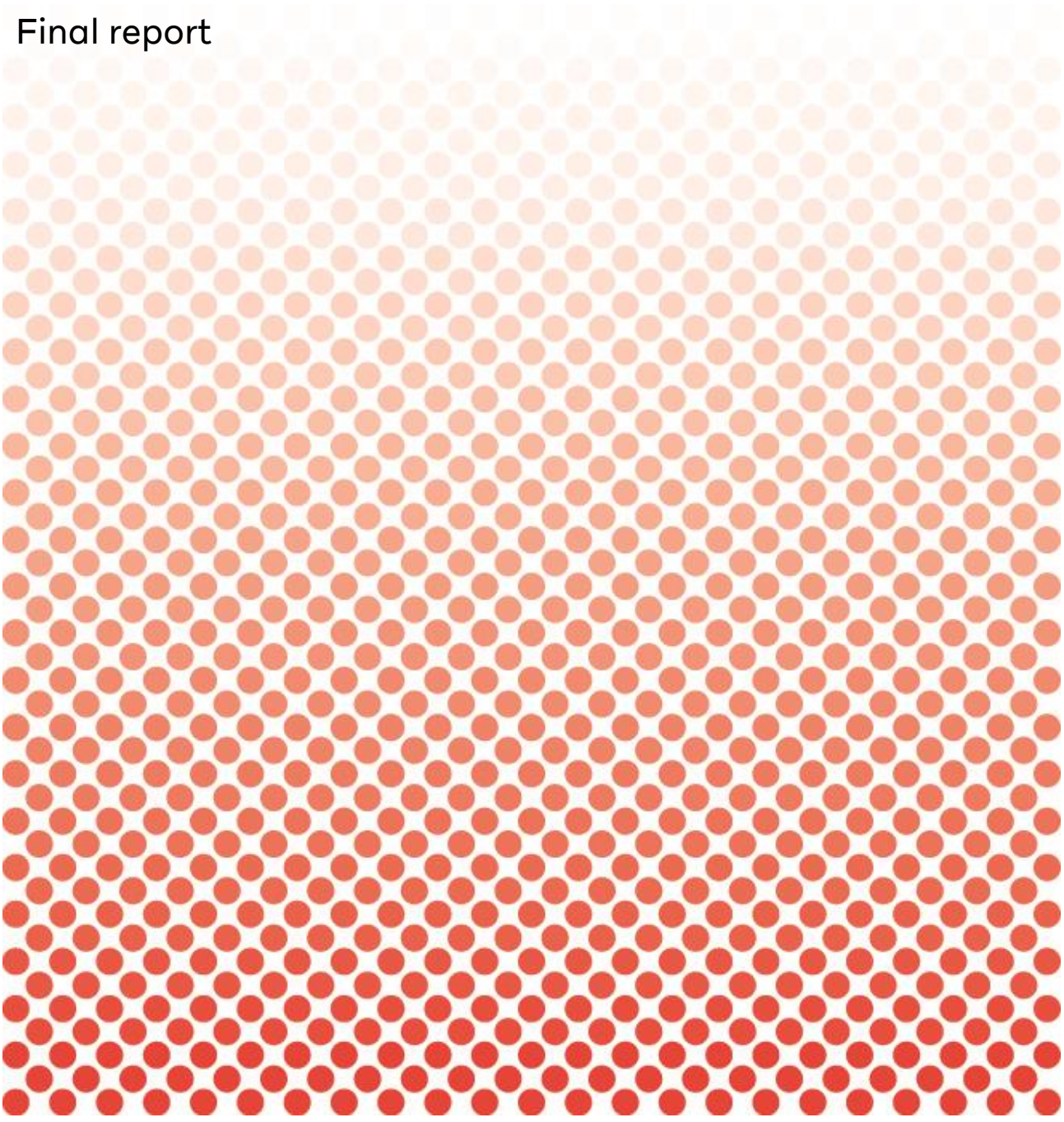
Oficina Antifrau
de Catalunya

Regulatory compliance and integrity in public institutional sector entities in Catalonia

Final report



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This publication is the result of the project on regulatory compliance and public integrity that has been developed within the framework of the collaboration agreement signed by the Anti-Fraud Office of Catalonia, the University of Castilla - La Mancha, the Autonomous University of Barcelona, the University of Santiago de Compostela and the Università degli studi di Modena e Reggio Emilia.

March 2023

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Foreword

Undertaking a study on the regulatory compliance and integrity of public business sector entities in Catalonia has been a demanding task, especially if we consider it carried out with the aim that it can be applied. For this reason, one of the most outstanding novelties of this work is the participation of various public business entities in Catalonia to facilitate its implementation.

Moreover, the intervention of professors from the public law departments of the University of Castilla-la Mancha, the Autonomous University of Barcelona, the University of Santiago de Compostela, experts from the Anti-Fraud Office of Catalonia, and other individual academics, has ensured its thoroughness. Moreover, the project also includes a comparative report by a team of professors from the University of Modena and reggio Emilia. In that case, there is no doubt that the result is a good picture of the situation in Catalonia, and some recommendations, agreed upon from a theoretical and practical perspective, that will improve the integrity of public business entities that can be extrapolated to other parts of Spain.

The first characteristic that makes the work unique is the participation of many public institutional sector entities in Catalonia. Through surveys, interviews and workshops, it was possible to get an accurate picture of the situation, suggestions for improvement, and their willingness to meet the highest standards of integrity. The study aims to transcend and ensure that public entities have rigorous and implemented compliance programmes and integrity plans, suggesting the need for a future observatory to monitor their evolution.

This paper reflects on the diversity of public and corporate entities under public or private law. At the same time, it is noted that the compliance models are similar to private companies, and that the latter have focused on the requirements arising from the criminal liability of legal persons, as provided in Articles 31 bis et seq. of the Criminal Code. Consequently, non-commercial entities or parent administrations mostly lack integrity programmes, as they are not subject to criminal liability as a legal person.

It advocates models that integrate the development of values and control measures, considering that regulatory compliance and integrity should be identical concepts. It rejects regulatory compliance based exclusively on controls, without attention to ethics and integrity.

The study provides a compliance model that contains the essential elements beneficial to the public business sector, without prejudice to the fact that these should be adapted to each organisation. Furthermore, the model advocated includes integrity and internal control configured on the preventive and reactive sides. Still, importance is also given to the institutional level responsible for design and compliance, and establishing a culture of ethics and integrity in the organisation.

In order not to avoid any risk, the regulatory requirements of the parent administrations of public business entities have been taken as a starting point. And the need to rationalise the public sector has been analysed: controls on the creation of public business entities, the appointment of managers and the criteria that should prevail, the essential transparency of actions, and, most significantly, its obligation to promote integrity programmes and supervise compliance with them by the dependent entities.

Irrespective of the obligations of the parent administration, public business entities are responsible for their implementation. Aware that these are diverse and their responsibilities may also be diverse, the study analyses the responsibilities of the various bodies and offers its conclusions, not forgetting the requirements of other subordinate entities. Here again, the need to record reactions to infringements, the evaluation and review of the model in place and compliance with transparency rules are underlined.

To conclude the integrity programme, the study comprehensively analyses the essential and cross-cutting elements of any compliance programme: risk analysis, the importance of ethical codes, alert channels and, above all, training and awareness-raising tools, from an ethical and control perspective. Due to their transversality and frequency, an analysis is also made of the main risks: conflicts of interest, irregular recruitment, recruitment of employees, management of subsidies, etcetera.

Finally, the study concludes with recommendations to overcome the numerous problems analysed, confirming its primary objective of helping public sector business entities in Catalonia facilitate the implementation of regulatory compliance and integrity instruments within these organisations.

Miguel Ángel Gimeno Jubero

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CONSORCI CORPORACIÓ PARC TAULÍ
CONSORCI DE BIBLIOTEQUES DE BARCELONA
CONSORCI DEL PATRIMONI DE SITGES
CONSORCI MAR PARC DE SALUT
CORPORACIÓ CATALANA DE MITJANS AUDIOVISUALS, SA
FERROCARILS DE LA GENERALITAT DE CATALUNYA
FIRA 2000 S.A.
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INFRAESTRUCTURES DE LA GENERALITAT DE CATALUNYA SAU
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INSTITUT CATALÀ DEL SÒL
INSTITUT DE CULTURA DE BARCELONA
INSTITUT METROPOLITÀ DE PROMOCIÓ DEL SÒL I GESTIÓ PATRIMONIAL
INSTITUT MUNICIPAL DE L'HABITATGE I LA REHABILITACIÓ DE BARCELONA (IMHAB)
LA FARGA GESTIO D'EQUIPAMENTS MUNICIPALS,SA.
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I. Introduction

Public business sector entities are regulated in a hybrid zone, composed of public and private law elements, where it is not always easy to strike a balance between the interests at stake. A similar challenge faces their integrity and compliance programmes, which aim to help them become more effective in complying with legal or ethical commitments they have made. The risks and misconduct to be prevented are, in turn, characteristic of public administrations and companies.

Although the organisations that participated in this study were aware of this difficulty, most often, the organisational models emerging in private companies since 2010 have inspired the compliance programmes that have been implemented. The explanation for this mimicry with the compliance programmes from companies is that its trigger was the inclusion of commercial companies within the regime of criminal liability of legal persons contemplated in articles 31 bis et seq. of the Criminal Code and which was produced by the LO 1/2015. Equal criminal liability, and equal organisational models, as implied in the PC, which in Art. 31bis establishes a series of indications common to any legal person.

The development of compliance programmes focusing on penal regulation has led to further distortions or inconsistencies. The regulatory pressure stemming from criminal liability has led to the emergence of compliance programmes in commercial companies. However, this has not been the case in owner-managed administrations, which in most cases lack integrity programmes. This is logically, as the owning administrations lack criminal liability, as they are among the public entities listed in 31 quinquies. To use business terminology, it seems not to make much sense for the "parent company" to lack integrity programmes or policies, while simultaneously trying to make integrity appear in its subsidiaries, in whose management it is also heavily involved, e.g. by appointing their managers or senior executives.

A third distortion can be added to the previous ones: the PC has established exclusively the criminal liability of commercial companies but not the rest of the entities that also belong to the public business sector. The decisive aspect should not have been the legal form adopted, but the permanent participation in the market by offering goods and services. The OECD, which has called for introducing criminal liability of public corporations, uses this broad concept.

Due to the criminal perspective that has dominated the development of compliance programmes in companies, the close links between compliance and governance have not been considered. In private companies, irrespective of the contents of the CP, there is growing awareness that the development of compliance programmes is inextricably linked to how corporate governance is organised within the entity. The OECD, in its Guidelines on Corporate

Governance and Anti-Corruption and Integrity in Public Enterprises, has also underlined how a sound corporate governance system is the starting point for integrity. Therefore, considering regulatory compliance in public business sector entities inevitably requires a more ambitious reflection on their governance systems.

The different dimensions and risks in public sector companies represent a further difficulty. The recent OECD Guidelines, which are an essential point of reference, are aimed at large SOEs active in extractive sectors or dominate the provision of essential public services. The reality of the Catalan public business sector is quite different. They are certainly not corporate giants, but small to medium-sized organisations.

Against this background, briefly described above, the aim of the project was, firstly, to take a snapshot of the situation of regulatory compliance in Catalonia's public sector companies. For this purpose, a questionnaire was drawn up. After being answered by the companies and public entities, it was completed with in-depth interviews conducted chiefly by the compliance officers. The results were shared and discussed in workshops by area or theme, in which people from the 23 public entities participating in the study participated.

Once the compliance situation was known, the project aimed to find best practices to collaboratively generate a compliance model, expressed in a set of recommendations. In the elaboration of these recommendations and the identification of good practices, special consideration has been given to the various reports and previous work carried out by the Anti-Fraud Office, the Report of the Court of Auditors on regulatory compliance in commercial companies, and the Guide for the prevention of corruption in the public administrations of Castilla la Mancha, prepared by the Institute of European and International Criminal Law (in Spanish).

A further step, which we would like to undertake in the future, would be to show how these practices are being implemented, and also to evaluate their effectiveness. An ongoing assessment of compliance controls and measures, plus the existence of controls targeted and proportionate to the entity's risks, is the most appropriate way to avoid the most frequent problems encountered in compliance programmes: excessive bureaucratisation and formal or cosmetic compliance.

