerial department to which it is attached or to which the body or entity subject to the control is accountable. At the same time, with respect to financial permanent control measures, the corresponding annual reports are sent to the head of each ministerial department containing the most significant results from the financial permanent control measures implemented both within the department and in the public bodies and entities subject to this type of control. This informing of department heads of control results is done periodically every six months, submitting before 31 January and 31 July each year the reports issued during the previous semester.

In addition to the issue of individual financial permanent control and public audit reports, in conformity with Articles 146.1 and 166.5 of Law 47/2003 of 26 November on the general budget, and with the objective of furnishing the Council of Ministers with organised information on the economic and financial management of the state public sector, the IGAE submits annual general reports to the Council of Ministers containing the most significant results from the implementation of the annual financial permanent control and public audit plans for each year; in the general report on account audits completed in particular, mention is made of the exceptions contained in those reports.

With respect to monitoring the correction of issues identified in financial permanent control and public audit reports, it is also necessary to emphasise the importance of the performance reports. The IGAE may prepare these reports on the basis of the recommendations and proposals for action for managing bodies contained in the annual reports of financial permanent control and the public auditing reports. In drafting these types of reports, some of the following circumstances must be met:

- a. where shortcomings have been identified and the heads of management subject to controls fail to indicate the measures necessary to resolve them and the planned deadline for doing so;
- b. where they express disagreement with the conclusions and recommendations and those points of disagreement are not accepted by the control body;
- c. where, having agreed to do so, they fail to take measures to remedy the shortcomings identified.

Those performance reports are sent to the head of the ministry having responsibility for the body or entity subject to controls or to which that body or entity is attached and, in the event of disagreement by the head of the ministry, will be referred to the council of ministers through the Minister for Finance. Decisions to that effect adopted by the council of ministers are binding on both the management and the control bodies.

The IGAE carries out continuous monitoring of the corrective measures that have been adopted as a result of shortcomings identified in the reports.

In order to enhance the effectiveness of the reports issued by the IGAE so that they may contribute to the attainment of the primary objective of the control measures, that being the constant and permanent improvement of public management from economic, financial, asset, budgetary, accounting, organisational and procedural perspectives, measures have been adopted recently whereby managing bodies are to be more proactive in adopting the appropriate corrective measures and in setting a schedule for remedying any discrepancies identified and for the implementation of measures for repairing or avoiding damages caused to the public treasury or to the managing body itself.

The internal control system has integrated measures for monitoring the corrective measures adopted by managing bodies in order to check whether they resolve discrepancies identified in the financial permanent control and public audit reports and report any general improvements in the observance of the principles of sound public financial management, and particularly the fulfilment of legality, in the reliability of public accounts and in the objectives of financial equilibrium and sustainability.

These measures supporting the monitoring and correction of discrepancies have been formalised in a Resolution of the Council of Ministers in which the government provides that each ministerial department shall draw up a Plan of Action, in conformity with the IGAE, laying down measures to be adopted for remedying weaknesses, discrepancies, errors and violations identified in the reports drawn up by the IGAE.

The IGAE shall periodically inform the Council of Ministers on the situation of the correction of weaknesses identified in the financial permanent control and public audit reports, thus enabling the government to periodically monitor the corrective measures implemented to improve the economic and financial management of the state public sector.

3.3. Coordination of public internal control

Political and administrative decentralisation to territorial authorities in Spain (Autonomous Communities and local authorities) has led to a process of transfers and a

resizing of the various levels of political and administrative power, which necessitates a tight system of controls and coordination and cooperation among all the entities comprising the Spanish public sector, understood in a broad sense.

This process of transfers in the area of controls has been accompanied by the replacement of a single form of internal control, carried out by the IGAE, with a model based on several organs and systems of control which are functionally independent but organically under the authority of the administration of which they form a part. The IGAE shares responsibilities for controls of economic and financial activities with the General Control and Audit Offices of the Autonomous Communities and the General Control and Audit Offices of the local authorities, each one acting within its own clearly delineated area of competence and territorial scope.

The constitution itself contains a number of criteria for controls relating to autonomous community bodies and to the exercise of their financial powers. In addition, it is important to highlight a number of previously mentioned legislative provisions which affect the exercise of the economic and financial powers of the various territorial authorities, such as the LGB and the law supplementary to the Law on Budgetary Stability, which, while respecting the autonomy of the Autonomous Communities, seeks to coordinate their economic and financial activities with the rest of the public sector.

