

## Article

### The framework of public audit in Spain



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ABSTRACT:

The depth of the economic crisis that began in 2008 led to financial stabilization instruments in the European Union (EU). After a period of transience and provisionally, the European Stabilization Mechanism (ESM) allowed the Economic and Monetary Union (EMU) countries to consolidate a permanent financial assistance fund. In 2017, the Commission proposed revising the ESM to revoke its international organizational character and transform it into an EU agency included in the EU's institutional structure. The strong opposition of some Member States (MS) has avoided this possibility. The ESM Treaty has been revised and signed by the Eurozone states and maintains its intergovernmental nature. In any case, some new functions have been added, including its establishment as the Single Resolution Fund (SRF) backstop facility only in case of extreme need and when its liquidity is insufficient. Creating this support to the SRF is essential for consolidating the Banking Union.

PALABRAS CLAVES:

Unión Económica y Monetaria, Mecanismo Europeo de Estabilidad, Fondo Monetario Europeo, Unión Bancaria, Fondo Único de Resolución

RESUMEN:

La profundidad de la crisis económica iniciada en el año 2008 condujo a la creación de instrumentos de estabilización financiera en el ámbito de la Unión Europea (UE). Tras un período de transitoriedad y provisionalidad, el establecimiento del Mecanismo Europeo de Estabilización (MEDE) permitió la consolidación de un fondo permanente de asistencia financiera los países de la Unión Económica y Monetaria (UEM). En 2017, la Comisión propuso la revisión del MEDE con la intención de revocar su carácter de organización internacional y transformarlo en una agencia de la UE incluida dentro de la estructura institucional de la UE. La oposición decidida de algunos Estados miembros ha evitado esta posibilidad. El Tratado constitutivo del MEDE ha sido revisado y firmado por los Estados de la Eurozona y mantiene su naturaleza intergubernamental. De todas formas, se ha aprovechado la ocasión para ampliar sus funciones, entre las que se destaca su constitución como el instrumento de último recurso del Fondo Único de Resolución (FUR) sólo en caso de extrema necesidad y cuando su liquidez no fuera suficiente. La creación de este apoyo al FUR es considerado una condición esencial para consolidar la Unión Bancaria.

MOTS CLES :

Union économique et monétaire, Mécanisme européen de stabilité, Fonds monétaire européen, Union bancaire, Fonds de résolution unique

RESUME :

La profondeur de la crise économique qui a débuté en 2008 a conduit à la création d'instruments de stabilisation financière au sein de l'Union européenne (UE). Après une période transitoire et provisoire, la mise en place du Mécanisme européen de stabilisation (MES) a permis la consolidation d'un fonds permanent d'assistance financière aux pays de l'Union économique et monétaire (UEM). En 2017, la Commission a proposé la révision du MES dans le but de lui retirer son caractère d'organisation internationale et de le transformer en une agence de l'UE incluse dans la structure institutionnelle de l'UE. Une opposition chez de certains États membres a empêché cette possibilité. Alors le traité instituant le MES a été revu et signé par les États de la zone euro et conserve son caractère intergouvernemental. En tout cas, cela aura été le moyen d'élargir ses fonctions, y compris celle de la constitution qui n'imposera le fonds de résolution unique (FRU) qu'en tant qu'instrument de dernier recours en cas d'extrême nécessité et lorsque la liquidité n'est pas suffisante. La création de ce soutien au FRU est considérée comme une condition essentielle à la consolidation de l'Union bancaire.

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## 1 INTRODUCTION

The primary and most basic purpose of an audit report is to express an opinion about the financial information provided by a company, in particular, whether the financial statements are prepared truthfully and presented fairly in accordance with accounting standards.

An audit report concerns and interests the company itself, mainly their senior managers. By contrast, trust in the accounts also affects third parties. Different kinds of people may have different kinds of needs from the company and different types of relationships with the company.

Employees, owners, potential investors and all sorts of stakeholders are interested in accounts being checked by accounting professionals and being in agreement with the company's financial position reflected on the accounts.

Everyone interested in annual accounts can trust the integrity of the accounts when reading an independent auditor's report that includes this paragraph in a country that has agreed to IFAC<sup>1</sup> accounting and auditing standards:

We have audited the financial statements of ... Company ....

In our opinion, ... present fairly, in all material respects, (or give a true and fair view of) the consolidated financial position ...<sup>2</sup>

Why can we be confident? It cannot be denied that economic scandals, at the beginning of the first decade of the 20th century, triggered a deep crisis of confidence in financial information and one of the most questioned aspects was the performance of auditors with respect to audited firms.

In response to these scandals, which harmed a large number of small investors who had relied on audit reports, the auditing profession was called into question<sup>3</sup>. Trying to resolve the loss of confidence in its activity,<sup>4</sup> many government and parliamentary debates<sup>5</sup> were sparked on the need to maintain a situation that guarantees the independence of the auditor with respect to the auditee as well as the quality of the audit,<sup>6</sup> and that, furthermore, engenders the trust of the public.<sup>7</sup>

The turning point was the Sarbanes-Oxley Law. It was approved in the USA with the main purpose of restoring confidence in the markets, which required improving the protection of investors by implementing a series of strict measures to increase the accuracy and veracity of the information disclosed by companies. The Act imposed more stringent

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1 The International Federation of Accounting (IFAC) was established in 1977, as the heir and agglutinating entity of different international organizations of accounting and auditing professionals. It has developed very comprehensive accounting and auditing standards that have become the benchmark for the profession throughout the world. Its formulation meets, initially, the needs of accountants and auditors in the private sector.

