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The Spanish Institutional Integrity Framework: Current situation and recommendations

Executive summary

Spain's economic crisis may deepen without an overhaul of political parties' internal workings and their ability to influence independent watchdogs. This study warns that instruments already in place to strengthen integrity and confront corruption, such as public spending control authorities, are pressured by political parties defending short-term interests over long-term reform.

Given the important role of the political parties in Spain, the fight against corruption and the promotion of integrity should take place in the political arena. Considering the weak institutional framework in Spain, an absolute political majority guarantees almost absolute control over public institutions, and this creates a great corruption risk.

This National Integrity System assessment report assesses the strengths and weaknesses of 12 Spanish institutions: legislative, executive, judiciary, public sector, law enforcement agencies, political parties, supreme audit institution, the ombudsman, the electoral management board, civil society, media and corporate sector.

National Integrity System assessment

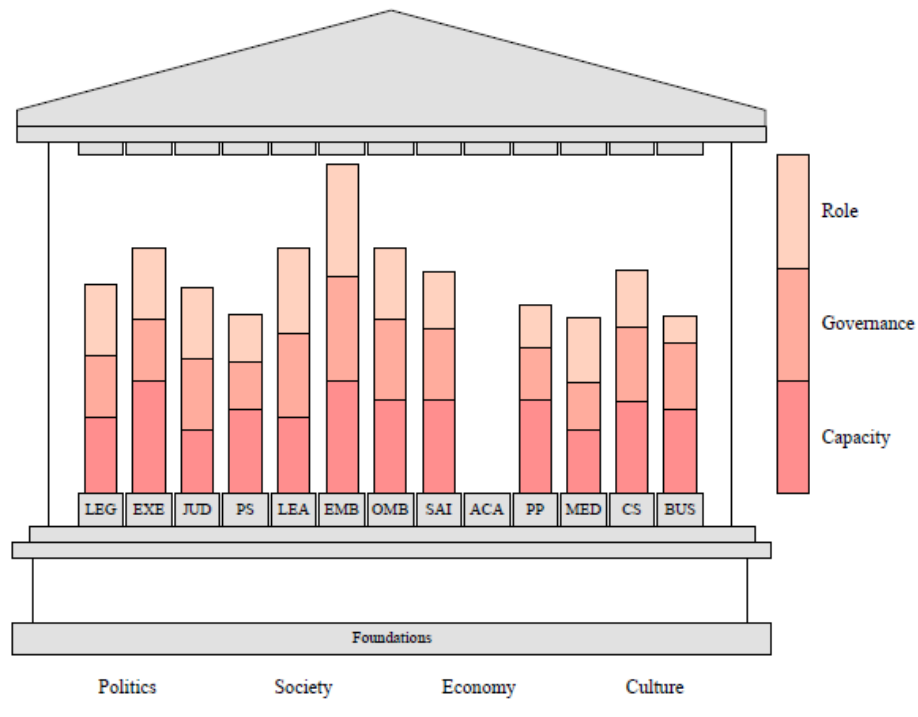
A series of high profile corruption cases in the private and public sectors has highlighted the urgent need to confront corruption in Europe. Corruption undermines good governance, the rule of law and fundamental human rights. It cheats citizens, harms the private sector and distorts financial markets. This report is part of a pan-European anti-corruption initiative, supported by the DG Home Affairs of the European Commission. The initiative looks to assess systematically the National Integrity Systems (NIS) of 25 European States, and to advocate for sustainable and effective reform, as appropriate, in different countries.

The NIS assessment approach used in this report provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption. A well-functioning NIS safeguards against corruption and contributes to the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. When the NIS institutions are characterised by appropriate regulations and accountable behaviour, corruption is less likely to thrive, with positive knock-on effects for the goals of good governance, the rule of law and protection of fundamental human rights. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

The Spanish NIS country report addresses 12 'pillars' or institutions believed to make up the integrity system of the country. A 13th pillar, anti-corruption agencies, has been removed from this study considering on the Spanish level such an agency does not exist.

