

**SUPERVISION ON AUDIT AND THE EFFECTS OF EU DIRECTIVE 56/2014  
CASE STUDY: PORTUGAL AND SPAIN**

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### **Abstract**

This paper will consider the transposition of EU Directives either in Portugal or in Spain. It is well known that their aim is to reinforce the audit supervision. The impact of last Directive 56/2014 will be reflected under the Portugueses and the Spanish frame law. As a consequence the supervision on auditors will be considered and the charges connected to this supervision will be described concluding that there are some differences either as to their value or as to their independence of duties. As final remark a good practice from Sweden on these issues will be displayed.

## Introduction

The past years have highlighted certain corporate governance shortcomings in European listed companies. These shortcomings relate to different actors: companies' and their boards shareholders (institutional investors and asset managers) and proxy advisors. From these events some have mostly contributed to some bankruptcies and failures of organizations. In brief and about this issue two main problems stand: insufficient engagement of shareholders and the lack of adequate transparency.

Stakeholders were consulted on two Green Papers ("Corporate governance in financial institution" and "The EU corporate governance framework"). In relation to what they considered to be the most important issues to be tackled at European level and based on these consultations and further analysis, the Commission's Action Plan concluded: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies provides the Commission's roadmap in the area, should be based on two objectives: enhancing transparency and engaging shareholders. This Action Plan announces a number of initiatives, amongst other, a potential revision of the Shareholder Rights Directive – what has occurred.

In order to contribute to the long-term sustainability of EU companies, to create an attractive environment for shareholders and to enhance cross-border voting by improving the efficiency of the equity investment chain in order to contribute to growth, jobs creation and EU competitiveness a renewed strategy must be considered based on better operating conditions for listed companies. This goal would require the realisation of the following specific objectives:

- 1) Increase the level and quality of engagement of asset owners and asset managers with their investee companies
- 2) Create a better link between pay and performance of company directors
- 3) Enhance transparency and shareholder oversight on related party transactions
- 4) Ensure reliability and quality of advice of proxy advisors
- 5) Facilitate transmission of cross-border information (including voting) across the investment chain in particular through shareholder identification.

To reach all these aims some new rules were established as considers, in particular, the supervision of the financial outcomes of the listed companies namely in what concerns the activity of the auditors.

So this paper intends to address this issue under two different perspectives: on one hand it will have to do with the state of art of the supervision as to the Portuguese listed companies and on the other it will deal with the supervision on the Spanish listed companies. To begin with the most recent European Directives about the audit function

will be considered. Next the transposition of these Directives either in Portugal or in Spain will be described. Besides a perspective of a good practice from a Nordic country – Sweden - will also be considered.

## **European Directives**

**Directive 2006/43/CE**: states the conditions for the acceptance and register of the people that are able to do the financial accounting audit as concerns the rules as to their independence, objectivity and ethics as well as the scope of the public supervision. Special disposal about the audit on the accounting of the public entities defined in the Directive 2006/43/CE, were deeply developed in the Rule (EU) 537/2014 from the Parliament and the Council. According to the Treaty about the Functioning of the EU (TFEU), the internal market is comprehended by a non barriers space in which the free trade of goods and services is assured as well as the settlement freedom. The elimination of the obstacles to the development of auditing services between the Member States will contribute to the integration of these services within the EU.

## **Directive 2014/56/EU**

This Directive from the EU Parliament and the Council, dated 16th April 2014 changes the contents of Directive 2006/43/CE as to the consolidated accounting and the audit opinion. The public supervision of the auditors (CPA-chartered public accountants) and their societies includes their approval and register, the adoption of all the norms and procedures as to the ethics and as to the internal quality control as well as the applicable inspection and sanctions. To reinforce the transparency of the supervision of the auditors and to allow a bigger responsibility each member state will define one only authority responsible for the public supervising of the auditors and their societies. The independence of these entities towards the auditing sector represents a crucial issue as to the integrity, efficiency and good functioning of the public supervision auditors and societies. Thus the public supervision authorities shall be managed by people that are not auditors and the Member States shall establish independent and transparent procedures for the selection of these persons. Furthermore this Directive explains in addition:

from issue 4-A some ideas: *the Member States will name two or more competent authorities to be in the management of these functions and they inform the Commission about it. The competent authorities are organized in order to avoid conflict of interests.*

from issue 4-B: *the Member States may delegate or authorize the competent entity to deliver any of the functions to some other organ or authority that was designated by law*

*to do those functions. This delivery shall explain the terms and conditions in which the functions shall be executed. These authorities and organs are organized in order to prevent the conflict of interests. In case of delegation of functions on other authorities the competente authority should claim case by case the delegated competences.*

*from issue 5: the competente authority has the right, whenever needed, to begin and conduct the inspections on the auditors and/or to their societies and to decide about the adequate measures to apply. Whenever some experts are contracted to achieve specific functions the competent authority guarantees that they have no conflict of interests as to the auditors and/or as to their societies.*

According to this European Directive it seems clear that, from 2016, the activity of the auditor as concerns the financial statements of the European listed companies is to be inspected or supervised by an external and independent authority not related or connected to the auditing profession either as CPA or as to their audit societies.