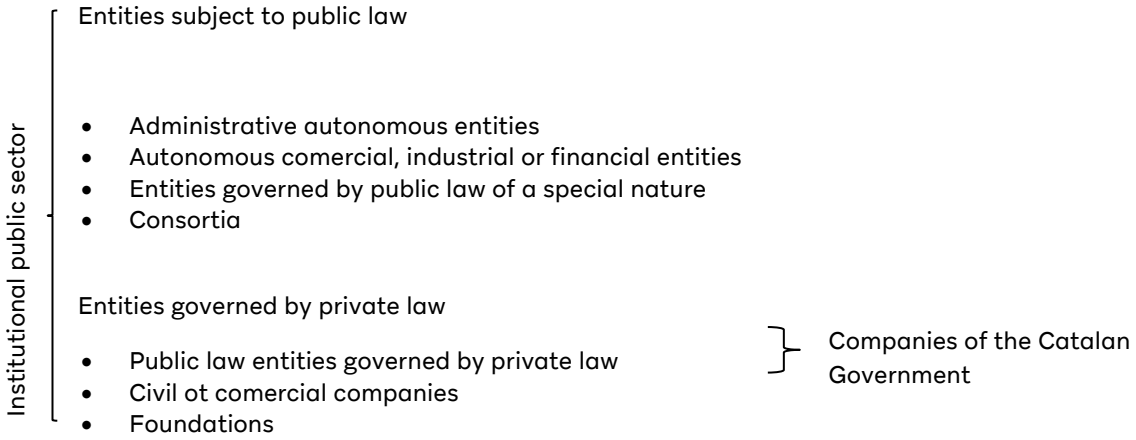
II. Delimitation of the study

1. The institutional public sector

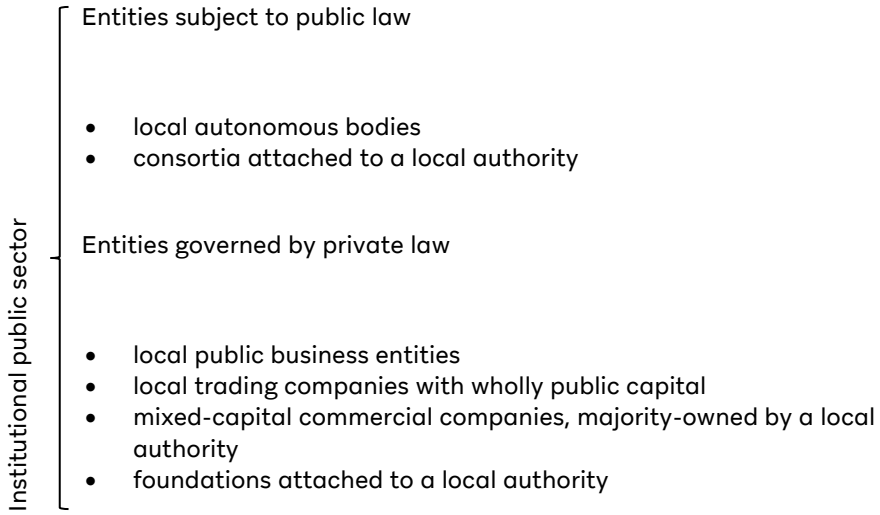
The entities that make up the institutional public sector can be divided into those subject to public law and those subject to private law, as can be seen in the following tables referring to the institutional public sector of the

Administration of the Catalan Government and the local institutional public sector[1]:

Illustration: Catalan Government Administration institutional public sector classification



Ilustration: Local institutional public sector classification

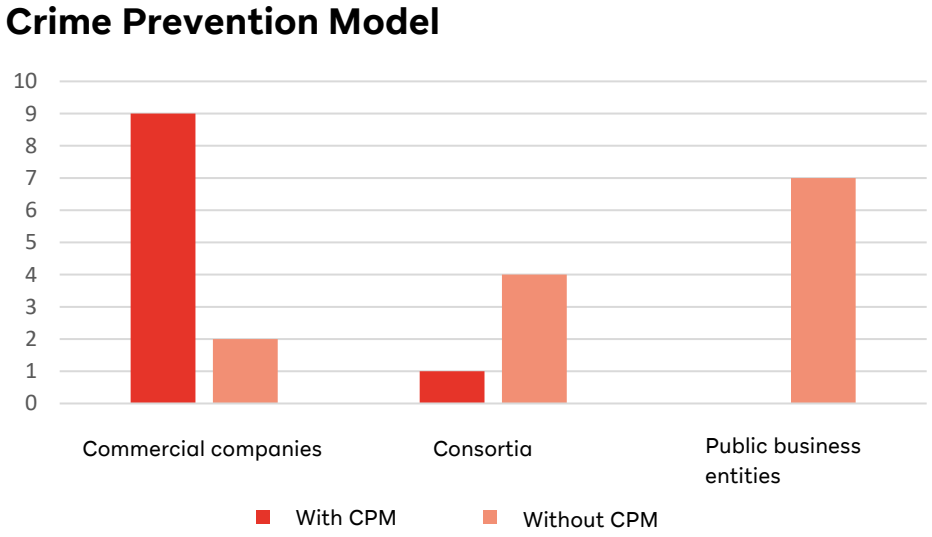


As already noted, the PC of this set of entities establishes the criminal liability of commercial companies exclusively. Consequently, entities subject to public law and other entities subject to private law, such as foundations, are not criminally liable. Nevertheless, the study presented here includes, in addition to commercial companies, other entities subject to public law, thus following the criteria set by the OECD, whose indications are not limited exclusively to commercial companies created by the administration, but also to legally established entities with legal personality recognised by a specific law, provided that their purpose or activities, or part of them, are primarily economic.

[1] Prepared by Agustí Cerrillo for this study in the document "Las entidades del sector público institucional y la responsabilidad de las personas jurídicas".

This last aspect, market participation through the supply of goods or services, is the basic factor in explaining the peculiarity of the legal risks and compliance challenges that characterise these organisations. What is decisive, therefore, is not that some organisations have criminal liability, and others do not, due to being incorporated as companies, but that the entity, nature and management of the risks are equivalent, and that the compliance and integrity structure and the controls to be applied must be equivalent.

Notwithstanding the above, the study shows that prevention models have been more prevalent in commercial companies than in the rest of the public business sector entities. This is undoubtedly due, although not exclusively, as we shall see later (vid. III), to the influence of the PC, which has acted as a trigger for implementing prevention programmes.



Correctly, ten entities, nine public corporations, have implemented a crime prevention model, which should become standard practice across the sector.

In any case, as will be seen below, this first component in our picture is transformed when the question asked of public sector entities does not refer to compliance or crime prevention programmes, but to public integrity policies.

2. Regulatory compliance, public integrity and crime prevention models

Surely one of the most important conclusions from the study is the distinction between public integrity and regulatory compliance. As seen from the previous section, many organisations answered negatively to the existence of criminal prevention models. On the contrary, they answered affirmatively to the existence of a public integrity policy, consisting of a code of ethics and certain mechanisms for its management, such as an ethics committee.

The distinction between integrity, compliance and crime prevention models is meaningless, as most compliance officers interviewed have pointed out. Two opposing models of compliance within organisations have long been distinguished, the value-oriented (integrity) and the more control-oriented. In

reality, most compliance programmes combine integrity and implementation of controls in varying doses. The effectiveness of internal controls and procedures is much less effective if it is not accompanied by actions, e.g. training, aimed at empowering the organisation's members to understand and assume certain values, generating a culture of legality and ethics.

Nor does it make sense to maintain a distinction between the two concepts by stating that while regulatory compliance is concerned with the entity's compliance with legal norms, integrity ensures that the organisation's members orient their behaviour following certain values. Regulatory compliance or, more strictly speaking, crime prevention models assume that the development of values within the entity is indispensable for compliance with legal norms and, therefore, part of regulatory compliance. Institutional integrity, in turn, is more than adopting an anti-corruption policy or a code of ethics. The operational functioning of the organisation, ethical standards and corruption prevention strategies need to be fully integrated to achieve the purposes for which these public entities and enterprises were created.

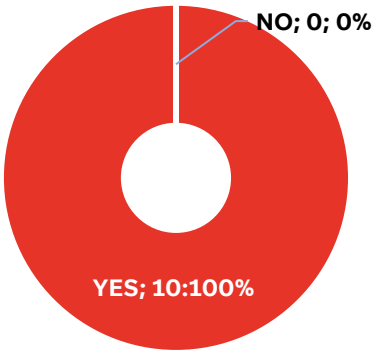
Finally, and to clarify these questions, which straddle the line between semantics and substance, it is equally meaningless to distinguish between integrity, regulatory compliance and other specifically criminal regulatory compliance. Compliance (and integrity) aims to ensure that the organisation respects the rules that bind it and any commitments it may have made voluntarily (e.g. by joining a public-private initiative). Within this objective, the criminal liability of the legal person defines a type of non-compliance that can have special consequences for the organisation, employees or managers.

However, this fact does not give it a uniqueness in dealing with the risks arising from non-compliance. The methodology followed is similar to the one used to prevent other types of regulatory infringement. On the other hand, even within what could be called criminal risks, it makes no sense for an organisation, in this case, a corporation, to focus exclusively on those risks from which criminal liability can arise for the legal person.

For this reason, and from now on, we will consider that regulatory compliance and integrity are identical concepts, and that the organisational models referred to in Art. 31 bis of the PC are only part of regulatory compliance.

A different question from the previous is to what extent the different organisations have followed the indications made by the PC in Art. 31 bis 5 when drawing up their integrity programmes. On this point, it can be said, without any doubt, that while the Catalan public sector companies that have implemented compliance programmes follow the indications of the Criminal Code, the rest of the organisations have opted for compliance models that are more oriented, at least apparently, towards integrity, and where internal controls are lower.

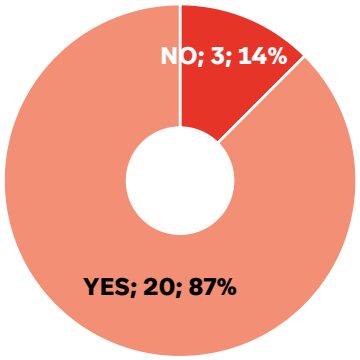
Have the indications of art. 31 bis 5 cp been followed in the formulation of the Crime Prevention Model?



However, the Criminal Code should not be seen as imposing a purely control-based compliance model. As the Supreme Court and the Attorney General's Office have already pointed out, a culture of legality is essential for effective regulatory compliance. Moreover, codes of ethics and the promotion of their values are part of regulatory compliance in most companies. On the other hand, there is agreement that most of the contents of Art. 31a.5 are essential elements of any compliance programme. This is the case with risk analysis (1st), the need for review (6th), disciplinary sanctions (5th), establishing procedures to know who makes decisions and how they are implemented (2nd), having information flows that enable compliance officers to be aware of irregularities (4th). However, there is also agreement that Art. 31a.5 does not refer to essential elements of regulatory compliance, such as codes of ethics, alert channels or internal investigations.

In short, after these clarifications, the picture reflects that Catalonia's institutional public sector has an overwhelming concern for regulatory compliance/integrity. This is undoubtedly one of the main findings of our study.

Public entities of the study with instruments of ethics or corporate integrity



Based on this observation, one of the aims of our study is to offer the essential pillars of a joint regulatory compliance model for the entire institutional public sector that participates in the market by offering goods and services, regardless of the entity's criminal liability.

During interviews with compliance officers, the opinion was occasionally expressed that the risks of non-compliance are higher in public corporations than in the rest of the public sector. Irrespective of the need to examine this statement further, the fact remains that when advocating a compliance system that is appropriate and proportionate to the risks of each entity, the varying intensity and nature of the risks are no excuse for not implementing compliance programmes. Furthermore, programmes or models cannot be "one size fits all". To be effective, they must be tailor-made for each organisation.

The basis, which will be developed throughout this report, is a mixed model, integrating elements of integrity based on the existence of an ethical code of values and its proper management, and elements based on the implementation of internal controls. In addition to being the one that has proven to be most effective, this mixed compliance model is also the one that emerges from the OECD Guidelines, where importance is given to measures that develop integrity and the implementation of internal controls. And likewise, as I pointed out earlier, it is the most authoritative interpretation of Art. 31 bis 5 of the Penal Code.

3. Degree of implementation of compliance programmes

This being said, our study shows that while most institutions have elements of a regulatory compliance programme, few institutions can be said to have implemented it in its entirety.

Let's take as a model the elements set out in the Penal Code, with the observations made above. First, only two entities have a complete compliance programme. Entities adopting integrity plans that deviate from the "criminal compliance model" often have key elements, such as a code of ethics. Still, they lack other basic elements, such as a risk map or a comprehensive system of attribution of responsibilities.

In this study, we consider a compliance programme to consist of the following elements:

<u>Preventive part</u>

— Risk analysis

— Standards of behaviour: set by codes of ethics, conduct, or similar document

— Internal controls and procedures aimed at enforcing standards of behaviour (e.g. procurement, financial, supplier selection, staff selection procedures, etc.)