The framework of controls in Spain is therefore characterised by the fact that within the three territorial administrations there are internal and external controls carried out by separate bodies and with the aim of coordination between them and with the state, thereby establishing, as a general rule, a budgetary, accounting and control framework similar to that of the state.

However, in Spain, the model of controls seems to be determined both by political and administrative decentralisation of the state, where each territorial administration has its own control bodies, and by the fact that Spain forms part of a supranational structure, the European Union, which, in turn, also has internal and external controls. All the above requires the introduction of mechanisms for coordination in carrying out control activities which avoid overlaps and duplication.

The single audit concept includes techniques and procedures that may allow cohesive action by all the control bodies in a state, based on a wholly or partially common methodology and on mutual recognition of the results of control measures.

We advocate neither the abolition of nor a reduction in the number of control bodies, whose existence and legitimacy should not be called into question, but rather the elimination of unnecessary duplication in those cases where separate control bodies carry out their activities, with the same subject matter and scope and in respect of the same public body. In short, the ultimate aim of a single auditing system is to support in a more effective way the activity of control bodies.

On the basis of these premises, the single audit concept observes the following three principles.

- a) The establishment of a single conceptual framework for all control bodies, as well as common methodological rules for carrying out controls. In that regard, it is essential that there be technical rules for controls and auditing which allow the application of common standards for carrying out the work and issuing reports.
- b) The coordinated planning of control activities, so that the control plans of controlling institutions should take into account the control planning of each institution in order to avoid possible overlaps. Coordination at that preliminary stage presupposes the existence of continuous communication and interaction between controlling bodies and the agreement of a system for determining

precedence in cases where provision is made for carrying out controls on the same administrative bodies.

- c) Each control body must accept the results of the work carried out by other control bodies provided that that work has been conducted in accordance with approved common methods and procedures, as well as supervision by the principal auditor of the work of other auditors involved in ensuring that the work of the participating bodies has been conducted in accordance with the established standards.

The main effect implicit in that model is the reduction and elimination of costs both for control bodies and for the bodies subject to audit activities. The removal of unnecessary elements in the implementation of control measures allows control objectives and strategies to be established in areas where such controls have not been carried out by any administrative body, a fact which requires a proper system for the recognition and planning of measures.

Among the instruments included within the single auditing framework, which are already being applied in the field of controls of EU funds, it is important to emphasise the preparation of documents for coordination between the IGAE and the control and auditing bodies of the Autonomous Communities, such as:

- a guide for the auditing of systems and operations;
- standard contract documents for the appointment of private auditors;
- minimum requirements to be imposed when appointing private auditors;
- a quality control guide;
- a procedure for random sampling, error identification and issuance of opinions.
- A procedure for reporting issues to the European Anti-Fraud Office (hereinafter: OLAF) via the IMS application.

4. Recent reforms affecting the Spanish government

The control of public sector economic and financial activity must be in-line with the changes in the current economic/financial situation. As the situation evolves and shifts towards the attainment of specific goals or it takes on new forms, control over it must be sufficiently flexible so that it can be shaped according to the object to which it is applied.

In mid-2012, the government initiated a programme of reforms aimed at overcoming the economic crisis, correcting the discrepancies that were halting growth and creating suitable foundations on which to build a new cycle of economic prosperity and employment for Spaniards.

It was with these aims that the Public Administration Reform Commission, hereinafter: CORA) was created with the purpose of implementing measures for evolving towards an austere and more efficient public administration. Numerous measures were adopted for streamlining structures, procedures and resources. In this respect, the Organic Law on budgetary stability and financial sustainability constitutes a milestone in the public resources management in that it lays down specific spending and debt targets for all administrations, as well as the obligation to submit plans for attaining those targets and the related mechanisms for ensuring they are achieved.

The Commission has focused its efforts in different areas:

- Administrative duplications. Aimed at identifying and eliminating duplications and strengthening cooperation mechanisms in order to reduce administrative costs.
- Administrative simplification. Aimed at reviewing bureaucratic obstacles which impede the processing of administrative proceedings in order to achieve greater simplification, which will in turn benefit the public.
- Management of services and common resources. Aimed at centralising management activities which, being similar or identical in nature, can be carried out in a unified or coordinated manner in order to maximise the use of public resources. In this group, it is essential to study successful models already implemented among Spanish business groups, drawing both information and collaboration therefrom.
- Institutional administration. Research is ongoing into the different types of entities this includes, in order to review the regulatory framework and what are the considered to be the best models.