Let us start now by the analysis of the impact of this Directive in Portugal.

## **1. European Directives impact in Portugal**

Following the above described audit measures described in EU Directive 56/2014 this part of the paper will deal with some relevant issues: 2.1 CMVM as the stock market regulator in Portugal and the consequences of the EU Directive on this entity; and 2.2 Portuguese Order of the Auditors. The first issue will do with the interpretation of the Statutes of CMVM, the application of EU Directive, and respective related law changes and the second one will consider the Statutes of the Order of the Auditors and the last is a good practice from a Nordic country dating back to more than 20 years.

### **1.1 CMVM and EU Directive**

The Portuguese commission for the trade of stock is called *CMVM Comissão do Mercado de Valores Mobiliários* and was created in April 1991, and has the following objectives: supervision, regulation, co operation and promotion of the stock market. CMVM statutes register the following fundamental ideas:

#### **Article 4 - Mission and functions**

1 — CMVM mission is to rule and supervise the financial market and all the connected entities and issue all the complementary rules.

2 — CMVM commitments:

- a) To rule and supervise the financial market promoting investors' safeguard;

- b) To assure financial markets stability contributing to the identification and prevention of the systemic risk;
- c) To contribute to the development of the financial markets;
- d) To render support and information to the not qualified investors
- e) To help the Government and the respective representative for the finances, under request or on self suggestion, to define adequate policies as to the financial instruments, namely their market and operating entities;
- f) To fulfill all the more functions defined by law.

5 — In order to properly fulfill their duties, CMVM may request from any public or private entity the needed information.

To reach these objectives the following managing positions of the organization will help. So article 7 deals with the Main board management functions of CMVM:

- a) Board of managers; b) Inspection Board; c) Consulting Board; d) Ethical Commission;
- e) General Council for the Supervision of Audit - from article 35 of the Law 148/2015 September - concerning the Supervising of the Audit (*as from EU Directive 56/2014*).

Particularly as concerns the functions of the Inspection Board (b) responsible for the control of the compliance, good financial and asset management of CMVM and it may be consulted at any time by the Board of managers. We must register that the business of this entity is to deal with the Stock Exchange - a portfolio of all the companies belonging to it. This is the reason why this entity should perform an audit to guarantee the compliance of its assets.

Following the EU Directive 56/2014 a General Council for The Supervision of Audit was created. In fact it was transferred from *CNSA (Conselho Nacional de Supervisão e Auditoria* - National Council for Supervision and Audit) a body created in 2008 and now accrued to the roll of duties of CMVM. So it seems that this independent entity (created by Decree Law 225/2008, 20th November) - National Council for the Supervision of Audit - CNSA Conselho Nacional de Supervisão de Auditoria did not work out. It had no formal statutes or law format being constituted by: a board member of the Bank of Portugal, a member of the Directive Council of CMVM, a member of the Insurance Institute of Portugal, a member of the Auditors Order and a General Sub-Inspector of the General Finance Inspection. Its goal was to coordinate and supervise the activity of the auditors and their related societies. Besides these functions it had to do with the support and assurance of the cooperation with international entities in order to: approve, register, do the quality control and inspect the ethics of the auditors and related audit societies. These CNSA commitments did not interfere with the competences of the Bank of

Portugal, of CMVM, of the Insurance Portuguese Institute and of the General Finances Inspection. In short, by the time, CNSA supervision habilities comprehended:

*Table 1. CNSA commitments*

<p><b>assurance</b></p>	<ul style="list-style-type: none"> <li>- of the approval and register of the auditors and related societies ( the Auditors Order – OROC – approves and registers them but some are also registered in CMVM);</li> <li>- of the adoption of the internal control rules of the auditing societies, of the audit procedures and of the application of the professional Ethics procedures;</li> <li>- of the continuous training, of the audit quality control and of the inspection and disciplinary systems.</li> </ul>
<p><b>starts, instructs and decides</b></p>	<ul style="list-style-type: none"> <li>- about processes and applies sanctions.</li> </ul>
<p><b>issues the necessary rules</b></p>	<ul style="list-style-type: none"> <li>- under the scope of analysis of CNSA; inspects the fulfilment of the law and the applicable rules (namely, it may issue opinions about the application of standards on audit, about professional ethics and quality control and may evaluate the disciplinary procedure proposed by the Order of the Auditors).</li> </ul>

Presently through the Law 148/2015 (article 9, issue 1-6), dated 9th September, CNSA was absorbed by CMVM and renamed Law Settlement of Supervision and Audit - RJSA - *Regime Juridico de Supervisão e Auditoria*.