Overall score of the Spanish NIS

National Integrity System



LEG. Legislature

EXE. Executive

JUD. Judiciary

PS. Public Sector

LEA. Law Enforcement Agencies

EMB. Electoral Management Body

OMB. Ombudsman

SAI. Supreme Audit Institution

ACA. Anti Corruption Agencies

PP. Political Parties

MED. Media

CS. Civil Society

BUS. Business

Overview Spanish National Integrity System assessment

The Spanish institutional framework prioritizes governance over ensuring representativeness. This provides for strong institutional support to governments but in practice this is no guarantee for effectiveness. Spain has an electoral majority system that in practice created an imperfect party bipartisanship, dominated by the Spanish Socialist Workers Party (Partido Socialista de Obrero Español) and the Popular Party (Partido Popular). The smaller regional parties, often deeply rooted in nationalism, only are able to influence decision-making when one of the two major parties fails to win an absolute majority. This combined with closed and blocked voting lists favours a system in which the party leaders maintain strong control over the representative bodies on the national, regional and local level. Whoever controls the party also controls the representatives, which in turn incentivizes strong party discipline. Besides, in case this person wins the election, he or she decides on the Council of Ministers and can even appoint thousands of senior positions in the public administration. Finally, consistent with the above, the electoral campaigns have been increasingly becoming a battle between the two leaders of the major parties. This creates scenarios similar to presidential debates, in which the

candidates feel they are running for the job as prime minister despite a motion of investiture before installing a new government.

The Spanish political system is characterized by:

- presidentialism;
- single party executives;
- an imperfect bipartisanship;
- a spoils system effecting the top of the public administration;
- a stronger executive as opposed to a legislative capacity;
- and two political party leaders deciding on the members of the Constitutional Court, Court of Auditors, Ombudsman, Central Bank, regulatory agencies and the Attorney General, strongly influencing the judicial system.

Spain scores strong on governance, but the country shows certain weakness in the system of representation and checks and balances. However, the country is highly decentralized which provides for regional counterweight. Nevertheless, it has to be noted that the majority of the regions are controlled by the two major parties meaning the party discipline also operates here when necessary.

The system's characteristics could not fail to have an effect on civil society, business and especially the media. The media sector does not represent all the ideologies of the political spectrum. There is variety of content but only within the two very specific ideological axes, coinciding with the two major political parties. Precisely because of the pervasiveness of bipartisanship, it is common to find forms of 'advocacy journalism' in which journalists tend to position themselves according to two main political dividing lines. Civil society heavily relies on public funding which links the non-profit sector strongly to public administrations. This reduces the autonomy of Non-Governmental Organizations and jeopardizes their ability to independently monitor public authorities. With regard to the business sector one should not underestimate the influence of the government, not only as a regulator but also as an important investor and consumer. Strong links can be seen between the two major parties and the banking sector in the party financing. This connection is a source of concern in relation to political capture.

The consequences of this on the integrity assessment are not positive. The institutional independence is always in danger. The influence of the two major political parties on the legislative, executive and to a certain degree the judicial branch can be strong whenever their interests are at stake. The transparency itself remains mainly a symbolic reference rather than real, complicating the acting of the government in its controlling function rather than providing services. Accountability mechanisms might complicate government's strategic behaviour and improving this could go against certain party interest. The integrity can be considered a symbolic declaration as the real implementation of the norms often collides with the immediate interests of power and its networks. All of this causes the major political parties to lack political will to change. When in the role of opposition they do call for improvements, however these demands have little legitimacy. The global picture is a model that provides for the adequate legal norms, constitutional requirements, the European Union and its

institutional isomorphism (copying the institutional trends of leading countries). Nevertheless in practice a large amount of risks can be observed, especially a model in which an absolute majority guarantees an almost absolute control over the institutional mechanisms. On top of that, the system seems to reduce and discourage the participation of citizens in public decision-making.

From the perspective of the NIS, the changes needed in Spain could collide strongly with the interests of the major political parties. They strongly believe, and are institutionally supported, that governance needs stability, efficiency and order. Changes in the system could jeopardize this. The origin of this belief lies in the peaceful transition of Spain to a democratic model in combination with a history of failed democracies heavily politicized (especially the first and second Republics). The key therefore lies in changing the preferences of the major political parties and showing them that it is precisely integrity that will be the main guarantee for order, efficiency, stability and justice. Not a simple task. Therefore, this assessment prioritized ten key recommendations to strengthen the national integrity system.