2 International standard on auditing 700 (revised) forming an opinion and reporting on financial statements (Ref: Para. A19–A26)

3 Gómez Maldonado, Mario Alberto. *Determinando la Auditoría Pública*. Auditoría Pública, 2010, nº 51, p. 61.

4 García Benau, M<sup>a</sup> Antonia. *El marco normativo internacional de la auditoría y su repercusión en España*. Revista española de nº control externo 52, 2016, p. 176.

5 En el país origen del escándalo, la GAO, rápidamente dirigió diversas recomendaciones al Congreso. Walker, David M. "El siglo XXI retos y oportunidades". Revista internacional de auditoría gubernamental, 2002, vol. 29, nº 3, p. 2.

6 Rubio Herrera emphasizes that the Directives of the European Union have undergone an evolution that has materialized, as far as the subject matter of this article is concerned, in a progressive strengthening of the duty of independence. Rubio Herrera, Enrique. *El deber de independencia de los auditores según la nueva normativa*. Revista española de control externo, 2016, nº 52, p.61.

7The scandal produced great mistrust among investors and the general public. Vide Cortijo Gallego, Virginia. Impacto de la Ley Sarbanes-Oxley en la regulación del sistema financiero español. Boletín económico del ICE, 2007, nº 2907, p. 43.

requirements in accounting and audits and has significantly influenced the changes in many countries. In general, Governments felt compelled to enable real change to restore confidence.<sup>8</sup>

Today, as a result of these measures, I think that we can say that a significant level of trust in auditing work has been restored.

Is it exactly the same in the case of public audits? Is it exactly the same in the case of public audits in Spain?

We can answer affirmatively, saying that the goal is the same: to express an opinion about the financial information. If the above-mentioned condition is fulfilled, the auditing works are carried out according to International standards. We must also say that in Spain, audits are carried out according to International standards. Therefore, our answer will be the same.

Although if we are talking about public auditing, there are different groups concerned and this will be a central question. We must take into consideration a very relevant kind of stakeholder, in addition to those referred to above, that is, the executive and legislative powers and the most relevant interested party, the citizens.<sup>9</sup>

## 2 EVOLUTION OF AUDITS IN SPAIN. THE ADOPTION OF INTERNATIONAL STANDARDS ON AUDITING (ISAS)

### 2.1 BEFORE EU MEMBERSHIP

The audit, in its modern conception, began with the advent of the industrial revolution in the United Kingdom.<sup>10</sup>

The first law about audits was the British Corporations Act, which was passed in 1844. The Corporations Law established the obligation of administrators to keep accurate accounts and the appointment of auditors to review the company's accounts.<sup>11</sup>

The Spanish auditing tradition, unlike the Anglo-Saxon tradition, is recent.

We can consider only one antecedent to the current regulation of the auditing of accounts. This is an article, article 108, of the Law of Corporations Act, passed in 1951, which introduced the figure of censorship of accounts in Spanish Law. Although its scope was much more limited, it can still be considered a step toward auditing.<sup>12</sup>

However, the similarity between the audit of accounts and censorship of accounts rests in only one point, the need to verify the accounts of limited liability companies in order to protect small shareholders. Apart from this, it was a radically different system that was completely outside the international auditing standards.

Strangely, however, the General Budgetary Law, a public regulation initially enacted in 1977, made the first legal reference regarding audit in Spanish law. It was issued twelve

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<sup>8</sup> Restoring trust in audit and corporate governance. Consultation on the government's proposals. March 2021. for Business, Energy and Industrial Strategy UK. Pag 15.

<sup>9</sup> Mata i Remolins, Lluís and Muñoz Juncosa, Antonio. La Reforma de la Comptabilitat de l'Administració Local. Escola d'Administració pública de Catalunya. 2005. Pag 69.

<sup>10</sup> Derek Matthews. A History of Auditing. Ed Taylor & Francis Group. Ed, 2006, p.4 y ss.

<sup>11</sup> Lee Teck-Heang, Azham Md. Ali. "The evolution of auditing: An analysis of the historical development". Journal of Modern Accounting and Auditing, december, 2008, vol.4, n.º12 (Serial No.43).

<sup>12</sup> Vide Vives Ruiz, Fernando. El derecho español en el siglo XX, vol. 3: Derecho privado. 2003. Varios Autores. Marcial Pons, *El Derecho Contable en el Siglo XX*, p. 257.

years before the first auditing law. This law timidly included an indirect mention about auditing, in article 100.

Since then, in parallel with private auditing, public auditing has experienced a significant boom.<sup>13</sup>

## 2.2 FIRST AUDIT LAW, LAW 19/1989.

As we have seen, before Spain joined the EU we cannot speak of an audit regulation in accordance with international standards, but since then, the situation has changed significantly. We can't forget that Article 288 of the Treaty on the Functioning of the European Union says

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

As a consequence, when Spain became a Member State of the European Community it was required to extensively reform its commercial laws and accounting matters, which also affected the field of auditing, so as to adapt them to European regulations.

This reform launched the adaptation to the community commercial legal framework, which comprised the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of company, the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts and the Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents.

The adoption of the Directives provoked the most significant accounting reform of Spanish mercantile legislation to date, with the enactment of Law 19/1989 on partial reform and adaptation of commercial legislation to the directives of the European Economic Community (EEC, precursor to the EC) in matters of companies. Through this Law along with Royal Decree 1643/1990, several laws were modified and a new General Accounting Plan was approved, which developed the legal provisions contained in the Code of Commerce and the Corporations Law. The reform included, among others, the Law 19/1988 of 12 July on the Auditing of Accounts.

Afterwards, the evolution of accounting standards has been led by the European Union, and public accounting standards in Spain, but not always in all EU members, have evolved to adapt public accounting rules to private ones.<sup>14</sup>

In the following table we can see a summary of this evolution:

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<sup>13</sup> Cervera Notari, Manuel "La auditoria en las entidades Locales", Revista de Hacienda Local n° 90, p. 775.