At this moment one should cite the content of the EU Directive 56/2014:

Issue 4A- *The competent authorities are organized in order to avoid conflict of interests*

Issue 4B - *the Member States may delegate or authorize the competent entity to deliver any of the functions to some other organ or authority that was designated by law to do those functions. Thus the public supervision authorities shall be managed by people that are not auditors and the Member States shall establish independent and transparent procedures for the selection of these persons*

and furthermore even as to subcontracted people the Directive is clear because it says Issue 5 -: *...whenever some experts are contracted to achieve specific functions the competent authority guarantees that they have no conflict of interests as to the auditors and/or as to their societies.*

So following the Directive inspiration it seems that an independent profile (and independent means an outsider as to any kind of organization) with no conflict of interests is needed.

Besides when looking at the content of article 37<sup>1</sup> of CMVM Statutes (note page) things do not look like quite clear for the function of inspection and audit that was already committed to CMVM.

But in accrual for this Supervising function that inspires little transparency the Rule 74 C (*Portaria 74-C/2016, was issued in 24th March 2016 but in force from 1 January 2016!*) considers that the auditors should pay to CMVM for it. So whenever they issue an audit report about the organizations' financial statements (every 3 months), charges shall be paid to CMVM. The following Table 2 summarizes these charges.

*Table 2. Charges to be paid by the Auditors, per audit report, to CMVM*

Type of organizations	Auditors fees (eur)	Charges (eur)	multiplier
<b>Not public interest entities PIE</b>	<15 000	Auditors fees/2500	10
“	>15 000 < 30 000	Auditors fees/5000	20
“	>30 000 < 60 000	Auditors fees /10000	40
“	>60 000	Auditors fees /20000	80
<b>Public interest entities PIE</b>	<15 000	Auditors fees/2500	100
“	>15 000 < 30 000	Auditors fees /5000	200
“	>30 000 < 60 000	Auditors fees/10000	400
“	>60 000	Auditors fees/20000	800

Looking at the described numbers one can imagine the impact that this may have in the future and although this is a direct charge on auditors it is very likely that they will try to recover it in the future invoice to the clients.

## **1.2 Statutes of the Order of the Auditors**

At this point of this issue something must be said about the Order of the Auditors under this new supervision approach.

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<sup>1</sup> Article 37 – inspection and audit:

CMVM human resources, when doing any inspection or audit, on behalf of CMVM, are considered an authority agent being able to: a) Enter all the company buildings, lands and means of transport; b) To inspect all books and register; c) To get all the copies/extracts of controlled documents; d) To ask to any legal representative, any worker or alike, any explanation about facts/documents e) To identify for future act of decision people that break the law under the scope of CMVM procedures; f) To claim the help from the police and administrative jurisdiction when needed; g) CMVM can hire experts to support and develop the follow up of the workers involved who will have the same rights of the workers under the situation according to CMVM rules.

The Law 140/2015 (7th September) established the new Statute of the Auditors Order. According to Article 6 it is described that independently of the public supervision of CMVM the Order commitments are:

*Table 3. Auditors Order Statutes (Art. 6) commitments*

To rule both the access and the exercise of the profession across the whole national territory.
To supervise the activity of audit as to the financial statements and as to other related services rendered to the organizations according both to the standards on audit (contents of article 4 of the Law Regime of Supervision of Audit from Article 148/2015).
To exclusively grant the professional title of auditor.
To grant the professional specialist title.
To take care of the responsiveness of the function under a social, an impartial and a good professional perspective.
To implement disciplinary jurisdiction.

From these assumptions related to the Auditor that make him/her someone inspiring public faith one remarks particularly the disciplinary jurisdiction as something that must work in order to assure that same representativeness. From the article 34- f) of the Statutes and in order to fulfil this issue the Order of the Auditors has a Disciplinary Council with the following competences:

*Table 4. Auditors Order Statutes (Art. 34-f) Disciplinary Council competences*

To judge (at first instance) the infractions done by the auditors and training members.
To issue an opinion about the claims about the services of the auditors.
To do the exams and analysis requested by any other management board.
To submit to the Directive Council the projects of law/administrative needed to solve problems.

After all it seems that some of the management positions of the Order of Auditors namely the disciplinary council is empty once CMVM will work for them. One should refer that these two countries – Portugal and Spain - were the pioneers in the anticipation of the implementation of these Directive measures. Let us now consider what happened in the nearby country – Spain.