Key recommendations

The Spanish NIS assessment resulted in ten key priorities for action in order to improve integrity, as well as 43 specific recommendations based on the full analysis of the system, which will be given at the end of the executive summary:

1. It is necessary to promote a national pact to fight corruption consisting of the government, political parties, trade unions, NGO's, business associations and the media. This national pact should aim to prioritize adequate implementation of existing legislation, underline those measures needed to strengthen sanctioning, assure independence of the bodies fighting corruption and coordinate joint-activities. This pact should be monitored and evaluated in order to ensure effectiveness.
2. It is necessary to improve the rules concerning party financing and to ensure that an independent supervisory agency oversees this process.
3. It is necessary to modify the electoral system (unlock the closed voting lists, improve proportionality and improve the delivery of information on the system's functioning to the voters).
4. It is necessary to stimulate the internal democracy of the political parties.
5. It is necessary to ensure depoliticization of the supreme bodies of the judicial power and the Constitutional Court.
6. It is necessary to approve a strategic plan for open government in which a Law on Access to Information guarantees effectively the transparency of the Spanish public institutions. The strategic plan should also entail measures that improve response, accessibility, participation and citizen's participation in public affairs.
7. A 'Senior Executive Service' is needed, guaranteeing the quality of appointment of top civil service positions, protecting from political interference. It is important to eliminate the free designation as an instrument of appointment and capture of the public administration.

8. It is necessary to pass a national law on external control (Ley Nacional de Control Externo), which coordinates the work of external control bodies and promotes cooperation between them.
9. It is necessary to pass a law protecting 'whistle blowers' in both the public and private sector.
10. It is necessary to regulate lobby activities according to the OECD guidelines.

This could all be part of the strategic plan for implementing the UN Convention against corruption, under the supervision of an Anti-Corruption Agency /Office of Government Ethics (temporarily placed under the office of the Ombudsman).

Key weaknesses and strengths of the NIS assessment

Below follows a summary of the key weaknesses and strengths of the various pillars resulting from the analysis, highlighting the most notable findings of the research:

Legislature

The system of closed and blocked voting lists that favour party loyalty over loyalty to the voters, threatens the Spanish legislative branch's accountability. In any case, the capacity to control the executive (especially in case of an absolute majority) remains a key strength. Besides, internal mechanisms of control in parliamentary groups ensure some form of discipline and reduce the risk for corrupt behaviour.

Executive

The executive branch has a serious problem with transparency, mainly due to the lack of a law on access to information and a traditionally existing culture of opacity. Its main strength, consistent with the over-protection of governance, is institutional independence. The government, especially in case of an absolute majority, enjoys a strong control over the internal system. On the downside, the government has limited control on external factors, i.e. over the international financial markets, something painfully visible in times of economic and financial crisis.

Judicial

The judiciary's strongest characteristic is its independence, explicitly recognized constitutionally and legally guaranteed. In practice, the judges have the possibility to fully exercise their independence despite a heavily politicized control body and a system in which members of the higher courts are appointed with relative political influence. In other words, in order to advance in their careers there is a certain incentive for judges to give up some independence by committing politically. The major weaknesses are above all the lack of resources and a high workload. There is weak accountability in practice despite improving norms. The judges act with integrity, responsibility and rigor. Nevertheless opposite behaviour is not sufficiently sanctioned.

Public Sector

Independence is the public sector's strongest characteristic in line with the institutional protection of governance. Above all, the independence should be understood as fairness. Spain has a Weberian model of bureaucracy in its central administration since the early 20th century. This favours fair or impartial application of rules and an implementation not excessively subject to clientelism and patronage (problems that do occur often at the local administrative level). Norms concerning contracting are in general terms adequate; however in practice this has been abused due to legal ambiguities in case of directly allocated and modified contracts. The most evident weaknesses have to do with opacity (as with the Executive there is not yet a law on access to information in place) and accountability, especially in practice. Inefficiency, mal practice and corruption are not sufficiently controlled or sanctioned. Also remarkable is the lack of concern to educate the public to address the problem of corruption.

Law Enforcement Agencies

The law enforcement agencies stand out for the independence, neutrality and professionalism. Also there is an acceptable level of accountability, especially related to corrupt and unethical behaviour. The hierarchic culture of these organizations strengthens ethical behaviour despite the danger of *esprit de corps*. The main weakness of the law enforcement agencies is the resources made available to develop cases, but also the opacity that comes with the type of work.

