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ESG and Capital Markets Department

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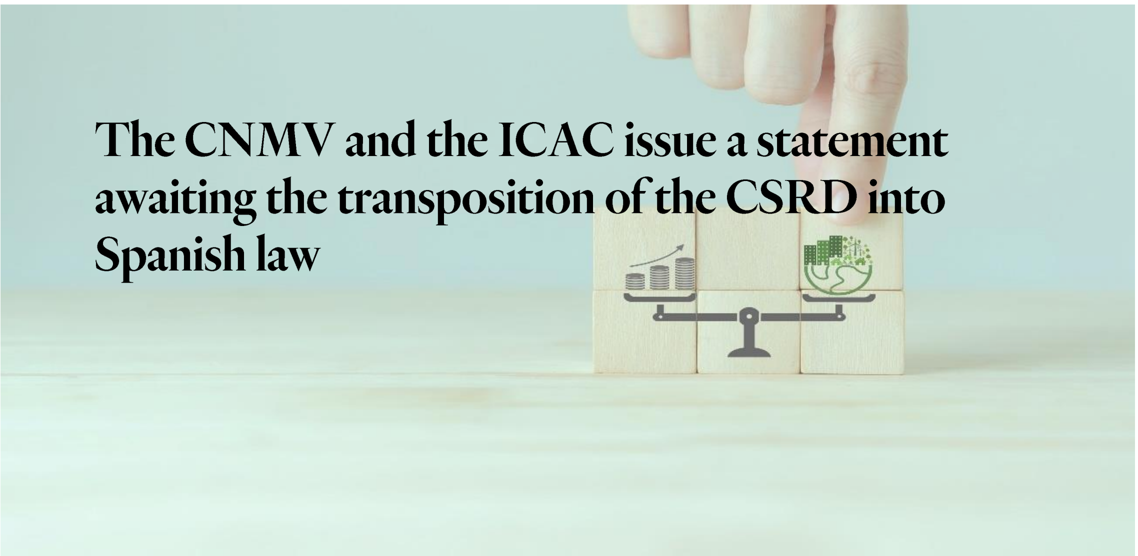

The CNMV and the ICAC issue a statement awaiting the transposition of the CSRD into Spanish law

Directive (EU) 2022/2464 on Corporate Sustainability Reporting (CSRD) should have been transposed into Spanish law before 6 July 2024; given the possibility that it will not be transposed before the end of the year and given that the CSRD entered into force on 1 January 2024, there are reasonable doubts as to how to proceed if it is not transposed before the end of the year. That is why, in the absence of news about a possible transposition, the CNMV and the ICAC have taken the initiative and warned companies about their publication obligations, even if the transposition into Spanish law is delayed.

Publication and compliance obligations are becoming increasingly important in the context of European regulation, and this is even more so when it comes to sustainability.

The Comisión Nacional del Mercado de Valores (CNMV) and the Instituto de Contabilidad y Auditoría de Cuentas (ICAC) have published a joint statement in view of the possible non-transposition of the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD) and the European Sustainability Reporting Standards (ESRS) into Spanish law by 31 December 2024.

The CSRD replaces the previous Directive (EU) 2014/95/EU of 22 October, which introduced the obligation to include in the management report a statement of non-financial information (NFI) on environmental and social issues, as well as on personnel, respect for human rights and the fight against corruption and bribery.

The main considerations of this statement:

- Companies and their verifiers are advised, even if the CSRD is not transposed into Spanish law in time, to prepare their annual sustainability report as of 1 January 2025 in accordance with the CSRD and the ESRS.
- The CSRD broadens its scope compared to Law 11/2018, affecting:
    - **Large companies and groups of companies**: the Directive applies to all large companies. A large company is considered to be a large company if, for two consecutive financial years, at the end of each financial year, it meets at least two of the following criteria:
        - total asset items exceeding EUR 25 million; or
        - an annual net turnover exceeding EUR 50 million; or
        - average number of employees during the financial year exceeds 250.
    - **Small and Medium-sized Enterprises issuing listed securities:** SMEs that have issued securities admitted to trading on regulated secondary markets in the European Union are within the scope of application.