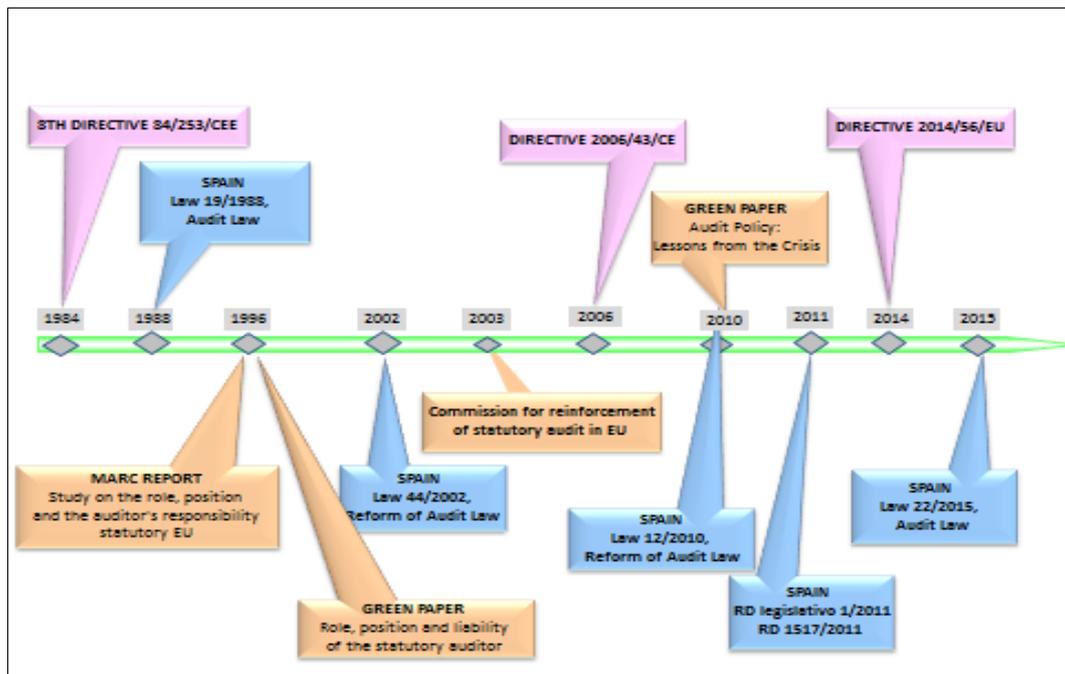
## **2. European Directives impact in Spain**

Spain audit activity started in 1988 through Law 19/1988 (12th July) concerning Financial Statements Audit (Congress of Deputies, 1988). According to the 8th Directive 84/253/CEE defining the activity of audit and ruling standards and its main characteristics of profession access – personal conditions and society requisites in order to register as Auditors that could belong to (ROAC).

Yet along the time there were some changes occurring in these audit procedures. Considering the impact of the different European Directives the Law 12/2010 (30th June), translated the contents of Directive 2006/43/CE European Parliament and the Council (17th May 2006). This Directive was crucial for the harmonisation of the audit activity in the EU area defining the principles that should rule the system of public supervision. The financial crisis of 2008 raised some problems about the fitness and adequacy of application of all the European Directives about audit procedures questioning about the activity of audit as a tool that should contribute to the financial stability of the Members.

It was under this scope of analysis that in 2014 the Directive 56/EU (of the Rule Nr. 537/2014 of the Parliament and Council, from 16th April 2014) was issued. In terms of evolution of audit one can summarize it (table 5):

*Table 5. Evolution of audit in legal terms*



## 2.1 Law 22/2015: consequence of the application of Directive 2014/56/EU

Its goal was to reinforce the stakeholders trust as to the financial statements and as to the quality of the audit therein embedded. In consequence of this Directive, Spain issued the Law 22/2015 (20th July) about Audits of Accounts (Congress of Deputies, 2015).

According to the Explanatory Statement of the Law, the ultimate purpose of the reform is to strengthen users' trust in economic and financial reporting by enhancing the quality of audits of accounts. In this way, the intention is on the one hand to increase transparency in auditors' activity by clarifying the purpose of the audit and its scope and limitations, and on the other to reinforce the independence and objectivity of the auditors in the performance of their activity. Moreover, it aims to contribute to the integration of the audit market through the incorporation of the so-called European passport, and a higher degree of harmonisation, not only in the rules governing the activity, but also in the rules for oversight and disciplinary measures. This Law has a chapter of audit accounts in general and a specific another chapter for the audit accounts of Public Interest Entities<sup>2</sup>. The aim is to guarantee a high quality of information safeguarding the stakeholders.