— Training and awareness raising

Reactive part

— Complaint channels

— Internal investigations

— Disciplinary sanctions

— Repair mechanisms

Institutional part

— Governing body: Role in driving, directing, providing ethical leadership and oversight of the integrity programme

— Compliance functions:

  - Compliance officer or compliance officer
  - Control owners or persons responsible for carrying out the various controls

— Independent monitoring body for the effectiveness of the system

— Documentation system

Immaterial part

— Corporate culture of integrity

III. Regulatory compliance of the owner, parent or lead management

As mentioned above, one of the main challenges of regulatory compliance in the institutional public sector is the involvement of owner administration and the adoption of corporate governance measures that allow for professionally guided governance of public entities. This is at the heart of the OECD Guidelines on Anti-Corruption and Integrity in Publicly Owned Enterprises, which, following the 2015 Guidelines on Corporate Governance for Publicly Owned Enterprises, are primarily aimed at owner governments.

The action of the Catalan Government illustrates how important it is for the owner's administration to promote the creation of compliance programmes. Most commercial companies that implemented compliance programmes depend on this administration and implemented their measures following the enactment of the Instruction issued in 2017 by the Catalan Government, which reported on the reform of the Criminal Code regarding the criminal liability of legal persons, and requested that state commercial companies have a crime prevention model. Thus, the emergence of compliance programmes has been motivated by the

introduction of criminal liability of legal persons, as indicated above, but also decisively by the impetus of some owner administrations.

However, the owner's administration should not stop at the initial impulse. It must exercise responsible and collaborative oversight with the public institutional sector, which depends on it, propose regularly concrete objectives, measures to achieve them, and periodically assess their fulfilment and adequacy. All this with the flexibility to allow each institution to have a compliance programme adapted to its size and risks.

However, the relationship between the owner, parent or lead entity and dependent organisations is more complex, as it has a dual profile. It cannot be ignored that the most important risks for SOEs come from the parent company's interference in their management. This often starts with the appointment of directors and managers with a strong political profile, or which, as is often the case, combine their political position, for example as board members or deputy secretaries, with the chair of the board of directors of a corporation or similar body in another public sector entity.

The OECD's main recommendation in this area is to professionalise the administration and management of business enterprises and prohibit interference in their management. Our country's experience shows the connection between these two elements. The greater the politicisation of management, the greater the possibility of influence of the party's leaders, which govern the administration or public officials of the same political persuasion as the person in charge of the public corporation. For this reason, the owner's administration must have integrity standards that guarantee professionalism in management and freedom from influence. While irregular or fraudulent acts occur not only in the management of public entities, professionalisation is one of the best controls against such irregular practices that can be imagined.

Ideally, owner administrations should have a comprehensive compliance programme, including risks and measures related to establishing institutional public sector organisations. The regulatory compliance requirements arising from managing the EU's Next Generation funds should be an incentive to take this step, which is essential to ensure the integrity of the entire public system. A partial compliance system, present in some organisations and not in others, or addressing only one type of risk and neglecting others, is ineffective.

However, this project does not aim to address regulatory compliance in general terms of the owner administrations, so we will limit ourselves to making a series of recommendations that relate specifically to the management of dependent public corporations.

These recommendations, which, unsurprisingly, closely follow those made by the OECD, are divided into three blocks, those relating to the timing of the creation of organisations belonging to the institutional public sector, transparency measures and measures relating to collaborative supervision with dependent entities.

1. Controls relating to the creation of public institutional sector entities and the appointment of their managers

In the public debate, usually linked to arguments regarding cost-saving measures, the usefulness and necessity of some entities belonging to the institutional administration have often been discussed. It is often objected that their number is excessive and that many of them perform unnecessary tasks, which could be performed by the public administration or duplicated. This contributes to a poor public perception of the efficiency and austerity of public spending, and increases the likelihood of irregular behaviour. In this sense, the Catalan administration has made a notable effort to rationalise its institutional public sector in recent years, reducing public corporations. The Preliminary Draft Law on the Organisation of the Administration of the Generalitat of Catalonia and the Institutional Public Sector will represent a significant step forward.

As noted above, the first measure that the owner administration should have in place is a procedure to ensure that the choice of managers of public sector business entities is based exclusively on professional criteria. This could be done, for example, through open selection processes, where the various curricula vitae of the applicants would be made public, and their appointment would be motivated. There should be an independent evaluation of their performance, appointment periods that do not correspond to election cycles (e.g. longer than four years), and clear grounds for dismissal.

Increasing professionalism is an important step towards independence. Still, it would also be desirable that the ethical codes of the owning administrations expressly interfere with the management of the dependent entity through any behaviour, especially when it affects decisions with economic content. This rule would reinforce compliance with the standard of conduct underlying the trading in influence offence. Their breaches internally should lead to disciplinary sanctions or political accountability.

It would also be desirable for the owning entities to have a policy on remuneration and senior management in the state and corporate sectors.

2. Transparency measures

The curricula vitae of the directors, their salaries, and, if applicable, the evaluation of their functions should be available on the website of the owning administration and, if applicable, the company or state institutional body.

3. Promoting and monitoring measures

The third group of measures aims to promote and monitor the integrity programmes of dependent organisations. At this point, in addition to obviously requiring their implementation, it would be necessary to ensure the continued involvement of those in charge of the owner administrations in ensuring the effectiveness of the compliance programmes.

This involvement can be shown through the approval of an annual plan or contract programme, where a series of objectives relating to regulatory

compliance that the group of dependent entities must achieve are indicated, setting out the control measures considered most appropriate, and, of course, providing for the necessary budgetary allocations. Some compliance officers have highlighted in interviews the limited means they have.

A common compliance policy should be based on risk analysis. Of course, as we shall see, it is up to each entity to carry out its risk analysis. Still, it is very useful for the watchtower of the owning entity to carry out sectoral risk analyses, for example in the area of public procurement or the application and application of European funds, and from there to propose compliance measures that guarantee a minimum standard in the dependent entities.

An essential aspect is a way in which the monitoring of these measures is to be articulated. The political leaders and collegiate bodies (plenary councils, provincial councils, etc.) of each owner administration must receive annual reports from the compliance officers of each dependent organisation. A good example of this is the regular appearance of the compliance officer of the Catalan Audiovisual Media Corporation before the parliamentary committee on which it depends to present its compliance programme.

However, a relative debate should be undertaken on whether an independent monitor of the effectiveness and correct implementation of these figures would also not be necessary. This independent supervisor would correspond to the characteristics of the supervisory body referred to in Art. 31 bis 2 of the PC. The provision that the PC makes for this figure, evidently designed for listed companies, must be adapted to the different legal persons that may be criminally liable. For example, in the case of corporate groups, it may be appropriate for the supervisory body to be located in the parent company, further strengthening its independence. Something similar could occur in this case, where the role of owner-management is similar to the parent company. If, as in the case of a public corporation owning the shares of various private entities, this option would be even more obvious.

Establishing an independent supervisory body within the owning entity to monitor the effectiveness of compliance programmes and make recommendations is a great advantage for smaller entities, where budgetary reasons make it difficult to have such a body.

The PC allows the management body in small and medium-sized companies to act as a supervisory body. The option for public sector entities of a common supervisory body is much more efficient and economically reasonable than coupling this provision to the public corporate sector. In reality, independent oversight functions are considerably frustrated when the one called upon to exercise oversight should be the principal overseer. The main function of the supervisory body, as is clear from the PC, is precisely concerned with the effectiveness of controls.

A common supervisory body at the parent company's level should not preclude that, subsequently, large commercial companies or other institutional public sector entities do not have their own supervisory body, in a sense required by the

PC. The following section will return to this issue, setting out the basic characteristics of this body, which should be useful both for a hypothetical common monitoring body and for those that appear in specific organisations.

IV. Attribution of responsibilities for the compliance system

Irrespective of the involvement of owner-management in the design, implementation and supervision of compliance programmes, the management bodies of the various entities that make up the institutional public sector have the ultimate and primary responsibility for ensuring their effectiveness. In the case of commercial companies, this follows the penal code itself, Article 31 bis 2 1°, which expressly entrusts them with this task. In the rest of the organisations, they are an inherent part of the management duties imposed on their governing body by the laws by which they were created.

The diversity of management bodies is considerable. While commercial companies, whether public limited companies or private limited companies have boards of directors, all other entities have governing bodies, such as boards of trustees or boards of trustees. In commercial companies, it is normal for the General Meeting of the entity to be constituted by the plenary of the owner's administration. There are also sole proprietorships, without a board of directors and with a single director. It is also common for the position of general management, the first line of the executive bodies, to coincide with the chair of the board of directors. The process of separating the two figures and creating a board of directors with a profile closer to a supervisory body, shaping the strategic lines of the institution, has not yet begun, a process already present in listed institutions.

Within this panorama, experiences such as the Institut Català de Finances, which, like banks and listed companies, has independent directors, stand out. While proprietary directors come from proprietary management and therefore have a more political profile, independent directors are chosen based on their professional characteristics and honourability by a committee composed of independent directors. Despite not being a corporation, the ICF shows how the institutional public sector can take on board existing best practices in corporate governance.

A look at the reality of corporate governance in the various public sector entities is essential to examine their functions within the governing body and to make proposals for improvement. At this point, it is worth recalling briefly the regulation established in the Criminal Code.

The Criminal Code, as mentioned above, considers that the management body - or equivalent body - is responsible for designing, implementing and supervising compliance programmes in legal persons. Logically, this function can be delegated to one or more persons. This is the role of the compliance officer, who, as can be seen, is a compliance officer who carries out his functions under this

delegation. It is hierarchically appropriate to place them in a prominent position to give them authority and autonomy within the organisation. The compliance officer is not responsible for implementing the various controls. The owner of control will normally be a different person within the organisation. Its responsibility is coordinating, supervising and handling cross-cutting issues, such as training.

The Penal Code requires a second compliance body: the supervisory body, whose function is now independent of the members of the management body, to monitor the adequacy of the compliance programme. The supervisory body makes sense regarding controls affecting directors and senior management. Controls affecting these bodies would not be credible since they should design, implement and supervise them. The supervisory body is, therefore a corporate governance body. Therefore, in listed companies, its function is normally carried out by the audit committees, which, as is well known, are mainly made up of independent directors with a smaller presence of proprietary directors.

The supervisory bodies monitor and make recommendations on the entire compliance programme, with a particular focus, as noted above, on those affecting senior management. Its function is to test the overall adequacy of the entity's controls and make recommendations to the management body on this basis. Therefore, it is not the responsibility of independent supervisory or oversight bodies to investigate individual cases, nor should they be understood as an internal audit body.

As noted above, in smaller institutions, for cost reasons, this independent supervisory function may be carried out by the supervisory body of the owner-management.

The institutionalisation of regulatory compliance in Catalan institutional sector entities is slowly moving towards this model. The management bodies have approved the most important documents of the compliance system, such as the codes of ethics. This is the case irrespective of whether the organisation perceives its measures as a model of prevention or integrity.

Similarly, compliance officers report to the board of directors in accordance with the above. Compliance delegates are all obliged to report regularly to the delegating body. Communication and reporting directly to the management body is also possible, which is considered a sign of authority. Only exceptionally have compliance bodies been outsourced.

In some institutions, the coordination and supervisory tasks performed on behalf of the board by the compliance officer have been entrusted to a parent body of the heads of the different sectors or areas of compliance. Of course, neither the Criminal Code nor any other law vetoes the board of directors delegating its functions to such a body.

However, the option of a compliance officer, who is not simultaneously responsible for executing the various controls set out in the compliance programmes, is preferable. Although the existence of a collegial body dilutes the

conflict of interest, it cannot be ignored that such a body is composed of the most important "owners of control" within an organisation. Therefore, where such a parent body is chosen, and as is the case for many entities, a good solution is to include independent persons with expertise in regulatory compliance within the parent body.

In the future, it would be desirable for the management body to emphasise its leading role in regulatory compliance. To this end, like we have indicated concerning the owner entity, it would be wise to update the regulatory compliance policy annually, indicating the main risks to be faced, the controls to be implemented, and establishing the appropriate budgetary measures. The usual practice of approving a compliance policy as a "starting point" for the whole system, done at the beginning of the implementation process, should move towards an annual policy, which the management body should approve after being informed of the entity's risk analysis.

Adopting this annual policy will help visualise the involvement of senior management and increase their leadership on integrity issues. However, another set of activities should be carried out regularly to show members the importance of compliance with the law. In this respect, it is good practice for them to receive ongoing training on the main risks to be addressed by the institution, and to participate in the training workshops on integrity issues.