<sup>14</sup> Nonetheless the trend is towards a common framework. Presente y futuro del control interno en la Administraciones Públicas. Miguel Miaja Fol. Auditoría pública: revista de los Organos Autónomos de Control Externo, ISSN 1136-517X, N°. 74, 2019, págs. 85-98

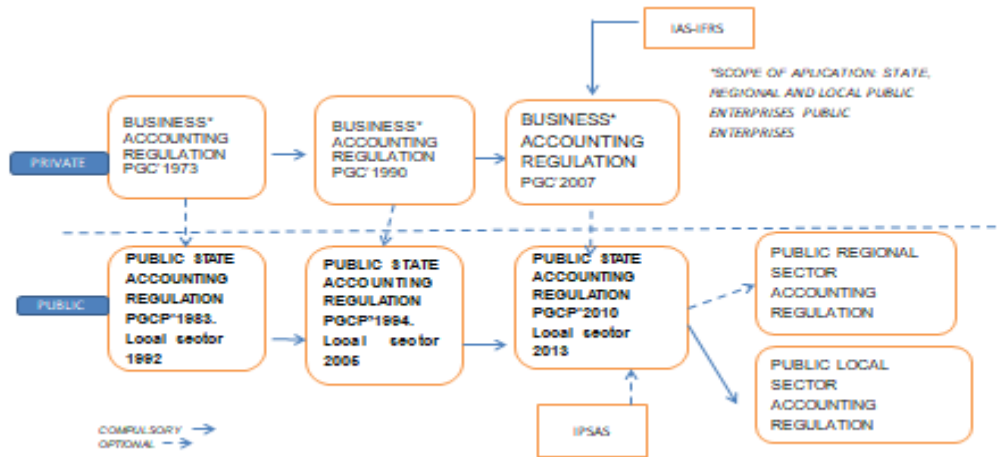


Figure 1. Spanish Accounting Regulation

Law 19/1988 established, in a general way, mandatory accounting review by auditors. Only a small number of companies were exempt from this duty. Lawmakers opted to alleviate the accounting burdens of some companies with few assets, low turnover or few workers.

They are only exempted if, in the two consecutive years leading up to the balance sheet date, they meet one of the following criteria:

- Total assets of €2,850,000 or less.
- Annual turnover of €5,700,000 or less.
- Average number of employees during the year of 50 or fewer.

Accounting and auditing reforms were happening in parallel and lawmakers considered that it was also necessary to establish a control mechanism over both activities. In Spain, this control is exercised by the Accounting and Auditing Institute, which was established by Law 19/1988.

There are two fundamental missions of the Accounting and Auditing Institute: to resolve queries on the correct interpretation of national accounting regulations and to exercise a supervisory function over auditors and audit activities.

Concurrently with these functions, the Institute is in charge of the Official Registry of Account Auditors. Companies that are under the obligation to have their financial statements audited must have their audit reports signed by auditors registered in the Official Registry of Auditors and deposited in the Mercantile Registry. This applies both to private and public companies.

In Spain, all companies must be registered at the Spanish Mercantile Registry, where they must deposit their annual accounts. As the Mercantile Registry is a public registry, any person may consult this information and therefore the annual accounts. This is a requirement of European Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies.

If a public company must be audited, it must be audited by auditors registered in the Official Registry of Auditors and the audit reports are required to be deposited in the Mercantile Registry with the annual accounts.

The Accounting and Auditing Institute is also the competent authority on the adoption of rules on ethics, internal quality control rules on audit activity and technical auditing rules in the terms provided in Law 19/1988. The first Spanish Technical Auditing

Standards were adopted by the Resolution of January 19, 1991, of the President of the Accounting and Auditing Institute.

### 2.3 SECOND AND CURRENT AUDIT LAW, LAW 22/2015

In the European Union, the rules of auditing have been evolving over time. Directive 2014/56/EU of European Parliament and of the Council, of April 16, 2014, modified Directive 2006/43/EC, with an impact on auditing.

In Spain, Law 22/2015, of July 20, on the Audit of Accounts has come to transpose the provisions of the Directive in replacement of Law 19/1988. The provisions of the Audit Law are expanded in Royal Decree 2/2021 of January 12.

The legal definition of an audit is found in article 4 of Law 22/2015, of July 20, reinforcing the previous law.<sup>15</sup> This definition of Account Auditing is the common definition and consists of verifying the accounts in order to determine whether they express the true image of the assets, the financial situation and the results of the audited entity, in accordance with the regulatory framework of financial information that results from application. This definition is suitable also for the public sector. Then both share regulation and purpose.

Law 22/2015 makes a specific mention of public sector audits in its second additional provision. On the one hand, the provision enforces a duty to audit the annual accounts of state-owned commercial companies on a level playing field with private companies, and on the other hand, it excludes public auditing from the object of the law.

In this regard, the activities of review and verification of annual accounts, financial statements or other accounting documents, and the issuance of the corresponding reports, carried out by public control bodies, are subjected to General Budgetary Law, Law 47/2003. But, as we will see next, specific regulation in the field of audit is similar to and converging with private legislation and standards.

### 2.4 RULES FOR AUDITING

In order to achieve the objective of an audit report, both public and private auditing require the existence of a *lex artis*, a series of regulations governing professional technique, which sets the rules and guidelines. These are regulations about the behavior and conditions of the people who will participate in the work, the execution of the work and the report to be issued. The aim is that the reader, any interested party or society in general, can trust the report issued.

Since the approval of the Sarbanes-Oxley Act, auditing rules have generally been tightened in all countries and have led to more intense regulation of audit activity.<sup>16</sup>

The public sector has also felt the need to develop standards to guide the execution of auditing works.<sup>17</sup> As in the private sector, there are international standards, which are nothing more than an adaptation of auditing standards to the public sector, and are generally introduced in national regulation.