<sup>2</sup> According to article 3.5 of the Law 22/2015 public interest entities are: issuing body in the secondary market, credit entities and insurance entities, supervised by Bank of Spain, Stock Market Commission, General Direction of Insurance and Pensions; entities are important either on the nature of the activity or in the dimension of work; group societies where the dominant one is one of the previous situations.

Law 22/2015 will be in force from the 17th June 2016 and has demonstrated to be quite unpopular as concerns what has been approved by the Spanish government. Yet recent financial Spanish scandals have contributed to the use of the Directive 2014/56/UE in order to improve the independence, the transparency and the supervision on audit to enable its inherent quality and to reinforce public faith about the financial statements of companies. Most changes occurring in the Spanish law frame are present in Law 22/2015 and its main aspects are the following as to the PIE- Public Interest Entities:

#### 1. Audit Commission

The PIE will be obliged to have an audit committee. In order to contribute to reinforce the independence of auditors and the quality of audits in Public Interest Entities the functions attributed to the Audit Committee reinforced (see table 6).

*Table 6. Functions of the Audit Committee of the PIE*

- |  |
|--|
| <ul style="list-style-type: none"><li>a. Information to the general assembly about the questions related to the Audit Commission and explaining the audit results in order to contribute to the integrity of the financial statements and the very function of this commission.</li><li>b. Supervision: of the effectiveness of the internal control of the Company, of the internal audit and risk management and discussion: about the deficiencies of the internal control and eventual suggestions without compromising the auditor independence.</li><li>c. Supervision of the elaboration of the financial statements and to suggest to the management board suggestions or recommendations in order to safeguard the Company integrity.</li><li>d. To contact the Board of Directors in order to select, elect, re-elect and replace the auditor of accounts being responsible for this process</li><li>e. To establish relations to the external auditor in order to get information about the issues that can be a threat for his/her independence, to be examined by the Commission and all the services belonging to articles 5, ap 4, and 6.2.b) EU Rule (UE) Nr 537/2014, 16th April and considering section 3 from chapter IV title I of the Law 22/2015, 20th July, of Audit Accounts, about the Independence as well as all the information related to the services rendered and respective remuneration associated to the audit work either directly from the auditor or indirectly from the subcontracted parts.</li><li>f. To give an idea every year, and before the auditor issues the opinion about the financial statements, about the independence of the accounts auditor and all the services related to the audit.</li><li>g. To previously acknowledge the Board of Directors about the issues considered in the law, the statutes and the rule of the Council, in particular:<ul style="list-style-type: none"><li>1. The financial statements and the consequent reporting to be made public.</li><li>2. The creation and acquisition of capital participations through any special entity purpose located in tax free countries.</li><li>3. The operations with linked parties.</li></ul></li></ul> |
|--|

#### 2. Rotation

The new Law establishes that auditors should stay in a PIE (Public Interest Entities) company at least for 3 years and at most, including all the extensions, 10 years (art 17 of the EU Rule 537/2014, parts 3, 5, 6 and 8). Yet after finishing these 10 years the auditor can have an extension of 4 years at maximum provided this extra time is used to be shared with other auditors.

### 3. Fees limitation

In order to ensure independence, the new law set limits on audit fees (see table 7):

*Table 7. Limits on audit fees*

<b>Entities with no public interest (Art. 25)</b>	The limit of the fees related to the services of audit along the three last sequential years should not represent more than 30% of the total annual receivable fees of the auditor or of the related society of auditors; if that happens the auditor should not do the audit in the next following year.
<b>Entities with public interest (Art. 41)</b>	The limit of the fees related to the services of audit along the three last sequential years should not represent more than 15% of the total annual receivable fees of the auditor or of the related society of auditors; if that happens the auditor should not do the audit in the next following year.

### 4. Incompatible services

In order to reinforce the professional scepticism attitude and objectivity and in order to prevent conflict of interests from the services rendered to the PIE some audit works are considered incompatible: accounting services; internal audit, law procedures and services, internal control framework design, risk management related to the financial information. Furthermore the fiscal services and assets evaluation will be also considered incompatible unless their material irrelevance.

### 5. Transparency

The content of the audit report shall be more detailed for the Public Interest Entities, in order to improve the information either as to the audited company as to the stakeholders. Besides for these companies the auditors will do an extra report to be delivered to the Audit Commission, and the annual report will comply with the transparency issues referred in Directive 2014/56/EU.