As far as the person in charge - compliance officer - is concerned, it must be ensured that they are professionally competent and, in a sense indicated above, that they report directly to the management body - or one of its members - without any intermediate link. Apart from its subordination to the board, it must exercise its functions with complete autonomy, particularly concerning those responsible for the various controls.

In light of some interviews, the most worrying aspect is the lack of resources for compliance officers, even though compliance sections mostly have an annual budget, and the excessive bureaucratisation that sometimes prevents them from attending to important tasks. The governing body should resolve these issues in its annual policy.

A good practice could be for the compliance officer to provide a statement of budgetary needs. The board of directors should provide a reasoned response after consultation with the owner-management governing body, where appropriate. The procedures and limitations imposed by budgetary law must be considered here.

Our study shows that one of the most discussed aspects is the supervisory body's functions, referred to above, which is often confused with the compliance body, i.e. the compliance officer. No entity currently has a supervisory body, in a sense described in this report. However, three entities intend to set up an independent body. Similarly, among organisations with an integrity system to implement a code of ethics, there are code commissions made up of independent persons from outside the organisation.

In other cases, it has been stated that creating an independent supervisory body is not necessary, as external control bodies already do it, such as the Sindicatura de Comptes or the Intervenció de la Generalitat. However, this is a different type of control from the supervisory body, which carries out professional and specific control of compliance programmes. Therefore, graphically, and to use the terminology of internal auditing, the oversight body is a fourth line of defence.

Beyond creating a supervisory body, it is essential to articulate internal operating regulations that guarantee its members' independence and professionalism, whether in the owner administration or the dependent entity. To this end, the professionals on it should be experts in preventing the main risks faced by the organisation, and be elected by a qualified majority or for periods spanning several election cycles. Furthermore, the grounds for revocation of their mandate should be specified. Finally, ensuring their supervisory power requires that they have access to any information relevant to regulatory compliance, that they also have an autonomous budget, and that, as indicated in the Criminal Code, they are informed of possible non-compliance.

V. Regulatory compliance in subordinates

Among the institutional public sector entities examined, some do not depend on proprietary administrations, because this term is commonly used, but on organisations that are part of the institutional public sector.

In these cases, there are two situations. The first occurs when a corporation depends on a public sector entity of different nature. This is the case, for example, of Vallter, which depends on Ferrocarrils de Catalunya. In this case, as we pointed out concerning the owner administrations, a context does not facilitate the effectiveness of the compliance programmes in the subsidiary entity, as the owner entity does not have a programme or only has some of its elements.

The opposite situation occurs when a corporation owns the commercial entity. In this scenario, the most common is a vertical and not very decentralised model, where the parent entity establishes the compliance model and appoints the compliance officer, who reports hierarchically to the parent entity's compliance office.

In this context, the Catalan Audiovisual Media Corporation is correctly moving towards a group compliance policy, with regular meetings with different entities to standardise and discuss criteria. The compliance programme of the parent company, which is also an institutional body created by law, serves as a model for the other entities that are commercial companies.

Within the institutional public sector, the key to developing an effective compliance system within the "group" is for the owning administration to establish the general guidelines for the compliance system of all the entities that

report to them, whether they are corporations or not, and to exercise oversight over their implementation in the terms indicated above. In small entities, it makes sense for their compliance system, as it happens, to be integrated with that of the owning entity.

VI. Risk analysis

Risk analysis is an essential element of a compliance and integrity programme. It is the tool to manage it efficiently and proportionally. Without knowing which of the entity's activities irregular activities are likely to occur, it is impossible to design adequate control measures, nor to establish rules of conduct that are effectively useful to guide behaviour, design training programmes or select the people who should participate in them.

On the other hand, not having a risk analysis can lead to disproportionate controls or controls in places in the entity rendered meaningless by the absence of risk, in other words, it leads to the bureaucratisation of compliance.

For the effectiveness and proportionality of the programmes to be a reality, the risk analysis must focus on the company's specific activities, as indicated in the Penal Code. Therefore, it is necessary to assess the risks separately for the different sections and departments of the entity, taking into account the specific activities carried out in each. In each of these activities, the risk involved is the result of comparing the level that may exist in the abstract for irregular conduct, considering the various criminogenic factors that may encourage it, with the actual effectiveness of existing controls. Once the risk analysis or mapping activity has been carried out, the organisation must prioritise the risks to be addressed in each exercise (assessment).

As noted above, the management best takes the latter decision after being thoroughly informed of the institution's risks. As we have also indicated, the owning administration must have its risk analysis and assessment, which in certain sectors guides the activity of the dependent entities, and also sets objectives regarding its reduction. Since zero risk does not exist, it should be prioritised among the preventive measures to be designed.

Although it has been common for risk analysis to be conducted at the instigation of the compliance officer in the institutions included in this study, a compliance model in which the management body plays a much more active role in driving and directing the analysis and in risk assessment is more effective.

Although many public sector entities participating in the survey reported they carried out risk analyses, specifically 15, this indicator should be improved in the coming years, especially because even fewer entities periodically review their risk analysis and risk map. It should be borne in mind that the Anti-Fraud Action Plans should include the assessment of fraud risk.

At this point, some entities state their approach is to add new risks to those already studied. The best practice when scheduling the risk analysis is to first select the activities that present the highest risk indexes, in the opinion of the experts involved in the analysis, and then add other activities based on this first analysis. In this sequence, the activities already analysed should be reviewed periodically.

The study also reveals that several good practices exist in this area. Concerning the methodology followed for risk analysis, the analysis is correctly carried out by areas and activities. Using one-to-one interviews with employees to be as specific as possible about how risks occur is a good practice. There are also specific risk analyses concerning specific events or activities, for example, by analysing the risks of third parties with whom it contracts (due diligence) to establish specific control measures (Fira International).

In other entities, a continuous risk analysis is carried out by what we have called control owners, who inform the compliance officer of any new dangerous situations they may observe and annually update their risks. This continuous analysis is supplemented by a systematic analysis and an analysis when there are legal changes (ICF).

It has also been noted that independent experts are often involved in risk analysis. An audit is a necessary, indispensable part of risk analysis, especially in assessing the effectiveness of controls. However, as some institutions already do, it is desirable to have independent experts who are specialists in the types of risks that concern the institution. It would also be desirable for the risk analysis to involve third parties who regularly deal with the institutions as customers or suppliers.

VII. Ethical codes

The OECD has noted the importance of having codes of ethics in SOEs that provide clear and detailed guidance on the conduct expected of all employees. In line with this recommendation, almost all the organisations that participated in this study have a code of ethics (21) or are planning to do so. Moreover, most of these codes were approved by the entities' governing bodies after 2015.

Beyond this apparent unity, however, there are several problems in the drafting, implementing and managing codes of ethics.

A particularly relevant aspect in the sphere of institutional public sector entities is to determine the relationship between the ethical codes of each entity, with the ethical codes approved in general by the Generalitat, with those specific to the owner administration and with the even more specific ones that may exist in the institutional entity that is the head of the group.

The codes of ethics approved by the Generalitat, such as the 2016 Code of Conduct for Senior Officials and Management Staff of the Administration of the Generalitat and its Public Sector Entities and the 2021 Code of Ethics of the Public Service of Catalonia, respectively, affect managers and employees of public corporations. Both texts have been drafted because they need to be complemented by more specific codes within each institution. Thus, the Code of Ethics of the Public Service only sets out values without developing specific rules of conduct. At the same time, the Code of Good Practice for Senior Officials is limited to very specific aspects, which certainly do not exhaust the number of existing ethical dilemmas. It is also common for institutional entities to follow the code of ethics of the owning administration; seven entities follow, for example, that of Barcelona City Council. These entities plan to adopt their code of ethics.

As can be seen, and in theory, there could be a ladder of ethical codes or a sort of "Russian dolls" game, which could be composed of up to four different elements: the ethical code common to the entire Catalan public sector, that of the owning administration, that of the "head" institutional entity of the group, and that of the specific organisation.

This is certainly not a satisfactory situation, as it reduces the clarity of the rules. A code of ethics should give details and examples and be adapted in the most specific way to the problems of an organisation. For this reason, the preferred code should be the one of each organisation, the closest one, and the rest should be applied in a subsidiary way in case there is no other code above it. A code of ethics is indicative rather than prescriptive and should relate to the institution's activities. This approach provides a context for action that facilitates the adoption of common criteria for public servants working in such a public organisation.

This proposal to have a single code of ethics is also set aside when, as is the case, for example, at Consorci Parc de Salut Mar, there is a Code of Ethics and a Code of Good Professional Practice with different areas of action. Moreover, within the same institution, a third code of good governance should be added to these two codes, binding on senior officers and managers.

On another note, the Style Guide of the Catalan Media Corporation is a good example of a valid code, close and adapted to the problems of the organisation, produced from the bottom up based on a debate among the organisation's members. This good practice can be seen in organisations that have considered employees' views in the Code's development. Also of interest is the existing model at the Consorci Parc de Salut Mar, where since 1991, there has been a Promotional Committee for the creation of a CEA made up of various professionals (doctors, nurses, social workers and non-healthcare staff) which draws up documents of good professional ethics practices, for cases of ethical conflicts, for example, and programmes training activities.

A code of ethics must be a living instrument. Organising workshops, seminars, or other spaces for dialogue is the most appropriate form of drafting. Still, it should be maintained throughout its life as a tool for reform and adaptation. The legitimacy of rules, also those about self-regulation, which is produced through

stakeholder participation, is one of the most effective ways to ensure obedience. The greater the participation, the less need to use disciplinary sanctions or any other coercive means to ensure the effective enforcement of the code of ethics.

However, dialogue or common spaces should not be the only possibility to comment on and raise problems concerning the interpretation or application of the code of ethics. Two types of practices could be established depending on the entities and their culture. The first was to set up a committee to consult individually on questions or problems. Several entities within our study have taken up this option. In the health sector, Consorci Parc Taulí and Consorci Parc de Salut Mar, for example, show the lively functioning of hospital ethics committees, where bioethical problems are constantly being discussed. A model that could be extended to other sectors.

In other types of entities, this function could also be performed by the compliance officer or compliance bodies, depending on the training and profile to be attributed to them. What should be clear in any case is that the code of ethics and its management are essential parts of the compliance system and cannot be understood and managed separately.

The second possibility is to establish a more tiered system, where the line manager would usually be the person with whom such problems are discussed. In the long run, this option may be the most efficient way to create a climate of dialogue. Within this second option, there could also be a code committee to ensure uniformity and drive reform. This committee could also be aligned with the compliance bodies.

These "channels" of communication of ethical problems should not be confused with the alert channels, which will be discussed below. It is very important to make it clear to its addressees and in the regulation of the compliance system that they are different tools with different legal frameworks. This is about raising concerns and not providing information on possible wrongdoing by third parties. Specific training is needed to instruct users when to use either route.

VIII. Alert channel

Alert channels are an essential element of any compliance or integrity programme. They are arguably one of its best indicators of effectiveness. The existence of alerts shows that members of the organisation are confident that the compliance system is not a dead letter. Otherwise, they would not risk reporting information relevant to the discovery of an irregularity. But the point is precisely to ensure that alerting is risk-free and that there are safe alternatives to silence.

The results of the 2022 Barometer of the Anti-Fraud Office of Catalonia identify as the main obstacles or obstacles to reporting, in this order, the difficulty of

obtaining proof, the ineffectiveness of the system (thinking that the perpetrator will not be punished, fear of reprisals and not knowing where to report).

Most entities have an alert channel, and all participants have shown a high sensitivity to this issue, which is demonstrated by the fact that almost all of them have provided specific training.

The most worrying aspect is the confusion that sometimes arises between alert channels, as understood by Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law and other communication channels or tools that may exist within an organisation, such as the ethical channels referred to above. An effort should be made to distinguish clearly between these different modes of information transmission. This does not mean they are incompatible with each other; on the contrary, they are complementary in pursuing different purposes and responding to different situations. Ethics mailboxes or channels are intended to raise doubts and questions about ethical dilemmas or compliance issues. They are not necessarily related to the existence of an infringement. Alert channels transmit information about a possible infringement and provide safeguards to avoid retaliation. Confusion between the two types of channels can cause serious damage since, as the Directive states, the protection it provides is reserved for whistleblowing channels, which, implemented following the Directive, channel information falls within its material scope.

The natural recipients of internal alert channels should be the entity's management and employees. Alongside this undisputed core, there is a debate as to whether third parties outside the organisation should also be able to use it. In institutional sector entities, as in any other organisation, there are processes where external third parties may have very valuable information, such as public tenders and personnel selection processes and applicants for the position. It is, therefore, important that those involved in these processes can use the channel while ensuring that the means of submitting the complaint is accessible to them (it cannot, for example, be an intranet). These people should also be given full information about this.