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<sup>15</sup> García Benau, M<sup>a</sup> Antonia. "El marco normativo internacional de la auditoría y su repercusión en España." *Revista española de n° control externo* 52. 2016, p. 175.

<sup>16</sup> Gómez Maldonado, Mario Alberto. *Determinando la Auditoría Pública*, Auditoría Pública, 2010, n.º 51, p. 57.

<sup>17</sup> Melián Hernández, José A. *Relaciones y diferencias entre fiscalización y auditoría. Razones para una reforma de las normas de auditoría del sector público*. Auditoría Pública, 2006, n.º 39.

In Spain, the first Public Auditing Standards (NAP) were issued by the Comptroller Office of the State in 1983, five years before Law 19/1988, and were subsequently replaced by Resolution of September 1, 1998, of the General Comptroller of the State Administration, approving the Public Sector Audit Standards.<sup>18</sup>

Today, Article 2 of Law 22/2015, in line with the principles defined by the European Directive, accepts the Regulatory rules for auditing of accounts, and says:

*For these purposes, international auditing standards shall be understood as the international auditing standards, the international quality control standard and other international standards issued by the International Federation of Accountants through the International Auditing and Assurance Standards Board, provided they are pertinent to the account audit activity regulated in this Law*

Even before the entry into force of Law 22/2015, IFAC standards were initiated by the Resolution of October 15, 2013 of the Institute of Accounting and Auditing of Accounts. Once the law had been passed, IFAC standards continued with the Resolution of December 23, 2016, of the Institute of Accounting and Auditing of Accounts.

As we have seen, the auditing standards in Spain, as in the entire European Union and a large majority of countries, are standards issued by IFAC. As far as the public sector is concerned, there was no legal requirement for the adoption of international standards, but the need for standardization with the private sector was considered, resulting in adaptation to the ISAs.<sup>19</sup>

The homogenisation process in Spain culminated in the Resolution of October 25, 2019 of the General Comptroller of the State Administration, approving the adaptation of the Public Sector Auditing Standards to the International Auditing Standards

Obviously, taking into account the differences between the public and private sectors, the audit process in Spain in both sectors are perfectly comparable.

All public standards are accompanied by an explanatory note, a set of regulations called “the regulatory of the activity of auditing accounts for the Public Sector in Spain”

The auditing standards of the public sector can be divided into the following areas:

- General rules: Global objectives of the public auditor and performance of the audit in accordance with the International Auditing Standards adapted for application to the Spanish Public Sector. They define concepts, objectives, scope, areas and classes of auditing.

They are basic assumptions, consistent premises, logical principles and requirements that contribute to the development of auditing standards and are used by auditors to form their opinions and prepare their reports, especially in cases where there are no specific applicable standards.

They include several standards relating to the professionals who will carry out the audit work, the diligence that they must observe in their execution and define their obligations and responsibilities, and rules on incompatibility.

Also, they include an essential idea, namely, that public auditors be able to apply their own criteria in the exercise of their functions, in accordance with legal provisions. This requires enough independence that they be able to act freely in the

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<sup>18</sup> These Audit Standards are mandatory in the State Administration . Also in the local sector, according to art. 220-3 of Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Regulatory Law of Local Finances,

<sup>19</sup> La auditoría: más pronto que tarde, con normas Internacionales. Cuenta con IGAE. Junio 2010 número 24. Pag. 22.



issuance of their professional judgment. This independence must be maintained with respect to the audited entity, without any kind of prejudice, for or against.

- Rules on the performance of audit work: The aspects related to the preparation and planning of actions, documentation and evidence, control and supervision of work and issues related to the review of compliance with the audit are developed.

Particular attention is paid to legality, of special significance in the public sector. The audit plan, a schedule of the work to be carried out that is approved by the internal control body, is particularly relevant here.

- Standards relating to audit reports: Indicate the requirements relating to preparation, content, presentation and dissemination.

### 3 Reserve of public audit to control bodies

Spain's model of financial economic control of public administrations is a continental one, although, in practice, it has notable adaptations.

It's a classic system of coexistence<sup>20</sup> of a body linked to parliament, external control, with another inserted within the administrative organizations, internal control, but endowed with functional autonomy.<sup>21</sup>

The institutions of external control, of course, have the mission of reviewing the financial activity of the administrations in their territorial scope. They can review the annual accounts but do not issue an audit report, as such, on each and every one of the annual accounts of the different public entities that make up the public administrations.

The internal control bodies are the Comptroller's offices of the different public administrations. The external control bodies are the National Court of Auditors, and the corresponding regional external control bodies.

In the case of the regional authorities, we can say, in general, that they have promulgated a fairly uniform regulation, inspired by the General Budgetary Law, Law 47/2003, in which an administrative body is created, called the General Comptroller Office, following the tradition of the Spanish budgetary regulations. This body is in charge of internal control including auditing works.

Commonly, in all the regional parliaments that have approved budgetary laws, there is an article similar to article 140 of the General Budgetary Law, Law 47/2003, in which the autonomy of the General Comptroller Office is proclaimed, with respect to the different public bodies that are supervised.

Based on this common denominator, regional regulations follow two different models. The first model would be communities in which their own body of comptrollers has been created and the second model leaves the general comptroller office as one more organ of the administration that is made up of officials according to the general norms of the community, but a separate body has not been created.

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20. Fernández Díaz, Andrés. "¿Puede hablarse de una economía del control?". *Revista española de control externo*, 1999, n.º 1, p. 41.

21 Longás Lafuente, Antonio. "La convalidación de la omisión del acto de fiscalización previa o intervención crítica: régimen jurídico Civitas". *Revista española de derecho financiero*, 1995, n.º 85, 1995, p. 54.