### 6. Supervision

The competences of ICAC are increased in particular as concerns the evaluation of the systemic risks and the analysis of the auditors declarations and reported information. The resources needed to do this are paid through the ICAC (Institute of Accounting and Auditing - Instituto de Contabilidad y Auditoría de Cuentas) taxes calculated on the auditors' fees and for each audit report issued (see table 8):

Table 8. Charges on the auditors

not PIE – Public Interest Entities	Euros	PIE – Public Interest Entities	Euros
<30 000 euros	123,4	<30 000 euros	246,90
>30 000 euros	246,9	>30 000 euros	493,80

## 7. Sanctions

According to Directive 2014/56/EU some procedures about the infractions and sanctions and related advertisement are introduced.

### 2.2 Public Supervision of audit accounts in Spain

The responsibility of the public supervision of audit accounts in Spain is committed to ICAC - Institute of Accounting and Auditing (Instituto de Contabilidad y Auditoría de Cuentas), who has the following functions (artículo 46.2):

<b>Responsibility of the public supervision of audit accounts = ICAC functions:</b>
Authorization and inscription in the Official Register of Audit Accounts and related audit companies.
The adoption of the norms – ethics, quality of internal control used along the audit process - according to the law, as well as the supervisión of its fulfillment.
Continuous training of the auditors of accounts.
Inspection and investigation system.
Regular <i>surveillance</i> of the evolution of the services of audit in case of the PIE.
The disciplinary regime.

ICAC is the competent and specialized authority as concerns the companies economic and financial information reported by the auditors and it is the standard of supervision of this activity. Yet, one must refer that the Stock Commission (CNMV)<sup>3</sup> has a supervising

<sup>3</sup> The Stock Commission - Comisión Nacional del Mercado de Valores - is a competent body of supervision and inspection of the stock market and the activity of all that are related to. Its functions are:

competence on the Audit Committee of the PIE, in spite of the competences of ICAC which is the only authority responsible for the public supervision system according to article 32.4 of the Directive. It pertains to ICAC the obligation to look upon the duty of independence of the auditors. As concerns the Audit Committee these measures are just a kind of safeguard of the auditor Independence and this does not exclude the supervision competences from ICAC (an autonomous body of the Ministerio de Economía y Competitividad - Ministry of Economy and Competiveness) that results from the EU Directive having the aim of efficiency, effectiveness and accuracy as well as integrity achieved under the following assumptions:

- Being an independent entity where the top management is not composed by people that work as auditors of accounts.
- Being transparent, as concerns the work process program and the activity reports.
- Depending on the capacity, technical knowledge, adequate resources and having a safe financing exempt from any influence from the auditors or related societies of auditing.

ICAC Management members are in brief the following:

<b>President</b>	Representative of ICAC.
<b>Committee of Audit Accounts (functions)</b>	<p>Defining the rules for the professional exams needed for the Registration of the Auditor of Accounts.</p> <p>Issue of the ethics and quality control audit norms.</p> <p>Suggestions and changes as to the scope of audit to be made on the rules and laws sent to the Ministry of Economy and Competitiveness.</p> <p>Determination of the rules for audit training.</p> <p>Resolution about the presentation of the auditors about their activities to ICAC.</p>
<b>Accounting Council (functions)</b>	After consulting the Accounting Consultive Council <sup>4</sup> , shall evaluate the suggestion of interpretation of any accounting issue related to the accounting framework within the Commercial Code scope.

### 2.3 The Auditors and representative public corporations

- 
- to supervise the transparency of the financial market, of the correct price construction and respective investors' protection, promoting the diffusion of information needed to reach the beforementioned objectives.
  - to assist the Government - The Ministry of Economy and Competitiveness.
  - to suggest measures or procedures about the stock market.
  - to do an annual report about financial market overview.
  - will report a summary of its activities to the Ministry of Economy and Competitiveness.

<sup>4</sup> Consulting body of the Accounting Council made up by accounting experts as concerns economic and financial information, representing the public administration or the sectors of activity of the companies about which one must make a report.

These public corporations are under the Rule and Law of Audit of Accounts that presently has been altered by the Law 22/2015 and is still in due course. These entities are considered under public law provided they fulfill the following assumptions:

- a) The Statutes identify the activity as Audit Accounts.
- b) At least 10% of the auditors with inscription in the Official Register of Auditors belong to this corporation.
- c) At least 15 % of the Auditors of accounts with inscription in the Official Register of Auditors, in activity, are members of this corporation.