Directive 2019/1937, in this sense, extends its scope of application to any person working under the supervision and management of contractors, subcontractors and suppliers, to persons who have already completed their employment relationship with the entity and to those whose employment relationship has not yet begun, in cases where the information they communicate has been obtained during the selection process or pre-contractual negotiation (Article 4). In our study we found that a significant number of organisations, nine in particular, limit the alert channel to their employees, while a similar number allows it to be used by external third parties as well.

Most of the alert channels of the companies analysed allow anonymous reporting (11 companies). The main advantage of this configuration is, in theory, an improvement in detecting infringements. Furthermore, subjects will generally be less reluctant to use the channel if they do not have to provide their details, as this is the only way to ensure that they are genuinely protected from reprisals

or other consequences of their disclosure. According to the experience of the Anti-Fraud Office of Catalonia, anonymity encourages reporting (in quantity). It does not affect its quality, taking the plausibility filter as an indicator. However, anonymity also has some drawbacks: the ease of reporting could encourage false, revenge-motivated communications. A person who supports a piece of information with their name can give it greater credibility than someone who transmits it anonymously. Perhaps for this reason, 7 companies have decided to guarantee the whistleblower's confidentiality but not to accept anonymous reports.

The main problem encountered by alert channels and those who design and implement them is effectiveness, as is evident from the information provided by some entities. The transposition of the European Directive, recently operated by Law 2/2023 regulating the protection of persons reporting on regulatory breaches and the fight against corruption, will undoubtedly help to establish and strengthen the alerter's safeguards, which is a conditio sine qua non to ensure its effectiveness. Legal regulation of alert channels will not make domestic regulation unnecessary. Still, it will have the function of developing it and even providing additional safeguards. This need for regulation seems to have been perceived by most of the companies participating in the study. Of the 18 companies with an alert channel, 11 have developed a regulation for processing and investigating the information received through it. Most commonly, each entity has a specific internal regulation or protocol.

In addition to bringing the internal regulation of the whistleblowing channel in line with the legal framework established in the European Directive and future Spanish legislation, it is essential to undertake a series of strategies to increase its use, including specific and intensive training explaining the importance of alerts in the integrity system and its legal framework. This training should be particularly intensive in those positions which, according to the risk analysis, are considered to be key in detecting irregularities.

As many institutions do, it is important to allow several alternative channels for providing information (telematic, in writing, in person, etc.) to guarantee effectiveness so that the alerter can choose the one that is most convenient for them given the circumstances. It is clear from the study that communication of information via e-mail is the preferred method of communication.

It is also essential for the alert channels to be effective so that the people who have decided to alert perceive that the risk they have taken has not been in vain. This requires channel managers to report fully on their use of the information. As for the entities in our study that have received complaints, all have been investigated, or their contents have been forwarded to the relevant authorities. When members of the organisation become aware that their information matters and is taken seriously, the effectiveness of the alert channel increases.

Less decisive for the effectiveness of the internal channel is whether it is outsourced or its managers belong to the organisation. In our analysis, creating an internal channel managed by the organisation itself is the preferred option for most organisations, while only two have outsourced it. Both options have

advantages and disadvantages, so the choice depends on the characteristics of each entity. The outsourced internal channel may be particularly advisable in the early stages of implementing the compliance programme, where an internal channel managed by organisational managers may be perceived with mistrust.

Each organisation should have a single alert channel stating that the subject of complaints should be the code of ethics or any other infringement or irregularity. It is not appropriate, for example, to have different channels for reporting sexual harassment and other irregularities. Furthermore, as some compliance officers have pointed out, the plurality of channels for reporting infringements can confuse the addressees, who may not know which one to address.

The single alert channel should be shaped as an enforcement tool for the code of ethics. If done properly, it should contain normative guidelines on the main areas of legal risk for the entity, from sexual harassment to data protection to conflicts of interest or corruption. Very general allusions in describing the object of the complaint introduce a dose of insecurity.

One aspect that needs to be reflected upon is how to coordinate the proliferation of possible warning channels. As in the previous section on ethical codes, four different channels are ideally possible: that of the organisation, that of the parent institutional entity, that of the owning administration, and external channels, which can also be of different kinds: the Anti-Fraud Office, the National Markets Commission, etc.

When an organisation belonging to the institutional administration is a "subsidiary" of another body, there would be no problem if the "parent" organisation decided to have a single alert channel. This would be the best option if the "subsidiaries" have few employees. However, this will depend on how the Directive is transposed.

The relationship between these alert channels and those existing in the owning administration or other public entities is different. The fact that the alerter enjoys a kind of forum shopping is an advantage to be exploited for them to choose the one that is most appropriate in the circumstances. External channels (not to be confused with outsourced internal channels), such as anti-corruption agencies, are a good option for reporting allegations involving members of the owner-management, for example, when they try to influence the management of the institutional body. It is this type of external channel that can inspire the most confidence. On the other hand, the information received by an external channel can, in certain cases, be communicated, while maintaining confidentiality, to the managers or compliance officers of the institutional entity so that they can carry out the investigation and adopt the appropriate measures. The disadvantages arising from this plurality of channels must be addressed through training. One aspect that certainly needs to be addressed in programming is choosing the most appropriate alert channel.

IX. Dissemination and training

Training and awareness-raising are tools for the transformation of organisations. This is why the OECD, UNDOC, the EU, the Council of Europe and non-governmental organisations such as Transparency International place training at the heart of any plan to fight fraud and promote integrity.

As noted above, there are two different models of compliance, one based on controls set through internal procedures and the other that seeks compliance by developing a culture of legality and ethics. Most compliance programmes could be aligned with the ethical model at one end and the control model at the other. Well, training is an essential element in both models. So what happens is that, logically, the way it is taught and its contents are different in each case. This should be considered when shaping training programmes to combine both factors.

On the one hand, they must be trained in the various controls and procedures. On the other hand, it is also necessary to pay attention to ethical development. Members of the organisation should have information and training commensurate with their level of risk on whistleblowing channels, recruitment procedures, disciplinary sanctions, transparency obligations, conflicts of interest, etc...

Whatever the orientation of the training, for it to be effective, the following factors also need to be taken into account: that it is adapted to the job and the specific risks existing in each organisation; that the organisation's top management is directly involved in the training processes, especially in those that have to do with integrity; listening to and discussing ethical problems with the management and middle management is the best way to emphasise their importance; that it is carried out on an ongoing basis and takes into account legislative changes; it is no good to immerse oneself in an initial marathon at the start of the compliance programme or in the initial induction plan and then forget about it; that both the knowledge acquired and its effectiveness in the development of values are evaluated.

The modalities in which training takes place again depend on its objectives. Training in values should be face-to-face and organised through colloquiums or workshops that encourage dialogue and ethical debate. In contrast, training in procedures can be carried out online. However, the various compliance officers have noted the lack of motivation and saturation this type of training sometimes causes.

The analysis of cases through "inboxes", in which, for example, the resolution of mini-cases are proposed by e-mail, or the in-depth analysis of the most important cases from the point of view of risk analysis, supervised discussion forums, the creation of focus groups to analyse cross-cutting risks supervised by integrity and compliance experts are useful methodologies. The formation of "internal referents", people with prestige in authority, as catalysts of the training processes, especially in the aspect of ethical development, is effective due to the proximity and climate of trust generated.

Ethical and integrity training should be continuous, while procedurally or legally oriented training while accommodating changes, should have a certain periodicity. International institutions recommend that no more than two years should pass without contact with such subjects. Training should also occur at key career moments: integration, internal promotion and, if necessary, on leaving an organisation.

Most organisations that participated in this study have carried out training activities for their employees, managers and senior managers. However, many of them have yet to do so. Efforts should also be made to tailor training to the job and specific risks. It is surprising, for example, that many participants have not been trained in crimes against the administration of justice or the functioning of alert channels. It is particularly important to further strengthen training in ethics, conflict of interest or transparency. This type of training is often limited to senior managers. Training is condensed at the time of the induction plan, and online training predominates. In many entities, training is provided for two or more years. Evaluation of training is not frequent, neither on the level of user satisfaction nor on the level of knowledge or ethical development.

X. Participation of experts and third parties

The great leap forward in building compliance programmes is integrating third parties in their different phases: design, implementation and monitoring. Prevention and control can only be effective when independent persons are in place. Otherwise, there is a danger of merely formal or cosmetic compliance, which will hide the fact that the interests behind the misconduct are still dominant in the organisation. It may be thought that this situation does not occur as intensely in non-profit organisations or that they do not have as strong pressure for profit as private companies. However, the problems are similar.

The priority of the interests of the political formation that dominates the owner's administration, or simply the personal profit motive of its leaders, can predominate in such a way that the compliance programme is a mere mirage. For this reason, the involvement of independent third parties is necessary for an organisation to successfully perform the complicated task of self-monitoring and especially to have effective control measures for its top management.

We have previously addressed the need for independent oversight of all public sector entities and owner administrations. But third-party participation can also be articulated in other ways. In this regard, the first thing to do is distinguish between third-party experts' participation and stakeholders.

The involvement of experts in the organisations that have participated in this study has been predominant in developing the crime prevention model or code of ethics. From the interviews, it can be seen that there is a gradual evolution towards a more ad hoc use concerning various technical issues. This trend is correct. Regularly using technical compliance experts indicates a significant gap

in training the entity's compliance bodies. The external elaboration of compliance programmes should have a strong internal involvement of the institution's management. The involvement of experts from outside the institution, in collaboration with internal managers, is highly recommended during risk analysis.

The participation of groups affected by the entity's activity or its main recipients is different from the participation of outsiders, where the participation of employees should also be included. Its participation in the compliance programme gives it credibility and legitimacy. Compliance officers should consider their opinion by organising spaces for dialogue (forums, workshops, interviews, etc.) when, for example, assessing risks, drafting or reforming the code of ethics, assessing the effectiveness of measures, approving internal regulations that particularly affect them, etc.

Regarding external consultation, most companies and public institutional sector entities that have participated in the report still have some way to go. However, it is already possible to note that certain entities participating in this study have already involved employee representatives in approving their Code of Ethics. In some cases, this intervention continues in the ethics committee. In addition, other entities in the process of drafting the Code of Ethics, such as INCASOL, are also planning similar participation, which corresponds to what has already been indicated in the section on the Code of Ethics.

XI. Reaction to infringements

One of the requirements of a good organisational model set out in Art. 31 bis PC is that disciplinary sanctions are imposed in case of non-compliance with the model. In our case, this places us in two very different situations. Those institutions where their employees are civil servants have to apply the penal law for civil servants, which is part of the ius puniendi of the state, under national or regional laws. On the other hand, in the case of individuals belonging to commercial companies, the disciplinary regime will be provided for in the Workers' Statute.

Starting with the latter, the ideal situation is that breaches of organisational models or the code of ethics are expressly disclosed in the Collective Agreement. Although case law considers that a breach of a code of ethics can be considered an act of disobedience to orders emanating from the management capacity of the employer and therefore give rise to the imposition of disciplinary sanctions, it provides greater legal certainty that collective agreements expressly provide for breaches of the code of ethics and/or the compliance programme as grounds for disciplinary offences. Within our study, three organisations have correctly included breaches of the code of ethics in their collective bargaining agreement.

Outside this area, i.e. when dealing with public officials, the situation is that a breach of the code of ethics or the compliance programme cannot be sanctioned

unless it is expressly defined as a disciplinary offence. In general, and as indicated in Article 52 of the Basic Statute for Public Employees, codes of ethics and conduct should be used to interpret disciplinary offences while respecting the principle of criminalisation.

The situation is somewhat better in the administration of the Generalitat and the local authorities of Catalonia and, therefore, within the institutional entities of its public sector that we are dealing with. Law 19/2014, of 29 December, on transparency, access to public information and good governance states in Article 78.3 that It is a serious infringement to breach the principles of good conduct established by laws and codes of conduct. This provision concerns only senior managers and relates expressly to the Codes of Good Governance that have appeared in some organisations within our study. In the future, consideration should be given to whether it is appropriate to establish this different typology of codes, distinguishing between senior managers and other staff, or whether a single unitary code is preferable.

In any case, and despite what is indicated by the PC, the reaction to possible infringements does not always have to consist of the imposition of sanctions strictu sensu, and these must always be imposed under the principle of proportionality. For example, in the Corporació Catalana de Mitjans Audiovisuals framework, where there is a style guide, which serves as a code of ethics, it was expressly renounced to establish sanctions in case of non-compliance. In the face of an infringement, the aim is to appeal directly to conviction and commitment. In the case of minor offences, an intensification of training or other means of reinforcing values may be sufficient.