In any case, the delegated auditors are guaranteed to be solely and exclusively subordinate to the general auditor, as well as functionally autonomous with respect to the bodies they control.

From now on, we will refer to the national and local administrations. The regional administrations are endowed with autonomy, and although, in general, the tendency is to follow the same model as the State, there are some variations that would make this article excessively long.

In any case, Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance requires the publication of annual accounts and an audit report for all public entities of all public administrations. Also Article 136.2 of the Law 47/2003, establishes that the State Comptroller's Office shall publish the annual accounts of the agencies making up the State public sector in the "Register of annual public sector accounts".

Spanish public audits have been entrusted to the members of internal control bodies because they are considered an additional question of internal control.

Article 140 of Law 47/2003 regards audit as a manifestation of control because one of the aims of internal control, according to article 142 of Budgetary Law, is to verify the proper recording and accounting of the operations performed, and their true and regular reflection in accounts and statements.

The General Comptroller of the State Administration is in charge of monitoring the economic-financial management of the state public sector. This control shall be carried out by means of prior financial control, permanent financial control and public audit. Audit is an essential method of financial control.<sup>22</sup>

In parallel to this regulation, Royal Legislative Decree 2/2004, of March 5, which approved the revised text of the Regulatory Law of Local Finances, reserves (article 213) the competencies of financial control, prior financial control, permanent financial control and public audit for local comptrollers.

Accounting verification of annual accounts, in Spanish law and ISAs, focuses on the relationship between the company and the auditors, always seeking to guarantee independence and objectivity in the exercise of the entrusted functions. This claim is clearly emphasized in the Accounts Audit Law, Law 22/2015, by providing that the auditors must be and appear to be independent.<sup>23</sup>

Obviously, the first question is whether civil servants in charge of the audit reports of public entities are really independent. What is the situation in Spain like?

### 3.1 STATE REGULATION. LEGAL REGIME OF THE GENERAL COMPTROLLER OFFICE OF THE STATE

In order to allow the officials in charge of audits to act freely with respect to their judgment, their legal status must be guaranteed by law, so that it can be real. The possibility of an independent mental attitude is a real duty for those who are in charge of auditing works, but at the same time, it is their right and the public administration must facilitate the conditions for their real autonomy.<sup>24</sup>

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<sup>22</sup> Díez Zurro, Alicia. El control interno. Revista española de control externo, 2002, n° 10, p. 40.

<sup>23</sup> Aurelio Menéndez Menéndez, Rodrigo Uría González Editorial. *Curso de Derecho Mercantil*. Civitas. Edición, 2007, p. 1009.

<sup>24</sup> Estrada Gonzalez, Elena Maria; Cortes Sanchez, Rafael. El control interno de la actividad economico-financiera de las entidades locales. Presupuesto y Gasto Público, 1996, n° 18, p. 160.

The autonomy of state internal control bodies is addressed by Law 47/2003, article 140-2, that clearly sets out the principle of autonomy in the exercise of internal control functions:

The General Comptroller of the State Administration will exercise, under the terms provided in this Law, internal control of the economic and financial management of the state public sector, with full autonomy with respect to the authorities and other entities whose management it controls.

Now, is this autonomy real? The autonomy of the General Comptroller of the State Administration is proclaimed by law, and is sought in their special incarnation within the administrative organization. They are attached to the Secretary of State for Budgets and Expenditures and have the rank of undersecretary. The Comptroller General of the State Administration is the head of the Comptroller Office of the State, which also includes the General Comptroller of Defense and the General Comptroller of Social Security, which depend functionally on the Comptroller Office, and only structurally on the respective ministries.

It's organized in a hierarchical way,<sup>25</sup> and both the Comptroller General of Defense and the Comptroller General of Social Security functionally depend on the Comptroller General of the State Administration, from whom they will get their respective instructions.

This hierarchical structure of all officials dedicated to the auditing function with an exclusive dependence on the Comptroller General ensures a reasonable autonomy of the officials in charge, based on the general guarantees of the public function.

The exercise of the financial control outlined in the 4th additional provision of Law 47/2003, the General Budgetary Law, is reserved to certain bodies of civil servants. According to this complement, which guarantees the control of personnel, auditors in the civil sphere of the State and all kinds of public entities under public law will be appointed from among the officers of the of State Comptrollers and Auditors body, auditors in the Armed Forces from among the officials of the Military Corps of Comptrollers of Defense, and auditors in the Social Security system from among the Control and Accounting officials of the Social Security Administration.

The assignment of functions to a certain body is not trivial in the Spanish civil service system. It is generally prohibited to exclusively assign jobs to official members of a specific body or Scale. The Law states this in article 15.2 of the Law on Measures for the Reform of the Public Function. The Law only admits an exception when it derives from the nature and function to be performed and only as a consequence of its specifications.<sup>26</sup>

This is the case for the functions reserved to the officials of the different internal control bodies, which cannot be entrusted to other personnel, because the law entrusts the exercise of the entrusted functions exclusively to the officials of these bodies.

There are two fundamental principles that tend to ensure the autonomy of the General Comptroller Office of the State: its independence from the authorities whose management it supervises, and the fact that all the comptrollers and auditors are subject only to the hierarchy of the Comptroller Office of the State.<sup>27</sup>

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25 Sánchez Revenga, Jaime. *Manual de presupuestos y gestión financiera del Sector Público*. Ed 2010, p. 518.

26 Ferret Jacas, Joaquim. *Cuerpos generales, cuerpos especiales en el momento presente. Una vieja polémica*. *Revista catalana de dret públic*, 2012, n° 45, pp. 63-75.

27 Míaja Fol, Miguel. *Las tendencias actuales en los sistemas de control interno de las organizaciones. Implicaciones para las Administraciones Públicas*. *Documentación Administrativa*. n.º 286-287, p. 209.