Regulated functions of the corporations (according to Art. 105 of the Rule on Audit<sup>5</sup>) are:

To do, to adapt and to to review the ethics and internal quality control under self motive or motivated by ICAC - Instituto de Contabilidad y Auditoría de Cuentas.
To propose and to achieve the profesional exams to enter the corporation.
To organize training courses once allowed by ICAC.
To plan training schedules to be achieved by the auditor accounts.
To supervise the collaboration of its members.
To do the ethical rules and to conduct the elaboration of the code of conduct for its members.
To verify the observation of the practices and procedures undertaken along the activity of all members.
To Propose to ICAC- Instituto de Contabilidad y Auditoría de Cuentas a sanctionery procedure to be applicable to the infractor members.
To cooperate with ICAC in all the issues related to the audit of accounts, namely the quality system of the internal control of the auditors and related societies during the three years that precede the execution of the quality control.

All quoted societies (IBEX and secondary market) are audited by audit companies that belong to one of these professional corporations of the auditors of accounts:

- Spanish General Council of Economists (CGE).
- Spanish Institute of Censors Juries of Accounts (ICJCE).

At this point of this paper some conclusions about the two countries can be done.

### 3. Comparison of Portugal /Spain

<sup>5</sup> Royal decree 1517/2011, 31st october, approving the rule that develops the texto concerning the Law of Audit of accounts, approved by the Royal Dcree Law 1/2011, 1<sup>st</sup> july.

Although these two countries are placed closely in the same península they have different perspectives of analysis.

- 1) While in Portugal the functions of Supervision of the Auditors are included in the Commission of the Stock Market in Spain they have created an independent entity – ICAC - to deal with this matter following close the Directive.
- 2) Both countries have created some charges on auditors as to the issuing of audit reports. In Spain this rate is an absolute value (varies in Euros from 123,4; 246,90 to 493,80) got within a limit of, below and above, 30 000, as to not PIE and PIE. In Portugal it depends on the class of the fees of the auditor (<15000; 15000-30000; 30000-60000; >60000) and is associated to each class of earnings considering a not PIE and a PIE, with a multiplier factor associated.

When comparing the results got, in Portugal and in Spain, for auditor fees of respectively 15 000 and 30 000 we get the following cost per audit report:

*Table 9. Comparison of Charges (euros) on Auditor in Portugal and Spain*

	<b>FEES</b>	<b>Not PIE</b>	<b>PIE</b>
<b>PORTUGAL</b>	15000	60	600
<b>SPAIN</b>	15000	123,4	246,9
<b>PORTUGAL</b>	30 000	120	1200
<b>SPAIN</b>	30 000	246,9	493,80

While the companies that are not of public interest, the cost in Portugal is half of the cost in Spain, the public interest companies in Portugal are charged almost three times its cost in Spain. One must say that in Spain these charges are more adequate than in Portugal.

- 3) In Spain these charges are launched by ICAC an independent entity (according to EU Directive 56/2015) and in Portugal, they emerge from the very Commission of the Stock Market Exchange what makes it quite weird in terms of transparency and conflict of interests.

And some ideas emerge: how can one guarantee independence, exemption and assurance if, on one hand, CMVM wants to have more clients belonging to its portfolio and at the same time the same CMVM is to inspect and analyse their financial statements in order to issue a quality certification about it? And if there is a mistake with a report elaborated by CMVM about the auditor's report?

Looking around the world let's consider now a very good example showing nice practices about these issues implemented some time ago from Sweden.

#### **4. Example of a good practice of audi supervision: Sweden**

##### *Introduction (Revisorsnämnden)*

In Sweden and dating back to 1973 the supervision of auditors became a task for the state when that function was transferred to a department within the governmental authority National Board of Trade from the private institution Stockholm Chamber of Commerce. In 1995, the organization took its present form. The Supervisory Board of Public Accountants (RN) was established by the Swedish Parliament in the Auditors Act of 1995, succeeded by the present Auditors Act (2001:883), hereafter referred to as the Auditors Act. Revisorsnämnden (RN) - Supervisory Board of Public Accountants RN is a governmental authority under the Ministry of Justice.

**RN is the government's authority** for all matters concerning auditors. RN has two overall tasks; firstly, to provide the Swedish business world with highly qualified auditors and, secondly, to supervise and regulate those auditors.

##### *Organization*

RN is organised in an office, a disciplinary board and an exam committee. RN is led by a director, who is the head of the authority and who has the full decisive powers in all administrative matters and all matters connected to investigations and other duties of the authority. The director is appointed by the government and reports to the Minister of Justice. RN's office presently has 22 persons employed: auditors with 30 years' experience of auditing in average, lawyers, four economists (Graduate Business Administrators) or having other similar academic degrees and additionally, four persons form the administrative department. All matters concerning exams, issuing of authorisation or registration, opening investigations and closing investigations without disciplinary action are decided by the director or the staff member to whom the director has delegated his powers of decision. He may also, by powers delegated to him, decide in disciplinary matters. Such powers may derive from regulations or from the disciplinary board. This delegated competence is rarely used in a general disciplinary matter but merely in connection to the practical performance of investigations of the authority. If, for instance, a registered public accountant refuses to adhere to RNs requests, the director or his designee may take the decision on disciplinary action for that without previous