The following are measures affecting the management of public resources which have been implemented to date.

A. BUDGETARY DISCIPLINE AND PUBLIC TRANSPARENCY

- The Organic Law on budgetary stability and financial sustainability — as already referred to on numerous occasions — which lays down the principle of budgetary stability as provided for in the Spanish Constitution.
- The rules on late payments in the public sector: On 20 December 2013, Organic Law No 9/2013 on controlling commercial debt in the public sector was approved, extending the control of public sector financial debt to the control of commercial debt, considered as the volume of debt owed to suppliers of the public administrations. This law was passed in order to limit delays in payments to suppliers and to eradicate late payments among the public administrations. With this in mind and as an indicator of commercial debt volume, it was made mandatory for public administrations to publicise the average time it takes them to pay their suppliers, the legal deadline for which is 30 days by law. The law requires that administrations include in their treasury plans information on payments to suppliers to ensure their financial management falls in line with supplier protection.

This is supplemented with measures to be unilaterally applied by each administration upon discovering average payment periods which exceed the permissible limits.

In the case of local corporations, the law provides that the controlling/auditing body shall be responsible for monitoring compliance with the average payment term. This increases the involvement of inspectors/auditors in controlling local sustainability to give suppliers backing.

- The Law on Transparency, Access to Public Information and Good Governance: The Law on Transparency has recently been approved by Law 19/2013 of 9 December 2013 on transparency, access to public information and good governance. This law has introduced figures and elements of transparency which will help society scrutinise the actions of public managers by giving them the tools they need to find out how decisions which affect them are made, how public funds are managed and under what criteria our institutions are operating.

The scope of this law is threefold: it increases and strengthens transparency in public activity (imposing active advertising obligations for all administrations and public entities), it grants and guarantees access to information (regulated as a law with a broad subjective and objective scope) and it lays down obligations of good governance to be fulfilled by public managers along with the judicial

consequences resulting from non-fulfilment, forming a responsibility which falls upon all those which carry out activities of public significance.

As regards the specific scope of control in question, the law introduces the obligation to publish, together with annual accounts, account audit reports and reports from preliminary controls drawn up by external control bodies on them.

- **Creation of an Independent Authority for Fiscal Responsibility:** Together with the legal measures approved for guaranteeing budgetary discipline, the government is developing an improvement in economic governance to ensure greater control of budgetary discipline. In this respect, in early 2014, Organic Law 6/2013 created an Independent Authority for Fiscal Responsibility which will serve as a key element of governance for the government when it comes to designing, implementing and evaluating fiscal policies.

Its creation is particularly appropriate in light of the current financial and fiscal crisis, in which it is essential to ensure tight and comprehensive control of compliance with the objectives of budgetary stability and public debt, as well as regulating spending.

This Organic Law reinforces the commitment to ensuring an effective monitoring of compliance with the targets on budgetary stability, public debt and regulated spending through the introduction of new mechanisms for supervision and transparency within our budget framework, establishing an independent fiscal institution which effectively monitors compliance with fiscal rules based on reliable and independent analysis, vying for strict compliance with the principles of budgetary stability and financial sustainability through continuous evaluation of the budget cycle and public debt and analysis of economic forecasts.

B. RATIONALISATION OF THE LOCAL PUBLIC SECTOR

- The local administration has been heavily reformed by Law 27/2013 of 27 December 2013 on rationalisation and sustainability of the local administration, which recently took effect.

The reform of Article 135 of the Spanish constitution, in its new version issued in 2011, establishes budgetary stability as a guiding principle to be followed in the actions of all public administrations. In implementing this constitutional provision, Organic Law 2/2012 of 27 April 2012 on budgetary stability and financial sustainability was passed, which provides for new adaptations to the basic regulations on local administration to ensure an adequate application of the principles of budgetary stability, financial sustainability and efficiency in the use of local public resources. This requires adapting certain aspects of the organisation and functioning of the local administration and improving its economic and financial control.