Within the General Comptroller Office of the State there is a department entirely dedicated to audits, the National Audit Office.

Royal Decree 1330/2000, of July 7, gave the rank of Deputy General Directorate to the National Audit Office inside the General Comptroller Office, to which it attributed planning, programming, execution and monitoring of the financial control and auditing actions of the public sector, which corresponded to the General Comptroller of the State Administration.

The autonomy of the State's Comptrollers is adequate to international standards.

### 3.2 LOCAL REGULATION

In each municipality and each province, there are three officials appointed by the State through a selective process who hold three basic positions in local administrations, secretary, comptroller and treasurer. The rest of the positions are served by civil servants selected by each local institution.

The status of comptrollers in local authorities used to be different with respect to the national government. This situation was highly criticized by scientific doctrine.<sup>28</sup> Their proximity to the political decision makers<sup>29</sup> which consequently implies an involvement in the decision-making process,<sup>30</sup> seemed to be an important weakness of the national entitlement officials<sup>31</sup>, and specifically of the comptrollers.

Even the Court of Auditors, in a session of July 20, 2006, approved a Motion that described the exercise of the comptroller function on Local Entities as unsatisfactory and noted the need to improve certain aspects, primarily related to their autonomy.

The proposed solution by the Court of Auditors was to develop a statutory regime to allow the Comptroller Office of the State to exercise control with full autonomy from the body or entity whose management is subject to control, similar to that of the Comptrollers of the State.

In addition to the aforementioned measure, the Court of Auditors also proposed to modify the conditions for the appointment or removal of comptrollers. The Court deemed it necessary to restrict appointments to the jobs reserved for nationally authorized civil servants using the free appointment system. This mainly applied to comptrollers, in order to guarantee their impartiality and independence. In the same way, cause for dismissal should be regulated to avoid subjective criteria, instead relying on objective criteria evaluated by the same authority that had appointed the comptroller.

This has been the trend. Successive Governments took these considerations into account as proposed. Royal Decree-Law 8/2010, of May 20, by which extraordinary measures were adopted to reduce the public deficit, has already introduced corrective measures in article 15-2. The next step was Law 27/2013, of December 27, of rationalization and sustainability of the Local Administration. This Law marked a turning point and led to Royal Decree 128/2018, of March 16, which regulates the legal regime of Local Administration officials with national authorization. Law 27/2013 expressly bans any

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<sup>28</sup> Gonzalez Pueyo, Jesus, Arnal Suria Salvador. *Comentarios al Texto refundido de la ley Reguladora de las Haciendas Locales*. Editorial El Consultor. Ed. 2005, p. 1445.

<sup>29</sup> Esta es en general una característica de los cuerpos especiales. Ferret i Jacas, Martí. *Les tendències actuals i les perspectives del règim de personal de l'administració pública*. Ponències del seminari de dret local. Ajuntament de Barcelona. 1988, p. 317.

<sup>30</sup> Vide Parrado Díez, Salvador. *Las elites de la administración estatal (1982-1991)*. Junta de Andalucía. 1996, pp. 169 y 170.

<sup>31</sup> Arnal Suria, Salvador y Barril Dosset, Rafael. *Manual de presupuestos y contabilidad de las corporaciones locales*. El Consultor, 1982, pp. 36 y 37.

possibility of dismissal for political reasons or loss of confidence of local comptrollers and requires a previous compulsory report from the Ministry of Finance if the termination is due to the comptroller's inefficiency.

The auditing functions of local comptrollers are regulated by Royal Decree 424/2017, of April 28, which regulates the legal regime of internal control in entities of the Local Public Sector, with the objective of achieving a more rigorous economic-budgetary control and reinforcing the role of local comptrollers.

The auditing cycle starts with an annual audit plan, prepared and approved by the comptroller and submitted to the City Council for its review. The City Council will then receive the audit reports, closing the cycle.

Law 27/2013, article 213, forces the comptrollers of Local Entities to send an annual report to the General Comptroller of the State Administration. It's a summary report of the findings of the controls carried out in the development of the previous control function, financial control function and audit of accounts.

Article 218-3 of the same law also requires the comptroller to submit an identical report to the National Court of Accounts each year.

Today we can consider that the autonomy of local comptrollers is adequate to international standards.

### 3.3 WHAT KINDS OF PUBLIC ENTITIES ARE AUDITED IN SPAIN?

The typology of public bodies is regulated in Law 40 / 2015, Of 1 Of October, of Legal Regime of Public Sector and has the following categories:

- Autonomous bodies ('organismos autónomos'), which deliver public services with more flexibility than the ministries.
- Business Public Entities, which are an intermediate category between Autonomous bodies and public-owned commercial companies.
- Independent administrative authorities, created with Law 40/2015, which have regulatory or supervisory functions over a particular sector or economic or social activity.
- Public foundations.
- Public-owned commercial companies, which are engaged in a commercial activity and operate under commercial law. The government owns at least a direct or indirect majority of the shares (Law 33/2003). When the central government owns 100% of the shares, administrative law is applied in budgetary, accounting, patrimonial, financial and contracting matters.
- State agencies.

In addition, the law provides for a different type of entity, the consortium. Consortia are entities governed by public law, created by several Public Administrations or their entities, among themselves or, even, with the participation of private entities, for the development of activities of common interest to all parties.<sup>32</sup>

These autonomous public entities are always dependents of a territorial administration, (State, Regions, Provinces and municipalities) but have some functional autonomy, without having full independence from the territorial administration, who

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<sup>32</sup> Panizo García, Antonio. La regulación de los consorcios, con especial consideración de los consorcios locales. Cuadernos de derecho local, , Número 44, 2017, Pág. 310.

appoints the director. These entities have a distinct public legal personality, their own assets and treasury, as well as management autonomy.