contacts with the disciplinary committee. Hereby a clear line is kept between investigation procedures and decision-making in disciplinary matters. Investigations, in which disciplinary action is imposed on a public accountant or an audit firm, are decided by the disciplinary board. It consists of nine persons, all appointed by the government. The chairman and the deputy chairman are judges. The other members represent various professions and central governmental authorities such as the National Tax Board and the Financial Supervisory Authority, all selected for specific competence in audit related matters. Two members are auditors in public practice. Beside disciplinary matters, the disciplinary board is also responsible to decide on the issuance of such formal regulations that relates to the authority of RN and in matters of principle.

### *Supervisory Activities*

The most essential task is the supervision of auditors and audit firms. It takes 80 % of the staff total working hours and around 65 % of RN's financial resources. This supervision is initiated and carried out in various ways. RN's mandate covers all auditors and registered audit firms and all categories of audit clients. RN's task in the supervisory field covers supervision of statutory auditors and registered audit firms as well as supervision of audit activities. It also includes the task to ensure that professional ethics for auditors, as well as generally accepted auditing standards, are developed appropriately. The tools available for RN's oversight are recurring quality control inspections as well as risk based inspections, disciplinary investigations, and the power to impose disciplinary sanctions. On the regulatory side of the supervisory function, RN can issue binding advance rulings in ethical matters and issue formal regulations in areas delegated by the Government. However, the most important regulatory impact on the application of standards is statements by RN in its disciplinary rulings.

### *Quality control inspections*

RN has the sole responsibility for the system for inspections of audit firms and auditors. When it comes to listed companies, RN carries out inspections on the largest seven audit firms, by which all listed companies are audited, every third year. To cover also a significant number of individual auditors in a three year cycle, the big four audit firms are subject to inspection activities almost constantly. When it comes to inspections of auditors and audit firms that do not audit listed companies, RN relies on the inspections carried out by the professional organisation FAR ( the professional institute for authorized public accountants "auktoriserade revisorer"), approved public accountants (godkända

revisorer), and other highly qualified professionals in the accountancy sector in Sweden. The activities of FAR are monitored by RN. Under an agreement between RN and FAR, the organisation has a duty to report to RN material breaches of auditing standards or professional ethics.

### *Investigations and disciplinary actions*

RN is the competent authority for investigations of all Swedish auditors and audit firms. RN's investigations can be initiated in the following situations. If an inspection carried out by RN shows material breaches of auditing standards or professional ethics, an investigation can be initiated. Similarly, RN can initiate an investigation if FAR reports to RN under the above-mentioned agreement. Further on, RN receives complaints, which usually lead to disciplinary investigations. Finally, RN opens investigations and disciplinary matters on its own initiative.

If a breach of standards or rules of conduct is found, RN may issue an admonition, a warning or, in the most aggravated cases, withdraw the approval or authorization, or registration (in case of an audit firm). In an investigation, the auditor is obliged to answer RN's questions and provide all documentation deemed necessary by RN. If the auditor fails to provide the required documentation, he or she would normally be subject to disciplinary action, already on that ground. In an investigation process the investigation team is generally composed by both lawyers and auditors. All such matters are prepared by the office and if a disciplinary action against the auditor is foreseen, presented to the disciplinary board (see below), which then decides on basis of the material prepared by the office. If an investigation does not indicate any breach of standards or rules of conduct, the case is closed. This is the process undertaken in Sweden that looks really well.

The segregation of functions and the transparency are issues that seem to be contemplated. There is not a commitment of qualifying an audit to someone that is going to need it. The functions and its development seem to be quite far from the interest area – leading to an absence of conflict of interests as the EU Directive states.

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## **Webs**

Comissão do Mercado de Valores Mobiliários (CMVM)

<https://www.google.pt/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=cmvm>

Comisión Nacional del Mercado de Valores (CNMV):

<http://www.cnmv.es/portal/home.aspx>

Comissão Nacional de Supervisão e Auditoria (CNSA): <http://www.cnsa.pt/>

Consejo General de Ecomistas (CGE): <http://economistas.es/>

Instituto de Contabilidad y Auditoría de Cuentas (ICAC): <http://www.icac.meh.es/>

Instituto de Censores Jurados de Cuentas de España (ICJCE): <http://www.icjce.es/>

Ordem dos Revisores Oficiais de Conta (OROC): <http://www.oroc.pt/>

Revisorsnämnden: <http://www.revisorsnamnden.se/rn/english/organisation.html>