      Micro-enterprises, defined as those that meet, for two consecutive financial years, at least two of the following circumstances, are excluded:
        - total asset items not exceeding EUR 475,000; or
        - an annual net turnover not exceeding EUR 900,000; or
        - average number of employees during the financial year not exceeding 10.
    - **Insurance undertakings and credit institutions:** Irrespective of their size and legal form, these entities fall within the scope of application. This includes small and non-complex credit institutions and captive insurance and reinsurance undertakings, which may submit an abridged sustainability report.
    - **EU subsidiaries or branches with a parent company outside the EU:** This includes subsidiaries and branches in the EU of companies whose parent company is outside the EU and whose legal form is a public limited company,

a limited joint-stock company or a limited liability company. Exceptions are those that are included in the consolidated report of the parent company and that comply with the relevant disclosure requirements.

- The statement seeks to ensure the comparability of the reports published in Spain with those of the rest of the European Union and thus correctly assess the developments made in recent years. To this end, the new regulation:
  - It requires the sustainability report to be clearly identified in a specific section of the Management Report.
  - It defines "sustainability issues" as environmental, social, human rights and governance factors, including information related to personnel, anti-corruption and anti-bribery.
  - Requires submission of the report in electronic format to facilitate *machine readability* and comparability.
  - Specifies the content to be contained in the sustainability report, which shall be differentiated among those to be submitted:
    - **SMEs, small and non-complex credit institutions and captive insurance and reinsurance undertakings**: They may submit an abridged report.
    - **Parent companies in third countries:** Must follow specific standards for their sustainability reporting.
    - **Other companies:** They will have to follow the new common model, which will include, among other aspects:
      1. Identification and Resilience Strategies for sustainability-related risks and key group dependencies and opportunities, with financial plans and investments to ensure a sustainable economy and limit global warming to 1.5°C.
      2. Sustainability Objectives with time horizon, monitoring and scientific backing.
      3. Identification of management body staff with sustainability expertise and skills. As well as incentive schemes linked to sustainability issues.
      4. Group policies in relation to sustainability issues, identifying actual or potential negative effects and measures to prevent, mitigate or remedy them.
      5. Sustainability Due Diligence Procedure.
      6. Specific and Relevant Indicators reflecting the impacts of the entity on the different sustainability issues.
- When drafting the Sustainability Report based on the CSRD and following the ESRS, it should be carefully assessed that the report continues to comply with the requirements of the current Law 11/2018, as there are transitional provisions

and specific breakdowns not expressly covered by the ESRS. For example, companies should ensure that they include:

    - **Tax information:** Profits earned on a country-by-country basis, profit taxes paid and public subsidies received.
    - **Employment information:** Total number and distribution of employees by gender, age, country and occupational classification; total number and distribution of types of agreement; average number of dismissals by gender, age and occupational classification, among others.

- Given that Law 11/2018 already established the obligation to verify by an independent verifier the content of the EINF, but did not indicate who could carry out this verification, nor the rules for its performance, nor its scope, until the ICAC's technical verification standard is approved, it is recommended that this verification be carried out by an independent third party taking into account:
    - The guidelines issued by the Commission of European Auditors' Oversight Bodies (CEAOB) on 30 September 2024.
    - The international standard ISSA 5000 issued by the International Auditing and Assurance Standards Board (IAASB) *"General Requirements for Assurance Engagements on Sustainability"*, approved on 12 November 2024.

In summary, from 1 January 2025, and until the regulations transposing the CSRD are published and come into force, the CNMV and the ICAC recommend that companies that were or will fall within the scope of application of the future standard begin to present Non-Financial Information Statement (NFS) reports under the indications of the CSRD, the COESA guidelines and the IAASB international standard, as well as using the ESRS. This is provided that, after assessing the compatibility of these new considerations with the non-financial information in their reports, compliance with all legal requirements is ensured.

If you have any questions or would like to further your knowledge on any of these subjects, please contact:

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