The Electoral Management Body

This institution received the strongest evaluation in the NIS assessment. This is rather remarkable due to the fact that this body has a large part of its members chosen randomly. Through a random pick, judges and citizens sit together with the political parties. This leaves the major parties without full control, favouring integrity. Nevertheless it is recommendable for this body to introduce a code of ethical conduct and improve on regulations concerning conflicts of interest.

The Ombudsman

This institution enjoys and acts with sufficient independence. The Ombudsman could improve its system of accountability in practice as their internal management is not transparent in terms of efficiency and effectiveness. Despite not having internal problems with corruption, the institution should have a code of ethics and internal rules of integrity. Unfortunately the Ombudsman has not been sufficiently used in order to promote integrity in the public sector.

The Court of Audit

This is the only supreme body charged with auditing government accounts and financial management. Besides, it is also an organ that prosecutes financial responsibility and controls the financing of political parties and the electoral processes. Legally and constitutionally, the Court of Audit is an organ of great independence. However, in practice it is influenced by the two major political parties whom could not allow such an important body to stay outside of their control. There are sufficient resources and a high level of professionalism. But the body is not very effective in controlling the efficiency and

effectiveness of the public sector. Controls seem to be more of a formality. The norms on internal integrity should be improved as well as the internal system of accountability. The control on financing of political parties is rather formal, mainly because the existing rules do not permit for more thorough evaluation. In order to combat effectively corruption, the latter should be addressed.

Political Parties

The political parties, essentially the two major ones, have strong independence. They themselves define their public resources. This tends to create inequalities among them. The main weakness of the political parties in the NIS assessment comes from the lack of transparency and accountability of the internal organization. Also oligarchization, professionalization and the lack of political will to combat corruption are concerns for the integrity system. Given the important role of the parties in Spain we could say that the fight against corruption and the promotion of integrity should take place in the political arena.

Media

The media has successfully and effectively investigated and communicated corruption cases in Spain. Nevertheless the assessment has found problems with transparency, accountability and independence of the different media channels. Pluralism is not guaranteed. There is no national institution regulating and holding accountable the activities of the audio-visual media, creating ethical standards or mechanisms for integrity and transparency.

Civil Society

Spanish civil society is weak and its capacity to control the government and influence politics is limited. Nevertheless, civil society manages to obtain some resources and enjoys a certain level of independence. The NIS assessment identified improvements in transparency, accountability and integrity. However, in practice the organizations rely too much upon public funding.

Business:

The Spanish business sector enjoys great independence when defending their private interests. This varies from sector to sector and depending on the size of the company. The sector is improving its norms of governance but, with the exception of some. However, the main weakness in the NIS assessment has been the low social engagement to fight corruption.

Overall the Spanish NIS assessment shows that the normative framework is sufficiently developed, apart from the fact that a law on access to information has not yet been adopted. However, the implementation of these norms is far from adequate. Therefore this study has set up an extensive list of recommendations to complement the key priorities for action.

Full list of recommendations

The following is a broader list of detailed recommendations that have been collected throughout the full assessment:

Legislature

1. Some pillars in the NIS assessment, like the Legislature (but also the Judiciary), lack sufficient resources. This should be improved. However, taking in account the financial and economic situation of Spain we reckon that an increase of resources is perhaps politically not reachable. In times of austerity we believe that the pillars of the legislature, judicial and of the law enforcement agencies should be shielded from these measures and remain either on their current level or slightly increase when reallocating public funds.
2. The independence of the legislative branch should be improved as well as the accountability towards the voting districts. However, an improvement should not resort to an unpredictable and chaotic system when supporting the government. In order to do so, some changes could be made to the electoral system (i.e. unblocking the closed voting lists, improvements on the proportionality), which stimulates a more democratic internal functioning of the political parties, and favours accountability of representatives to their constituents.
3. A code of ethics for the deputies should be created. There is also need for an update of the rules on incompatibilities and conflicts of interest of the legislators.

Executive

4. A law on access of information is needed to guarantee effectively transparency of our public institutions. Added to this, an independent body needs to be established guaranteeing the effective implementation of this law. In order to reduce costs, this body could fall under the existing Agency for the Protection of Data (Agencia de Protección de Datos). However under the provision that it is established under two separate sections.
5. Under the framework of this law on access to Information a public transparency portal should be created¹.