All of them have separate public legal personality, equity and treasury, as well as management autonomy and must be audited each year.

We said above that only the auditors registered in the Official Registry of Auditors may sign audit reports for companies under the obligation to have their financial statements audited. However, are state-owned commercial companies inconsistent with the restriction of public audit to control bodies?

First of all, state-owned commercial companies are 37,28% of all entities<sup>33</sup>. The number of these companies that must be audited is not published, but the main owners (53,62% of all Trading companies<sup>34</sup>) are local governments, which are usually small. It could be safely assumed that half of them is not under compulsory audit. Therefore, more than 80% of public entities are audited by comptrollers.

The account auditing regulated in Law 22/2015 is focused mainly in the commercial field, and it refers essentially to the companies and entities operating in commercial traffic, in order to provide transparency to the economic-accounting information of the companies, as a consubstantial element of a market economy system and arises from the need to transpose the European Union directives on this matter

For its part, Law 47/2003 also contemplates commercial and public auditing in the public sphere. It both defines and regulates public audits with substantial differences from commercial audits, with the former being broader than the latter as well as able to adopt different modalities. Also, public audit will be done through the review procedures contained in the rules and instructions for audits issued by the Comptroller General of the Administration of the State.

Certainly if a public company must be audited, it must be audited by auditors registered in the Official Registry of Auditors and their reports will be deposited in the Mercantile Registry with the annual accounts, but this does not close any doors to the public auditor.

The audit of annual accounts is only one aspect of the public audit of various public entities.

There are three more kinds of audit that must be performed by public auditors in each entity:

- a financial regularity audit,
- a legality audit, and
- a performance audit.

On top of this, we can't forget that the European System of National and Regional Accounts (ESA 2010) is the tool for harmonizing and monitoring the excessive deficit procedure (EDP) statistics. Public auditors are in charge of the transition from business accounts and budgetary accounts to national accounts, according to ESA 2010. This means they make all adjustments required.

For public commercial companies that are not required to submit their annual accounts to audit, the audit report will be carried out by comptrollers and subject to public sector auditing standards.

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<sup>33</sup> <https://www.pap.hacienda.gob.es/invente2/pagVisorInformesBI.aspx>

<sup>34</sup> <https://www.pap.hacienda.gob.es/invente2/pagVisorInformesBI.aspx>

This raises the important question of the relationship between the auditor and the auditee in the private and public fields. In public audit, the auditee is not a client bound by a contract, it is the subject of supervision and control.

Aside from this, there are a variety of circumstances that require the necessary coexistence of public-private auditors. Two are specifically important.

First, it is very common to contract private auditing companies to help public auditors. This is provided for in the second additional provision of Law 47/2003. In practice, private auditors are working for and under the supervision of public auditors. The external auditor acts on behalf of the Internal Control body, under its direction and even though he is responsible for his work, just like any other professional, the ultimate responsibility of the control action falls on the entity's Internal Control body.

Second, public-private auditors come into play when auditing the consolidated accounts of a group<sup>35</sup> in which the entity's parent company is a public entity, subject to mandatory public auditing by law and whose compliance is assigned to a public auditor.

For all these reasons it was advisable to adopt the Resolution of the General Comptroller of the State Administration Concerning Technical Standards in the Relationship With Auditors in the Public Sector.

This Technical Standard regulates the interactions between public auditors and private auditors and the delimitation of functions and responsibilities between them, as well as their effects on the reports to be issued by the public auditor.

In relation to the working papers of the private auditor, public auditors may always access the working papers that have served as the basis for the public audit reports carried out by private auditors. This is the Third additional provision of Law 47/2003.

### 3.4 PUBLIC AUDITOR VS PRIVATE AUDITOR

Public audit originates from and is modeled on private audit<sup>36</sup>. In spite of this, it must be noted that public audit cannot be considered an identical copy of private audit.<sup>37</sup>

We can see *prima facie* that, in Spain, public audit seeks a broader scope than the audit of accounts provided for in Law 22/2015. Private audit focuses on the review and verification of annual accounts and other financial statements or accounting documents. By contrast the target of public audit is the systematic *post facto* verification of the economic-financial activity of the public sector of public administration. Therefore, the intention of Parliament is to expand the objective scope of public audit beyond mere accounting review.

There is also a wider subjective range of entities to be audited.

We will focus on the main three differences, in my view, between the two branches of auditing in Spain.

The first difference is the perception of audit. In Spain, public audit, despite the broad extension of the concept, is primarily considered to be an instrument for verifying the economic-financial functioning of the public sector,<sup>38</sup> and an element of control. However, the same does not apply in all countries. In Spain it is a legal requirement. Law 47/2003, the General Budgetary law, has come to regulate financial control in a specific Chapter within

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35 Order HAP/1489/2013, of July 18, which approves the rules for the formulation of consolidated annual accounts in the field of the public sector.

36 Gómez Maldonado, Mario Alberto. Determinando la Auditoría Pública Auditoría Pública, 2010, n° 51. 2010, p. 56.

37 Díaz Zurro, Alicia. Evolución del control de la actividad económico-financiera del sector público. Presupuesto y gasto público, 2004, n.º 35, p. 235.

38 Garcés Sanagustín, La eficacia de la auditoría pública. El seguimiento de recomendaciones. Partida Doble, n.º180, p.94.

Title VI of the Law. This chapter regulates the control of the economic-financial activity of the state public sector exercised by the General Comptroller Office.

That is the vision of the law, which allows public audit to access all types of public entities where other modalities of internal control do not reach.<sup>39</sup>

This point of view is paramount in Spanish regulation, and connects with the second of the big differences between the audit of private and public entities. It can basically be summarized as the need to assess compliance with the law and devote greater attention to the internal control report, with a special emphasis on the recommendations section, in order to ensure that the public audit is fundamentally constructive. Obviously the first target is a verification of financial reality<sup>40</sup>, but a verification of legal compliance is also important.