Beyond the imposition of sanctions, the reaction to infractions, especially when they generate some conflict, can consist of mediation, promoting the assumption of responsibilities, apologies and reparation. On this point, the apology protocol established by the Hospital del Mar, within the Consorci Parc de Salut Mar, is a very interesting example.

XII. Review, audit and evaluation

Article 31a of the Criminal Code states that the organisational models must be subject to periodic verification when relevant breaches of their provisions are revealed or when changes occur in the organisation, control structure or activity that make this necessary. This verification should not be confused with the monitoring of controls by the supervisory body referred to above. They are diverse and complementary. The review to which we now refer is a review carried out from within the system. It must be driven by those most responsible for it, i.e. the management body of the public institutional body and the administration that owns it.

In this internal review of the model, entities may use different professionals, depending on the parts of the prevention model to be reviewed. For example, in

the case of the rules of the code of ethics or code of conduct, the review is carried out by the bodies in charge of ethical management. However, an internal audit may be in charge when it comes to internal procedures and controls. In many of the entities in the study, this function is performed by auditing the owner's administration, which helps to exercise responsible stewardship.

Although entities that have long had integrity systems and ethical codes have a tradition of reviewing them regularly, as is the case with the Consorci del Parc del Mar, the entities that have set up compliance programmes as a result of the Criminal Code have not, with a few exceptions, carried out any review whatsoever. It has not even been established that a review has been carried out in cases with an infringement.

Reviews should not always be carried out to increase controls. Its aim should also be to uncover unnecessary controls and explore less burdensome control forms. The review involves the effectiveness assessment and is the most useful tool for tackling the bureaucratisation that compliance can lead to.

As suggested above, this activity should involve independent experts and stakeholders.

XIII. Transparency

Compliance with the obligations arising from the transparency rules should be considered a cross-cutting control in that it prevents many irregularities. So that, Brandais' famous phrase, "sunlight is the best of disinfectants", helps to prevent conflicts of interest, bribery, irregular appointments, embezzlement, illicit enrichment, price-fixing in public tenders, etc. Strict compliance with transparency regulations is a considerable step towards having a compliance and integrity plan in place, even if the entity in question does not have one.

In this regard, the first thing to note is that most organisations that have participated in this study, whether they are trading companies, public business entities or consortia, comply with the transparency rules. In this way, and in a similar way to what we indicated when talking about Codes of Ethics, which are also present in most organisations, the Catalan public business sector, regardless of the legal form it adopts, has already laid the foundations for more robust future integrity and compliance plans.

The basic regulations on transparency are state regulations. The function of the regional regulations is to complement them by extending, for example, the obligations of active disclosure for their obliged subjects or by establishing a sanctioning regime, as is precisely the case with the Catalan regulations. This, therefore, requires a joint reading of Law 19/2013 on transparency and the Catalan regulations contained in Law 19/2014, of 29 December, on transparency, access to public information and good governance and its regulations (Decree

8/2021, of 9 February, on Transparency and the right of access to public information).

In both texts, there are three types of obligations: active transparency - it is the obliged subject who must reveal, and make public, information on significant areas of action -; passive transparency - which is a citizen's right of access to information - and good governance, which refers to "the ethical principles and good practices following which senior officials of the Administration, managers and other personnel in the service of the Administration must act, to ensure that it functions with maximum transparency, quality and fairness, and with guaranteed accountability".

As has just been pointed out, the obligations arising from transparency regulations already positivise some controls that ensure compliance and integrity in public organisations. Thus, for example, within the obligations of active transparency, information must be provided on the remuneration (Article 11.1.b Law 19/2014), compensation and allowances of the directors of public corporations; likewise, and in line with what will be said later, the obligations of transparency are also very notable in all matters relating to public procurement processes (Article 13 Law 19/2014). In addition, from the obligations of good governance derives the need to have a code of conduct for senior officers, which, as we have already pointed out, should be integrated into the institution's more general code of ethics.

Therefore, due to the interrelationship between transparency and integrity, some of the recommendations made in this report should also be read as complements or specifications of transparency regulations. In some ways, it could be suggested that transparency obligations constitute, at the regulatory level, the spearhead of a broader set of integrity and compliance obligations for public entities. At the same time, the latter, as this report shows, are a matter of voluntary self-regulation by organisations or encouraged through strategies such as the criminal liability of legal persons in the case of public corporations, the legislator has made mandatory the internal measures that public organisations and other obliged subjects must adopt in the area of transparency, establishing, as usually happens in regulated self-regulation, a meta-regulation about them in the legal regulations.

Although on a normative level, the relationship between integrity and transparency is complimentary, on an organic level, it is advisable to go one step further to avoid falling into the trap of hyper-institutionalisation. It is not the purpose of this report to discuss the institutional relationship that should exist between the institutions in charge of transparency - state or autonomous - and those in charge of public integrity, although it is well known that in some countries such as Italy, there has been a merger between the two. However, whatever the solution to be adopted at this level, it is clear that it makes no sense to maintain parallel structures in individual organisations. Instead, transparency officers should be integrated into the integrity structure. Regarding active and passive transparency, those responsible within each integrity should be understood as responsible for a specific control within the integrity and compliance programmes. The same would apply, if any, to the stakeholder

register manager. As regards good governance obligations, and especially the management of the code of conduct for senior officers, these should be framed within the management of the institution's general code of conduct. Institutional unification within each organisation will provide greater strength and visibility to an area whose task, in the final analysis, is to serve compliance with the legality and ethical commitments of each entity.

Beyond these general issues, the study on transparency focused mainly on whether institutions complied with the obligations of active and passive transparency. In this area, they did not establish any restriction beyond what was provided for by law. As we have indicated above, compliance with these aspects is generalised, with only a slight failure to comply with the obligation to publish data in a reusable form (Article 16 and 17 Law 19/2014).

The probably weakest point concerns the publication of the agendas of high-ranking officials in the Catalan public sector and the register of interest groups, which according to a joint reading of Catalan and state regulations, is a legal obligation. Only slightly less than half of the organisations publish senior officials' agendas, and even fewer have a register of stakeholders. The main difficulty in complying with this obligation is technical. Still, doubts have also been detected about interpreting the legal framework. The information provided by the entities shows that they understand and assume the importance of transparency policies concerning the influence exercised by civil society and interest groups, in particular, in public decision-making processes, but that integrating them into their corporate culture requires overcoming various organisational obstacles: those related to the existence, provision and training of areas dedicated to the maintenance and preparation of information, liaison areas and web pages.

Transparency regulations are a preventive tool against possible irregularities. Still, it should also be noted that non-compliance can lead to various sanctions. In the first place and directly, the administrative sanctions contemplated in Article 74 ss Law 19/2014, but also indirectly, it can be subject to criminal sanction. On the one hand, and although the risk seems very hypothetical, an "excess of transparency" could give rise to the offence of disclosure of secrets (Article 415) or insider trading (Article 442). It is, therefore, important that those responsible for active transparency are well aware of the limits established for this obligation in national and regional regulations. Among the criminal risks derived from hindering access to information, in addition to a possible crime of prevarication, when it is carried out arbitrarily, it is worth highlighting Art. 542, which punishes with special disqualification from public employment or office for a period of one to four years the authority or public official who knowingly prevents a person from exercising other civic rights recognised by the Constitution and the Law.

Special mention should be made of the hitherto virtually unenforced Article 433 bis, introduced in the 2012 penal reform. Conceived as a guarantor of the transparency intended to endow the public sector, it constitutes the closing system of the criminal system in the area of embezzlement to ensure the integrity and completeness of public accounts. To this end, it punishes

misrepresentation in accounting and other documents that should reflect the financial situation of the entity or, in another variant, provides third parties with false information concerning the financial situation of the entity. As can be seen, this precept can appear about both active and passive transparency obligations in many cases. Article 435 PC establishes the criminal liability of legal persons concerning this offence, and the offence of embezzlement, which is particularly relevant in the case of public, commercial companies.

The regulations on active and passive transparency require compliance measures from the obliged public entities to ensure they are respected. To this end, it is recommended that public sector entities have a document entitled transparency policy. The intersection of state, regional and sometimes sectoral regulations, together with the soft administrative law coming from the transparency authorities, which occurs at this point, increases its complexity, which is why it would be advisable for each organisation to have an internal policy on transparency where it establishes regulatory aspects, which can be particularly complex. In addition to specifying each organisation's rules on active and passive transparency, the transparency policy should also set out, among other things:

— Those responsible for fulfilling transparency obligations and following the above-mentioned organic unification of transparency with integrity. Thus, the compliance officer must monitor compliance with transparency obligations on behalf of the management body. Logically, the transparency obligations of public business entities should be subject to the same attention as the other integrity obligations of the owning administration.

— The assessment and review of compliance with transparency obligations should be integrated as an aspect of the assessment and review of integrity and compliance measures with the requirements set out in the previous section. The same applies to training and dissemination.

— Consortia, as independent entities, must also have a transparency policy with their managers. Still, they are subject to the supervision of the administrations they report.

— Information relating to public procurement and subsidy processes, in connection with what will be indicated below (vid.).

— The policy on transparency should also set out how the diaries of senior officials are to be published, starting with establishing within each organisation which has this status. The indications offered by the Council for Transparency and Good Governance (especially Recommendation 1/2007 or the Interpretative Criteria CI/002/2016 of 5 July) contain clarifications that facilitate this task.

— Like the alert channel, passive transparency is also an important preventive mechanism. It enhances the sense of control of public decision-makers. It is, therefore, necessary that the passive transparency rights of citizens are indicated on the web pages where the information that the organisation must proactively provide is presented. The transparency officer of each entity

and, where appropriate, the compliance officer are responsible for advising on these rights and ensuring they are safeguarded within the organisation. Any obstruction should be brought to the attention of the management body and, where appropriate, the compliance officer of the owner-management. Obstruction, including unjustified delay, should be subject to disciplinary sanctions. In particular, those responsible for providing this information should be warned of the criminal liability they may incur under Art. 542 of the Penal Code.

Risk prevention in particular

I. Introduction

A compliance and integrity programme consists of some cross-cutting elements, referred to above, plus several elements that specifically address the main risk sectors of each organisation. These elements may therefore vary from one organisation to another. This study has focused on the areas we have identified as most common: conflict of interest, public procurement, recruitment and career development, and grant management.

II. Conflicts of interest[2]

There is no general legal definition of conflict of interest, either at a national or regional level. A sectorial definition, but one that describes its essential elements, is found in Article 64.2 of the Public Sector Contracts Act (LCSP): "…. the concept of conflict of interest shall cover at least any situation in which staff in the service of the contracting authority, who are also involved in the conduct of the tendering procedure or who may influence the outcome of the tendering procedure, have directly or indirectly a financial, economic or personal interest which might appear to compromise their impartiality or independence in the context of the tendering procedure". In state and regional legislation, the absence of a conflict of interest is an implicit requirement for the impartiality and objectivity of civil servants, as, for example, established in the Code of Ethics of the Public Service.

As pointed out by the OAC in its work on "The management of conflicts of interest in the public sector in Catalonia", given the partial and incomplete nature of the regulation, the existence of internal regulations that specify and clarify what a conflict of interest is, establish how to prevent it or, if it arises, manage it, is essential to offer clear behavioural guidelines and management tools. The need for a conflict of interest policy is also evident in the regulation of Next Generation Funds.

The notion of conflict of interest is framed in an agency relationship: between a principal and his representative, who is obliged to serve the principal's interests loyally. Within this relationship, a conflict arises when the agent has an interest that collides with the principal's interests. This interest may be apparent, potential or real. It is potential when, despite the existence of the conflict of

[2] The Anti-Fraud Office of Catalonia uses the expression "conflict of interest" instead of "conflict of interests" to emphasise the contrast between private interest and professional duty.

interest, the representative does not have to decide at that moment (future risk). It is real when they have to take it (current risk). Finally, it is apparent when the representative does not have an actual or potential conflict of interest. Still, someone could reasonably conclude that they do (reputational risk).

Conflicts of interest may already exist at the time of acceptance of the representative's office or during the exercise of the representative's office. Its appearance can be intentional or fortuitous when the representative consciously places himself in this situation. Since conflicts of interest are risk situations, not per se irregular situations, preventive action can be taken. The prevention of conflict of interest should preserve the appearance of impartiality and objectivity of public officials and also cover situations where this might "appear" to be compromised.

Self-regulation of public sector business organisations must start from the premise that conflict of interest is an alternative modality to corruption in affecting the impartiality of public officials and creating similar risks of misuse of power. When the mismanaged conflict of interest occurs in persons who have to take decisions of economic content on assets they administer on their principal's behalf, the shadow of unfair administration or, in our case, embezzlement of public funds appears. When other types of decisions are to be taken, that may influence a decision or a procedure, and there is a risk of taking unlawful decisions or directly incurring criminal offences such as prevarication.