¹ This Transparency Portal should include:

- Statistics on public employees (amount of civil servants and distribution by category, etc.), including the financial picture.
- A list of buildings (offices, shops, etc...), either owned or leased, used or linked to the respective public entity.
- Information on salaries and curriculum of elected officials and senior public officials as well as third parties collaborating directly with public entities.
- The number of credit cards and bank passes of the public entities.
- The number of phone lines and cell phones of public entities.
- The number of official vehicles of public entities
- All expenses occurred on official travels.
- The number of temporary contracts.
- Information on public investments and construction, including reports on the added-value of such projects.
- The annual budget of each public entity, including the final report of budget execution.
- Information on the public debts on all governmental levels.
- Information on all grants and subsidies allocated by the public entities.

6. The Spanish government should strengthen open government policies as well as participatory and accountable policies. For this, the full implementation of the Law 11/2007 on Electronic Access (Ley 11/2007 de Acceso Electrónico) is very important.
7. It is recommended to pass a Government Performance Act (Ley de Rendimientos del Gobierno), requiring all public bodies to develop a strategic plan and submit it to Congress with an annual accountability compliance report.
8. It is necessary to pass a National Law on External Control (Ley Nacional de Control Externo) that coordinates the work of external control bodies and promotes cooperation between them.
9. The government should elaborate on a strategy to implement the United Nation Convention against Corruption. This means both incorporating key strategic actors for the implementation and educating the citizens on corruption.
10. Each government agency should have an ethics committee responsible for analysing the performance of existing codes, provide expert consultation, develop a network of best practices and promote organizational frameworks of integrity. These committees should report to a form of Anti-corruption Agency or to a similar organization.

Judiciary

11. The supreme bodies of the judicial power should be depoliticized. A judicial career path should be established with clear meritocratic criteria and objectives in order to obtain positions in the supreme courts.
12. The norms on conflict of interest for the judges, magistrates and prosecutors should be updated, regulating inter alia, the organization of leaves of absence and post-judicial employment.
13. It is necessary to pass a law on judicial accountability. This would incorporate existing practices like the annual appearance of the President of the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ) in front of the Chambers and/or the development of judicial statistics, regulating in an effective manner the responsibilities for mistakes and undue delays.
14. The CGPJ should be depoliticized which is no simple task. The members should be appointed by lot and chosen from a list of qualified magistrates, professional lawyers and jurists. It could be considered to organize public hearings for the Congress and Senate as a form of selection interview.

Public Sector

15. Cost accounting and calculation and publication of actual costs for public service activities should be promoted.
16. Policy and program evaluation and analysis of costs and benefits provided by each of the various public institutions to citizens should be promoted.
17. Empowerment systems to civil servants should be promoted through an open platform of proposals and suggestions on costs saving in public institutions (this could include the creation of awards in order to incentivize initiatives).

18. Sufficient independence of the Office of Conflict of Interests should be guaranteed and for that some form of budgetary independence is needed, and management appointment based on merits and protection from political interference.
19. A 'Senior Executive Service' is needed, guaranteeing the quality of appointment of top civil service positions, protecting from political interference. It is important to eliminate the free designation as an instrument of appointment and capture of the Public Administration.
20. It is necessary to introduce into the different educational levels training on ethical behaviour and values against corruption.

Law Enforcement Agencies

21. The Prosecutors Office should strengthen its independence with respect to the government, especially when working on criminal cases. Also the anti-corruption Prosecutor needs somehow to step up protecting its independence. The law enforcement agencies that investigate corruption, and especially the top of the units, should be protected from unfair professional dismissals.
22. Procedural improvements are needed to prosecute more effectively corruption. Perhaps the prosecutors entrusted with the investigation would make the system more viable. In any case, a reform of the Criminal Procedure Act (la Ley de Enjuiciamiento Criminal) seems essential.

Electoral Management Board

23. It is desirable to introduce an Ethical Code and to improve the norms concerning conflict of interest for bodies such as the Electoral Boards, the Constitutional Court, Ombudsman and the Court of Audit. The bodies also require public auditing and annual evaluations.