With this in mind, this reform was proposed which pursues several basic targets: clarifying municipal competencies to avoid duplicities with the competencies of other administrations, thus adhering to the "one administration, one competency" principle; rationalising the organisational structure of the local administration based on the principles of financial efficiency, stability and sustainability; ensuring a stricter financial and budgetary control; and supporting the private economic initiative to avoid disproportionate administrative audits.

Regarding the aim of clarifying local competencies and carrying forward the "one administration, one competency" principle, efforts will be made to avoid existing problems with competencies overlapping between administrations.

At a time when the fulfilment of European commitments on fiscal consolidation are a top priority, the local administration must also contribute to this objective by rationalising its structure - which is in some cases oversized - and ensuring financial sustainability.

Local administration reform is carried out, on the one hand, to try to accurately define the competencies applicable to the local administration and to distinguish them from state and autonomous competencies and, on the other hand, to ensure a stricter economic and budgetary control, reinforcing the role of the preliminary control of legality in local entities. Accordingly, as of this point in time the government will establish rules on control procedures, a methodology of application and implementation criteria, as well as rights and duties in the implementation of public functions necessary in all local corporations. This will cover a gap in the law and facilitate the generalised application of techniques, such as auditing in its different forms, to local entities under the same terms as those implemented in other areas of the public sector. This will involve the participation of the IGAE.

Similarly, with the goal of strengthening its independence with respect to local entities in which nationally-qualified public servants provide their services, the state shall be responsible for their selection, training and qualification, and shall hold powers to issue penalties for the most serious violations.

This proposal will ensure a greater transparency of economic and financial information in local entities, which will undoubtedly help to improve decision-making by elected officials in the exercise of their constitutionally-assigned representative roles.

Accordingly, there is a need to clarify and define the different areas in which specific functions are to be carried out. While the functions under the regime of preliminary control of legality and auditing are subject to parameters of control and internal auditing of economic, financial and budgetary management, those corresponding to elected positions are based by necessity on aspects of opportunity or convenience.

To guarantee the professionalism and effectiveness of internal control functions, the law also regulates the regime of local administration civil servants qualified to work in any national entity.

C. IMPROVE THE EFFICIENCY OF PUBLIC ADMINISTRATIONS

- Law on electronic invoicing and creation of the accounting register: The approval of Law 25/2013 of 27 December on electronic invoicing and creation of the accounting register for invoices in the public sector, together with the measures from the law on control of commercial debt, will help to expedite procedures for payments to suppliers and provide security in regard to unpaid invoices.

The law establishes an electronic invoice control system which, by facilitating the tracking of invoices, will better protect suppliers against administrative delinquency, easing their relations with public administrations. Similarly, this protection will also be reinforced with a greater accounting control of invoices received by administrations, which will not only help improve the monitoring of compliance of public administrations with payment obligations but also provide greater control over public spending and the deficit, generating greater confidence in public accounts.

In relation to the IGAE and the equivalent control bodies at the autonomous and local levels, these shall have access to substantiating documentation, to the information contained in the invoice accounting register and to public accounts at any time, and shall draw up an annual report evaluating compliance with the regulations on delinquency.

- Reform of the law on subsidies: A draft law is currently in process for amending General Subsidies Law 38/2003 of 17 November, with the aim of intensifying the fight against fraud and corruption.

The draft contributes to the principle of transparency through a reconfiguration of the National Subsidies Database which, in addition to being a tool which is essential to combatting fraud, will also now be used as a source of public information. The IGAE is in charge of the administration and safekeeping of the national subsidies database and will take the necessary steps to guarantee the confidentiality and security of the information it contains. Another introduction is its inclusion of a penalty system for cases of non-fulfilment of obligations to provide information to the national subsidies database.

Meanwhile, the control procedure is supplemented with the subsequent repayment procedure. Through this model, the IGAE is entrusted with settling repayments deriving from controls carried out by its control bodies. This solution aims to:

- a. Reduce administrative and financial burdens on entities subject to controls.
- b. Simplify the procedure and shorten processing times, which are reduced by up to one year.
- c. Smoothly link repayment control procedures with the penalty procedure.
- d. Strengthen the role of the IGAE as the universal body for subsidy control, which it implements selectively and intensively and as a means of securing and ensuring the correct application of subsidies.

Finally, as a mechanism for combatting fraud and corruption, the Spanish Anti-Fraud Coordination Service (*Servicio Nacional de Coordinación Antifraude*) was created for cooperation with OLAF.