Despite the proximity between conflict of interest and corruption - understood in a broad sense - criminal law punishes the latter more harshly because it is considered more dangerous. The different level of danger stems from the fact that conflict of interest can be more easily prevented and must be properly managed once it occurs and that it is not always intentional.

The self-regulation of conflicts of interest in public organisations should take into account the organisational difficulties and obstacles that may exist in each organisation that hinder the identification and detection of these situations, and the underestimation of conflicts of interest, especially potential and apparent conflicts, and the individual psychological barriers that prevent us from detecting and dealing with them, especially the cognitive biases identified by the behavioural sciences.

Compliance requires the implementation of three types of measures. The first is a clear, entity-specific definition of a conflict of interest, accompanied by examples that refer to scenarios that may arise in the organisation. The second are tools aimed at preventing and detecting conflict of interest. Of course, training in this area is one of them. Still, it should be complemented by others, such as public declarations of interest before accepting office or the obligation to disclose as soon as possible conflicts of interest may arise after they have arisen. These declarations, which are usually legally binding on senior management, should be extended to all organisation members, including third-party collaborators. A preliminary risk analysis on this matter should determine its scope, and procedures should, of course, be put in place to verify the data provided.

Finally, and thirdly, once the conflict has been detected, the question is how to manage it. In reality, once detected, the focus is on the decision-maker in the conflict of interest situation, which is why its danger decreases once it has become transparent. However, in certain situations, their abstention should be required, or provision should be made for removing them from office, either momentarily if the conflict is a one-off or permanently if it is not.

Conflict of interest regulation is often not part of corporate compliance programmes. However, within our study, a good number of public bodies - 14 - are aware of the particular importance of this integrity risk and have adopted specific policies, in many cases defined in their code of ethics. Beyond this first element, others have a specific protocol for dealing with conflicts of interest. Given the special importance of conflicts of interest in public procurement and under the existing provisions in the LCSP, some entities have specific protocols for regulating conflicts of interest in this area. There are also cases in which disciplinary proceedings have already been carried out due to non-compliance.

As noted above, conflict of interest and anti-corruption policies are adjacent, complementary matters. It is important to highlight the fact that virtually all entities - 21 - have a gift policy, which is usually based on two elements: the establishment of a quantitative limit that cannot be exceeded - between 50 and 100 euros depending on the entities - and a register of gifts that requires disclosure of their receipt. For senior officials, the receipt of gifts should be made public on the transparency portal.

Despite undoubted progress, a major effort must be made in most companies and public sector entities, especially given the importance of conflict of interest regulation for the receipt of Next Generation Funds.

III. Irregularities in recruitment

Public procurement is undoubtedly the activity that generates the greatest risks, as shown by the OECD and the European Parliament, but also by the analyses of risks in public procurement of the entities that participated in our study. Particularly valuable in this area is the Anti-Fraud Office's working documents and Guide on Risks in Public Procurement(in catalan), which identifies, for example, the "twelve points" with the highest risks within the process, and the various risk factors that increase the likelihood of irregularities.

In a cross-sectional study, such as this one, it was not possible to carry out an exhaustive analysis, so we focused on some issues that we considered essential concerning integrity risks; specifically, these were the aspects analysed:

1. the need for recruitment to be carried out by persons with a high level of specialisation;

2. contractual advertising, to give the greatest possible transparency to contracting processes, going beyond what is established in Article 63 of the Public Sector Contracts Act (LCSP); it is especially necessary, for example, to increase transparency regarding contractual execution and the prior phase of justification of the need for the contract;

3. controlling the splitting of contracts to avoid exceeding the thresholds foreseen in Article 118 of the LCSP and thus using the procedures for smaller contracts, which are more opaque and therefore more likely to be used inappropriately;

4. the control of risk factors that occur during the execution of contracts, such as deficient management of incidents and non-compliance, the guarantees that must exist to ensure correct reception and the mechanisms for demanding responsibility under the provisions of Article 62 of the LCSP concerning the figure of the person responsible for the contract, who from the point of view of regulatory compliance represents a true owner of the control;

5. including integrity or anti-corruption clauses following the provisions of Article 202 LCSP, which establishes the obligation to impose in the contract special performance conditions of an economic, social, ethical, environmental or any other nature that both the successful bidders and the subcontractors have to comply with (vid. Instruction of 23 December 2021 of the State Procurement Advisory Board on aspects to be included in the files and specifications governing contracts to be financed with funds from the Recovery, Transformation and Resilience Plan).

Compliance with these basic requirements to avoid corruption and irregularities in procurement procedures is uneven. Most entities that participated in the study indicated that the people in charge of managing recruitment have a professional and specialised profile in the field. As regards the second objective, contractual advertising, the achievements are lower: only eight entities do so. Most of them limit themselves to publishing the minimum legally required information without applying it to other relevant aspects or documents such as those mentioned above. Regarding minor procurement, the figures, with data relating to 2019, range depending on the entities between 10% and 58% of procurement. However, entities with a high volume of small procurements are trying to adopt measures to reduce it, such as planning, grouping several small procurements into a single contract and/or advertising small procurements above €5,000.

IV. Recruitment and career development

We have already noted that professionalisation was one of the main objectives in the good governance of public sector entities, which should leave aside purely political profiles. This objective must be established in selecting directors, senior management, and other professionals. Good recruitment and career development procedures are necessary to achieve it. This is important because it

improves the organisation's effectiveness and is the best antidote to influence peddling and other irregular practices, which are easier to carry out when political profiles are scattered throughout the various levels of public sector entities. Logically, this professionalisation must also extend to promotion and mobility criteria.

The responses of the entities that participated in the survey show a clear contrast between management positions and the recruitment of other staff. In the latter case, except for two entities, a selection process based on a public call for applications is almost unanimously followed; a slightly smaller number also follow this procedure in the case of managers. On the other hand, there is a public call for applications in only five cases concerning the recruitment of senior officials.

Of course, the objective of professionalisation does not require eliminating political appointments from the outset. Still, it does require reducing them to those cases where such a profile is justified and requires a professional connection to the activity entrusted to it. It is also desirable to have a selection process that ensures the motivation of the appointment and includes an independent evaluation process.

Establish a reasoned procedure where candidates are subject to an independent evaluation process. In a previous section, we noted the good practice in some entities for appointing independent directors. The progress towards professionalisation, seen from these data, can also be observed in the method followed in the selection process. At this point, however, the atomisation that exists in the institutional public sector concerning the bodies with the capacity to promote and manage the selection and the consequent disparity of criteria, mechanisms and divergent methodologies that this generates should be underlined with concern.

All entities apply professional assessment and accreditation tools to select any post and entrust the selection and filling of the post to an impartial technical body. In the case of hiring managers, as 19 entities already do, this practice reinforces the impartiality intended to be achieved through the public call for applications; in two entities, this procedure is followed to appoint senior officials.

V. Grant management

The risks for a grant-giving body are different for the applicant than for the grant-giver, which is why the prevention strategies are also different. In our study, few public business entities and commercial companies grant subsidies; on the other hand, most of them are beneficiaries of public subsidies, which is why we will start with this point. The implementation of assistance under the Recovery and Resilience Mechanism Funds also significantly increases the occurrence of this type of irregular behaviour.

The offences of subsidy fraud and participation in embezzlement form the main criminal risk for state corporate entities, commercial companies, and their leaders as beneficiaries. In the case of commercial companies, both offences establish the liability of legal persons. It is not unusual for other crimes, such as bribery, influence peddling, fraud, false documentation, etc., to appear in these cases. For this reason, and moving on to the preventive level, anti-corruption measures should take into account, as a risk activity, establishing specific controls in this respect, the activity of applying for and executing public subsidies.

As far as the granting of subsidies is concerned, the leading criminal risk is the offence of misappropriation of public funds. For these purposes, it makes no difference whether the funds are held by entities subject to private law (as admitted by Disp. Ad. 26TH LGS). According to the ATS 25-5-2017, embezzlement can also be assessed concerning "assets, effects, funds or any other assets of any kind that form part of the assets of commercial companies in which the State or other public administrations or bodies have a stake" provided that certain conditions are met concerning certain aspects such as the public participation of the companies, the provision of public services, their subjection to mechanisms of control, inspection, intervention or public oversight, or the high level of subsidies received. Likewise, it is not impeditive that the person who has the power to dispose of the funds is not a civil servant in the administrative sense, as is derived from the criminal concept of the civil servant (Article 24 PC) and from the extension of the scope of application of the so-called "improper" embezzlement (Article 435 PC) to those who "are in charge of funds, income or effects of the public administrations in any way". In addition to the previous offence, the offence of prevarication (Article 404 CP) could also be considered in cases of arbitrary granting of subsidies (arts. 9.4 and 25 LGS) as a decisive action on the merits of the case with an impact on the rights of the persons administered. This is not the case for other decisions that may be adopted throughout the entire process and that do not meet the above requirements, such as the act of approval of the regulatory bases (Article 9.2, 17 LGS) or the expenditure [Article 9.4, e) LGS].

Public business entities and trading companies, whether as concessionaires or as beneficiaries of subsidies, rely on preventing such behaviour in compliance with the regulations established in each subsidy and the precepts of the General Subsidies Act and on transversal control elements such as transparency regulations.

In this respect, it should be noted that the recent Law 31/2022 on the general State budget has significantly changed, increasing the obligations of preventive self-regulation that concessionaires must comply with. About the activity of granting public subsidies and supervising their implementation, the new text aims to make the administration responsible for the legality and effectiveness of public subsidies.

Indeed, the original wording of the LGS modulated or even allowed for the exclusion from its application of subsidies granted by foundations and public business sector entities. The 2015 reform did not significantly alter this

possibility. The current wording of Law 31 /2022, as has just been pointed out, opts for placing the control activity in the hands of the owner's administration. The 16th Additional Provision, which in conjunction with Articles 3.2 and 4 d) of the LGS, regulates this issue and requires that public sector entities may only grant public subsidies when, in our case, the owning administration expressly authorises it utilizing a resolution of its governing body. The owner administration is also responsible for the approval of the regulatory bases, the prior authorisation of the concession, the functions derived from the demand for reimbursement and the imposition of sanctions, and the control functions and others that involve the exercise of administrative powers.

Following these functions, the owner's administration is also responsible for approving the strategic subsidy plan referred to in article 8.1 of the LGS after the reform. Strategic plans, hitherto a preventive measure based on self-regulation and voluntary, are a prerequisite for any public body granting subsidies. Before approving the specific subsidies, a strategic plan must be approved, which must specify the objectives and intended effects of their implementation, the time required to achieve them, the foreseeable costs and their sources of financing, subject in all cases to compliance with budgetary stability objectives. Subsequently, the regulatory bases of each grant should reference it, indicating how it contributes to achieving its objectives. Where a subsidy is established outside the programme's objectives, its need and how it affects the achievement of the programme's objectives must be explicitly justified.

In line with the new responsibilities of the owning administrations, they should also publish guidelines on how to justify the expenditure, which not only helps the beneficiaries of the subsidy but also increases the transparency of the management.

Of course, the owner administration may delegate the granting and control of subsidies and aid to commercial companies or public entities. Still, under the legal policy line established by Law 31/2022, it is up to the owner administration to specify how these activities are to be carried out and to provide, for example, the necessary training measures. At this point, it would be advisable to establish internal procedures that assign management, control and payment functions to different departments, which must be adhered to.

In accordance with the leading role of the owner's administration, and given that it has the power to impose sanctions, its alert channels should play a leading role.

But as noted at the beginning of this section, quantitatively, the main risk of the public and corporate sectors lies in the receipt of public subsidies. The preventive measures at this stage revolve around ensuring that the information that reaches the granting and administering administration is accurate and complete. Infringement of this duty of truthfulness is at the heart of most of the conduct sanctioned, whether administratively or criminally - fraud or subsidy fraud may be applicable. These duties of truthfulness must be fulfilled throughout the entire relationship with the administration from the moment of application to the moment of granting. It is also a duty of truthfulness that is not

formal and passive but substantial and active, in the sense that any event affecting the purpose of the grant must be reported.

As a general rule, the rules granting subsidies already provide for several mechanisms to ensure their proper use and justification. However, beyond this aspect, establishing an internal procedure for grant management would be necessary - and essential. A department or person independent of the one requesting or disposing of the funds shall verify the accuracy and completeness of the information provided to the granting administration.

Recommendations

1. General issues

1. These recommendations are addressed to all public corporations in the institutional public sector in Catalonia, whether incorporated under mercantile legislation or created by law, provided that they participate in the market by offering goods and services.