Ombudsman

24. The politicization of the appointments at the Constitutional Court, Ombudsman and Court of Auditors is a serious problem for the integrity of the system (and for the legitimacy of the respective bodies). To find a solution for this is difficult. An option could be to avoid re-election and extend in return the mandate.
25. It is necessary to form an Anti-Corruption Agency or some kind of body that promotes ethics and develops preventive mechanisms, coordinates activities, disseminates information and proposes improvements. Given the economic and financial situation it might be an option to include such a body within the structures of the Ombudsman.
26. A law protecting the 'whistle blowers' of corruption, fraud and abuse is needed. The Ombudsman could create an internal body following up on this.

Court of Audit

27. The Court of Audit should incorporate an annual audit of the economic-financial state and effectiveness of public organs. This at least for the organs budgetary-wise most relevant in order to avoid chronic delays of such audits.

Political parties

28. It is necessary to change the rules on the financing of the political parties as indicated by GRECO. Although political parties are private associations, they receive large amounts of public money. It is desirable that they were legally obliged to publish their accounts in detail, timely and easily understood by voters.
29. The financial control over political parties is extremely weak when looking at income from private sources and incomplete when looking at public sources (lack of information on local organizations, their foundations, businesses and youth organizations). Loopholes need to be addressed through an independent supervisory body with the legal capacity, resources and human capital.
30. The internal democracy of the political parties should be reformed by demanding primary systems, obligated consultations and other instruments in order to avoid oligarchization. To this effect a fast-track arbitration system should be in place to resolve intra-party conflicts that have to do with internal democracy.
31. The political parties should publically declare that they will not include persons on the voting list previously processed for corruption.
32. The government, political parties, trade unions, businesses and the media should enter into a national pact aiming to improve transparency and integrity by taking key measures in preventing corruption.

Media

33. The State Council for Audio-visual Media (Consejo Estatal de Medios Audiovisuales, CEMA), regulated in articles 44 y seq. Law 7/2010, should effectively regulate and require accountability of audio-visual media, create ethical standards and mechanisms of integrity and transparency as well as a consistent disciplinary system.
34. It is necessary to depoliticize the process of granting audio-visual licenses and to promote the informative independence of the public broadcasters.

Civil society

35. It is necessary to develop a grand pact between NGO's in order to fight corruption and coordinate joint activities.

Corporate sector

36. It is necessary to strengthen the implementation of corporate social responsibility policies, strengthen compliance with the ethical code of the CNMV (Comisión Nacional

del Mercado de Valores²) and encourage companies to join the Global Compact and consistent with their commitments.

37. It is necessary for the government to ensure compliance with the Plan of Action for Reducing Administrative Burdens (Plan de Acción para la Reducción de Cargas Administrativas) and ensure actions corresponding regulatory improvements.
38. Establish a system of official accreditation in order to develop the activity of lobbyists in public buildings. Improve the transparency through mandatory public disclosure of key aspects of lobbying activity, such as objectives and target beneficiaries.
39. Incentivize a culture of integrity by distributing ethics guides and rules of conduct lobbying, directed both to the lobbyists as well as to the lobbied.
40. Money laundering present two types of risks: social, as in favouring indirectly crime by allowing delinquents to legitimize their criminal products, and economic, as in producing distortions in the financial flows. Given these risks, it is of utmost importance not only to repress money laundering, but also its prevention through the imposition of a series of obligations and administrative actions directed to certain financial and non-financial players (financial institutions and professionals such as notaries, lawyers, auditors, real estate, jewellers, antique dealers, etc.) that may be more exposed to this risk. Therefore, it is necessary to implement rigorously the Law 10/2010 on the prevention of money laundering and terrorist financing (Ley 10/2010, sobre prevención de lavado de capitales y financiación del terrorismo).
41. We consider that the additional privileges should be eliminated, the possibility of getting a special lawyer and extra protection do not reflect reality.
42. It is necessary to promote full implementation of Article 39 of the Sustainable Economy Act on Corporate Social Responsibility (Ley de Economía Sostenible sobre la Responsabilidad Social de las Empresas).
43. It is necessary to promote compliance among Spanish multinationals to the OECD Anti-Bribery Convention.
44. It is necessary to seriously combat the 'black' economy.

² The CNMV is the Spanish government agency responsible for regulating the financial securities markets This agency falls under the Ministry of Economy and Finance of Spain