This question has been addressed in NIA-ES-SP 1250, CONSIDERATION OF THE LEGAL AND REGULATORY PROVISIONS IN THE AUDIT OF FINANCIAL STATEMENTS (NIA-ES 250 adapted for application to the Spanish Public Sector).

Legality is one of the guiding principles of the control of public management activity. Therefore, the auditor of the Public Sector should pay specific attention to it, but without implying a substantial change in the scope of the audit of accounts.

The same note points out that even so, the verification of legality that is carried out during the work of auditing accounts cannot be expected to have the same depth as in the case of a compliance audit. Neither is it exactly comparable to the approach that is carried out in the scope of the auditing of accounts of public entities that must be audited by auditors registered in the Official Registry of Auditors.

Without prejudice to the professional judgment of the auditor, the compliance tests on legality will normally have a greater scope and, consequently, their greater effect should be considered in the audit report, in the case of public sector audits. In this sense, breaches of the law that do not affect the accurate image but which are not irrelevant, must be included in the report in the legal and regulatory requirements section of the report.

In addition, there is an essential element influenced by the great importance of the budget. According to article 46 of the General Budgetary Law, expenditures over budget allocations are prohibited and rendered void *ab initio*.

In 2011, Spain implemented a national reform at the Constitutional level to reinforce the fiscal framework, accepting the principle of budgetary stability and prohibiting structural deficit beyond the limits stipulated by the European Union for its Member States. It was also established that the volume of public debt for all the Public Administrations as a whole as a ratio of the Gross Domestic Product shall not surpass the benchmark figure set forth in the Treaty on the Functioning of the European Union.

Obviously, these strict new budgetary rules across all levels of government attached great importance to verification of their compliance.

In this sense, Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance includes Article 28: Infractions in financial and budgetary management.

It constitutes a very serious infraction to be found guilty of:

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<sup>39</sup> Blasco Lang, José Juan. "El control financiero y la auditoría pública en la nueva Ley General Presupuestaria". Revista española de control externo, 2004, vol. 6, n.º 18, p. 183.

<sup>40</sup> La auditoría y la evaluación públicas una función y una actividad similares con fundamento diferente. Javier Medina Guijarro, Enrique Alvarez Tólcheff. Revista española de control externo, N.º 33, 2009, pág. 22.



c) Committing to an expense, recognizing an obligation, or ordering a payment without sufficient credit or in breach of the terms of Act 47/2003 of 26 November, on Budgeting, the annual Budget Act, or other applicable budgetary legislation.

Also Organic Law 2/2012 of 27 April 2012 on Fiscal Stability and Financial sustainability includes budgetary requirements.

Article 30. All public administrations must approve an upper limit on non-financial expenditure which shall mark the ceiling for allocation of resources in their Budgets.

Public audits must specifically verify the due application of the budgetary principles in order to issue a technical opinion on the budget deficit or surplus. The General Budgetary Law includes, in addition to the annual accounts of the commercial system, the budget outturn. Consequently, it is one more statement that the public auditor must verify, with the special importance that the budget has for public entities.<sup>41</sup>

These are, I believe, the three major differences, but I want to refer to two nuances that are also important.

First, let us consider a very relevant kind of stakeholder of public accounting information and an element to be introduced into the concept of independence of the public auditor.

In Spain, Document No. 1 of the Public Accounting Principles of The General Comptroller of the State (1991) constitutes the first work that identifies the users of public financial information.<sup>42</sup>

These appear arranged into five large groups, the same ones that have later been included in paragraph No. 7 of the introduction to the General Public Accounting Plan of 1994:

- Organs of political representation: Chambers of National Parliament, Legislative Assemblies of the Autonomous Governments and the Provincial and municipal Councils.
- Officials in charge of the different Public Administrations both at the political and administrative levels.
- External control bodies: the Court of Accounts and the Courts, Chambers and Accounts Commissions of the Autonomous Communities and Local Corporations.
- Private entities, associations and citizens interested in the "*res publica*".

The first four groups will always have a certain level of knowledge that may range from mere notions in many cases of those included in the first group, to the expertise that will occur in the vast majority of those belonging to the remaining three.

However, we cannot forget that the most important group is the last one, the citizens, the true holders of sovereignty, since the others are simply their representatives or the managers of public affairs.

Whatever the case may be, the objective is the same, to be able to trust that the accounts present the consolidated financial position fairly.

As in other cases of communication of information included in the NIA-ES-SP 1260 R, a public auditor may have legal or regulatory obligations that establish the communication

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41 Díaz Zurro, Alicia: "La auditoría Pública" en Presupuesto y Gasto Público, 2001, nº 25, p.70.

42 [https://www.ComptrollerOfficeoftheState.pap.hacienda.gob.es/sitios/ComptrollerOfficeoftheState/es-ES/Contabilidad/ContabilidadPublica/Documents/PrincipiosContablesPublicos\\_Doc\\_1\\_a\\_8.pdf](https://www.ComptrollerOfficeoftheState.pap.hacienda.gob.es/sitios/ComptrollerOfficeoftheState/es-ES/Contabilidad/ContabilidadPublica/Documents/PrincipiosContablesPublicos_Doc_1_a_8.pdf). Pág. 28

of internal control deficiencies to recipients other than those of the audited entity. Furthermore, and depending on the needs, objectives and types of audited entities, the public auditor may need to detail aspects related to internal control originating in breaches of the law or any other work in a different report specified in this standard.

Finally, Public Sector auditors may have additional responsibilities to communicate deficiencies in internal control identified during the performance of the audit.

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