2. Compliance and integrity programmes shall be based on a culture of legality promoting ethical values. They shall have adequate internal controls and procedures to ensure compliance with legal or voluntary obligations undertaken by public corporations.

3. Compliance programmes shall set out measures proportionate to the risks of non-compliance. To assess the risk of non-compliance, the probability of this type of behaviour appearing in the activities carried out by the organisation, and the damage that its appearance may cause to the entity and society shall be considered.

4. The compliance programme should cover all types of risks; as a general rule, it is not recommended to have organisational models that only partially address specific risks, such as criminal risks in particular.

2. Regulatory compliance of owner administrations

5. Public administrations, before the creation of a public corporation or any other organisation belonging to the institutional administration, must draw up a report justifying its creation, primarily pointing out why its functions cannot be carried out by the public administration or by another already existing entity (go beyond what is stated in the Law on the legal regime of the public sector).

   Once created, the owning administration will periodically justify the need for them.

6. The owning administration, which exercises control in any way over a public undertaking (1), will act as an active and informed owner, which requires a compliance programme to ensure the integrity of the management of the subsidiaries.

This programme should have at least the following elements:

6.1. A procedure for appointing senior officials that ensures a choice based on professional criteria and preferably uses an open selection process.

Professionalisation does not require eliminating political appointments from the outset. Still, it does require reducing them to those cases where such a profile is justified and requires a professional connection to the activity entrusted to it. It is also necessary to have a recruitment and selection process that guarantees the motivation of the appointment and includes an independent competency assessment process. The collaboration of selection bodies with external and cross-cutting bodies can help to make the selection process more objective. In Catalonia, for example, the Escola d'Administració Pública. The curricula vitae of managers and senior officials of public corporations shall be made public.

The terms of office should be longer than four years, and the grounds for termination should be specified.

6.2. A policy on the remuneration of directors of public corporations and other institutional entities.

6.3. Establish career guidelines within the organisation based on the individualised and external evaluation of the activity.

6.4. The prohibition of undue interference in the management of the public corporation through any behaviour, mainly when it affects decisions with economic content.

6.5. Annual compliance risk assessment of SOEs and institutional entities. The management body of the owner's administration (e.g. plenary) should be informed of this analysis.

6.6. Annually, the management body of the owning administration shall draw up an integrity policy for all subsidiaries, indicating the risks to be prioritised and the objectives to be met concerning each of them (controls to be introduced, training plans, etc.) and the budgetary measures to be adopted. This annual integrity policy shall be published on the website of the owning administration in a prominent place.

6.7. Owning administrations will have an independent monitor with autonomous powers of initiative and control to supervise the adequacy of the compliance programmes of SOEs and institutional entities. It shall periodically report to the management body of the owner-management on its effectiveness and suitability. This body will pay special attention to the control measures affecting senior officials of the owner administration and the dependent entities.

6.8. The compliance officers of the dependent entities shall regularly report to the compliance officers of the owning administrations on how they are meeting these objectives and, in general, on developing their compliance programmes.

3. Attribution of compliance responsibilities

7. Irrespective of the role to be played by the management bodies of the owner administrations (vid. 6), the governing body of state commercial companies or other institutional sector entities shall be responsible for designing, implementing and supervising within their organisation a compliance programme with the characteristics indicated above (see points 2-4).

   Annually publish a compliance plan outlining the main risks to be addressed and the control measures to be implemented, with a forecast of the funds needed to carry them out. This annual plan will also assess the degree to which the objectives set for the previous year have been achieved.

   The board of directors shall be informed of the entity's principal risks.

8. Where necessary, given the institution's size, there shall be a compliance programme oversight body independent of the management body and acting in coordination with that provided for in point 6.6. In public corporations and smaller entities, the monitor may carry out this task independently of the owning administration.

   The supervisory body shall have rules of procedure governing its operation.

9. Each public, corporation and organisation of the institutional administration will have a compliance officer who, with a power delegated by the board of directors, will supervise the correct implementation of the compliance measures, ensure their correct execution, design the training plans deemed necessary and, in general, carry out as many functions as necessary to ensure the correct functioning of the compliance programme in the day-to-day running of the organisation.

   The board of directors is responsible for ensuring that the compliance officer is adequately trained, experienced and empowered to carry out their duties.

10. The compliance officer shall be placed within the organisation's hierarchy in a position of sufficient authority and autonomy.

11. The compliance officer shall report periodically on his activity to the institution's management body or one of its members or on an ad hoc basis when a significant event occurs.

12. When an organisation belonging to the institutional public sector has, in turn, created another entity dependent on it, it shall coordinate both

compliance programmes, bearing in mind the coordination measures that the owning administration has already adopted (Vid. point 6).

4. Risk analysis

13. Each of the company's activities or procedures must be subject to risk analysis. It is necessary to analyse the risks of the different sections and departments of the entity, particularly the risks posed by each management position and those arising from interactions with the owner-management.

    The risk analysis should cover the full range of the entity's potential non-compliance and not be limited to criminal risks.

14. As we have seen, it is up to the management body to prioritise the risks for treatment annually (point 7).

15. A review of the risk analysis must be carried out at least every two years and whenever relevant changes in the organisation's activity or regulatory modifications affect it in a relevant way.

16. Risk analysis should involve independent experts and specialists in the types of risks concerning the institution in collaboration with internal teams.

5. Ethical codes

17. The governing bodies of SOEs and other institutional public sector entities should develop, implement and communicate internal codes of ethics or conduct. These texts should set out the values of each institution and translate them into clear rules of conduct, which, under the risk analysis, respond to the organisation's main compliance issues.

18. Each organisation's code should be consistent with any more general codes of ethics, whether general, from the administration that owns the organisation or from the public institutional body to which the organisation reports.

19. The organisation of workshops, seminars or other spaces for dialogue are the most appropriate way of drafting a code and should be maintained throughout its life as a tool for reform, adaptation and training.

    The involvement of employees and stakeholders legitimises the contents of the code of ethics and contributes to increasing voluntary compliance.

20. Other channels should also be created for raising questions concerning interpreting or applying the code of ethics. For example, consultation with

superiors, creating a specific committee, and consultation with the compliance officer are various alternatives organisations can use.

6. Alert channels

21. The safeguards of EU Directive 2019/1937 on the protection of whistleblowers should serve as a frame of reference in the internal regulation of whistleblower channels. As we are within the public administration, its provisions may have a direct effect once the transposition period has elapsed.

22. Owning administrations should have a complaints channel open to employees, suppliers, former employees, bidders and job applicants of the institutional administration entities under their control.

23. The alert channel should be unique, and it should be possible to report any irregularity affecting the company. The code of ethics or conduct should preferably be their frame of reference.

24. Training on using the alert channel, its legal framework and safeguards is essential to ensure effectiveness. This training should include how to strategically use the various alert channels available to the whistleblower. Training will be more intensive at critical checkpoints for the detection of irregularities.

7. Dissemination and training

25. Compliance training has two objectives: ethical development and internalisation of the values on which the organisation is based and information about the elements of the compliance programme and the regulations that affect the organisation.

26. Training plans must be adapted to the specific risks existing in each workplace and continuously evaluated in terms of their effectiveness and the knowledge acquired.

27. The top management of the institutional body and the owning administration should frequently be involved in the training processes.

8. Legitimacy of the compliance programme

28. Public enterprises and institutional public sector entities should involve experts in risk analysis.

29. Employees, directly and through their union representatives, and stakeholders should be involved in developing, implementing and reviewing the compliance programme concerning those risks that directly concern them.

9. Reaction to infringements

30. Imposing disciplinary sanctions are necessary to ensure compliance programmes' effectiveness.

This does not imply, however, that every infringement should automatically lead to a sanction. The sanctioning regime needs to respect the principle of proportionality and establish accountability mechanisms other than the imposition of sanctions, such as apologies.

31. The legal certainty of disciplinary sanctions imposed on employees would be enhanced if collective agreements expressly provide that breaches of the provisions of the compliance programme can be subject to disciplinary sanctions.

10. Review and evaluation

32. The review of the compliance programme regularly or when there have been changes in the law in the activity of the entity or its governing bodies is essential for the effectiveness of the compliance programme.

33. Those responsible for the compliance programme, the management body of the public institutional entity and the owning administration are responsible for driving the review. The review is an internal process in which experts and stakeholders should be involved if necessary.

34. The purpose of the review is to assess the effectiveness of the controls to, where necessary, remove or modify them so that they are proportionate to the risk involved in each activity.

11. Transparency

35. The obligations arising from transparency regulations are essential to compliance and integrity programmes, so it is important not to create parallel structures within organisations with different responsibilities. The governing bodies of the owning administrations must promote and monitor compliance under recommendations 5 and 6.

36. A transparency policy integrated within compliance and integrity provides greater legal certainty and a more precise and detailed understanding of the entity's obligations. The transparency policy shall set out the responsibilities within the organisation, clearly identifying the bodies and persons required to provide information. It will also specify the obligations of transparency in public procurement and subsidies, agreements or any other instrument that establishes the granting of public funds (see the above recommendations...).

    Agendas, trips and gifts received by senior officials and similar persons must also necessarily be published. The contents of Recommendation 1/2007 of the Council for Transparency and Good Governance should be taken as a model to follow.

37. Transparency officers should ensure that the information provided is consistent, complete and reusable. It shall ensure the quality and proper functioning of the website.

38. The website of the public business entity and the parent entity should inform about the right of citizens to request information and the procedure to do so. It is the responsibility of those responsible for integrity and transparency to ensure this right.

39. Entities must have a register of requests, indicating both those that have been considered and those that have been rejected, and the deadlines for response

40. Non-compliance with transparency regulations generates the risk of criminal sanctions for commercial companies and their administrators and administrative sanctions for other public entities. In the meantime, external technical assistance should be sought to design and implement transparency portals and resolve requests for access to public information, especially in cases of refusal or limitation of access.

12. Conflict of interest

41. Due to the scarce, and in any case incomplete and partial, legal regulation of conflicts of interest, it is necessary for all public sector institutional entities to have a definition of conflict of interest adapted to their characteristics in their code of ethics or a specific policy.

    This definition must be complemented by a comprehensive catalogue of examples showing the situations in which conflicts of interest may arise and how to act in each case.

42. The regulation of conflict of interest and the resulting duties to act must be extended to all organisation members and third parties collaborating to perform essential tasks. It should be indicated what the obligation to disclose the conflict consists of, when the duty to abstain is applicable, and the

procedure to be adopted, if any, to challenge it. Conflict of interest management measures should be proportionate to the actual, potential or apparent nature of the conflict of interest and the significance of the risk of the misuse of power.

43. Training is essential to ensure the effectiveness of conflict of interest regulation.

13. Irregularities in public procurement

44. The professionalisation, specialisation and continuous training of the people involved in the recruitment process must be ensured. Otherwise, there is a significant malpractice risk, including, most importantly, excessive bureaucratisation.

45. While all internal controls must be proportionate to the risk, particular care must be taken in the area of public procurement to not affect the organisation's functioning.

46. Transparency should extend to issues such as the necessity of the procurement and special incidents during the life of the contract, especially those occurring during the execution phase, in particular, non-performance and subcontracting

47. Small contracts, above a threshold to be established by each organisation, must be published, accompanied by a justification report indicating the required service characteristics. The annual procurement planning identifies recurrent needs that can be excluded in this way from the procurement of minor procurement. Where it is considered proportionate, concurrence in small procurement should be encouraged because of the risk.

14. Public subsidies

48. The managing directors who own commercial companies are primarily responsible for ensuring that the subsidies and grants they provide achieve the purpose of the subsidy.

Acting as an informed and responsible owner-manager in this regard requires: (a) include the subsidies granted by its subsidiaries in its strategic subsidy plans or, where appropriate, in a specific plan; (b) its governing body must authorise in advance each of the lines of subsidies or aid granted under this strategic plan and establish the regulatory bases for the subsidy, in which the provisions of the LGS must necessarily be applied; (c) the governing body must expressly justify the establishment of subsidies or aid outside the strategic plan.

The owning administration should also publish guidance on how to justify the expenditure,

49. The governing body's authorisation shall also describe how the public corporation is to supervise. Those responsible for the owner's administration should be informed promptly of any irregularities. The alert channels of the owner administrations should always allow information on this type of irregularities.

50. The commercial companies and business entities receiving public subsidies shall establish internal protocols to ensure that the information they provide to the entities receiving subsidies, from the time of application to the final justification, is complete and truthful. They must spontaneously report any incident that significantly affects the purpose of the grant. A department or person independent of the one requesting or disposing of the funds shall verify the accuracy and completeness of the information provided to the granting administration.

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