

INTERNAL CONTROL OF PUBLIC ADMINISTRATIONS. ITS ROLE IN PREVENTION AND THE FIGHT AGAINST THE CORRUPTION OF THE PUBLIC POWERS*

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Abstract

Corruption scandals in Spain have created a crisis of credibility in the public sector and its control mechanisms. International bodies and institutions are committed to new forms of governance and institutional integrity that require a profound change in organisational culture. This change should make it possible to implement an “internal control integrated framework” inspired by the COSO III methodology, which should be implemented and maintained by those responsible for governance of the organisation and must be compatible with the internal control that is the responsibility of the public sector auditors. This work analyses the current configuration of internal control in public administrations, and its strengths and weaknesses. It also makes improvement proposals to create an internal control integrated framework that provides reasonable certainty that the organisation’s objectives will be achieved, the reliability of financial information, effectiveness, efficiency of operations and compliance with the applicable legal provisions that enables effective prevention of fraud and corruption.

Key words: public sector; corruption; fraud; abuse; internal control integrated framework; auditing bodies; senior management; governing bodies; management bodies; good governance; good administration; good government.

EL CONTROL INTERN DE LES ADMINISTRACIONS PÚBLIQUES. EL SEU PAPER EN LA PREVENCIÓ I LA LLUITA CONTRA LA CORRUPCIÓ DELS PODERS PÚBLICS**Resum**

Els escàndols de corrupció a l'Estat espanyol han comportat una crisi de credibilitat del sector públic i dels seus mecanismes de control. Els organismes i les institucions internacionals aposten per noves formes de governança i d'integritat institucional que requereixen un canvi profund de cultura organitzativa. Aquest canvi ha de permetre implantar un “marc integral de control intern” inspirat en la metodologia COSO III, que ha de ser implementat i mantingut pels responsables del govern de l'entitat i ha de conuiu amb el control intern que és responsabilitat dels interventors del sector públic. En aquest treball s'analitza la configuració actual del control intern en les administracions públiques, les seves debilitats i forteses. També es fan propostes de millora per configurar un marc integral de control intern que proporcioni una seguretat raonable sobre la consecució dels objectius de l'entitat, la fiabilitat de la informació financera, l'eficàcia, l'eficiència de les operacions i el compliment de les disposicions legals aplicables que permeti una prevenció efectiva del frau i la corrupció.

Paraules clau: sector públic; corrupció; frau; abús; marc integral de control intern; òrgans interventors; alts càrrecs; òrgans superiors; òrgans directius; bona governança; bona administració; bon govern.

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1 Introduction

The importance of the public sector in Spain is indisputable, not only because it is made up of a heterogeneous group of 19,682 authorities and dependent bodies belonging to subsectors of the central, regional and local governments¹, but also because it employs 16.25% of the active population² and it is estimated that public expenditure in 2019 accounted for 39.8% of gross domestic product.³

The importance of the public sector in the economy explains why the corruption cases that erupted during the economic and financial crisis caused angry reactions from the public and loss of trust in public institutions. They cast doubt on the public sector's control procedures and the responsibility attributed to specialised control bodies that did not timely detect the serious management risks that resulted in the wasting of public resources and, on occasions, diversion of funds for the benefit of private interests (Villoria, 2010: 81-104).

However, internal control of public-sector activity has a much broader scope than traditional internal control of economic and financial management. In the aforementioned subsectors this is carried out by the specialised technical control bodies of the General Comptroller of the State Administration (IGAE in Catalan), the intervention authorities of the autonomous communities and local bodies under the General Budgetary Law (LGP in Catalan),⁴ the consolidated text of the Public Finance Law of Catalonia (LFPC in Catalan)⁵—or the regulations of the respective autonomous community—and the consolidated text of the Law Regulating Local Treasuries (TRLHL in Catalan).⁶

Internal control is given a broader scope in the regulations that the Law on the Legal Regime of the Public Sector (LRJSP in Catalan)⁷ the Law on the Organisation, Procedure and Legal Regime of the Administration of the Government of Catalonia (LOPRJC in Catalan)⁸ and the Law Regulating the Basis of the Local Government (LBRL in Catalan)⁹ provide for the organisational structure and operation of the General State Administration, the Government of Catalonia and local authorities and their respective dependent bodies. This is especially so when they establish the powers of senior officials—superior bodies¹⁰ and managers of the administration and the institutional public-sector—who are assigned the responsibility for directing, planning, managing and promoting the achievement of the objectives set by the public policies approved by the respective governments, as well as establishing the administrative control and management mechanisms necessary to ensure compliance.

In my view, the lack of an integrated vision of internal control of the public sector, together with internal control of economic and financial management by auditing bodies with insufficient resources and sometimes with an excessively formalist approach, as well as weak controls over the management performed by senior officials in the public sector—often temporary civil servants and trusted political appointees—are some of the reasons that have prevented corruption cases in the Spanish public sector from being detected and halted in time. In order to correct this deficiency, we should consider whether it is necessary to strengthen the

1 Inventory of central, regional and local public sector bodies INVESPE 2019. Ministry of Finance. Number of central public sector bodies: 453; autonomous communities: 1,921; and local bodies: 17,308. Total: 19,682.

2 National Statistics Institute (INE in Catalan). Economically Active Population Survey (EAPS). Third quarter 2019.

3 Ministry of Finance and Civil Service (2019). Update of the Stability Programme 2017-2020.

4 Spain. (LGP). *Ley 47/2003, de 26 de noviembre, General Presupuestaria* (Official Gazette of the Government of Spain (BOE) no. 284, 27/11/2003).

5 Catalonia. (LFPG). *Decret legislatiu 3/2002, de 24 de desembre, pel qual s'aprova el text refós de la Llei de finances públiques de Catalunya* (Official Gazette of the Government of Catalonia (DOGC) no. 2791A, 31/12/2002).

6 Spain. (TRLHL). *Real Decreto Legislativo 2/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley Reguladora de las Haciendas Locales* (Official Gazette of the Government of Spain no. 50, 9/3/2004).

7 Spain. (LRJSP). *Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público*.

8 Catalonia. (LOPRJC). *Llei 13/1989, de 14 de desembre, d'organització, procediment i règim jurídic de l'Administració de la Generalitat de Catalunya* (Official Gazette of the Government of Catalonia no. 1234, 22/12/1989).

9 Spain. (LBRL). *Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local* (Official Gazette of the Government of Spain no. 80, 3/4/1985).

10 Senior officials: superior bodies: ministers, secretaries of state; management bodies: undersecretaries, general secretaries, technical secretaries, directors general, subdirectors general, managers of bodies in the institutional public sector (autonomous bodies, state-owned enterprises, consortia, public business organisations, foundations, etc. and their counterparts in the regional and local public sector).

current internal control procedures or completely reform them in order to improve their effectiveness and ensure that internal control can play the key role assigned to it by international bodies and institutions in the supervision of public policies based on good government, good governance and good administration, and in the fight against fraud and corruption.

In order to answer this question, the following aspects will be analysed in this paper: the importance given to internal control of the public sector by pronouncements and studies by international bodies and institutions that specialise in institutional integrity, prevention and the fight against corruption, as well as the current situation regarding internal control of the public sector in Spain. Lastly, proposals will be made to improve internal control in order to increase its efficiency in preventing fraud and corruption, taking into consideration the latest trends in integrated internal control frameworks advocated for the private sector by the National Commission on Fraudulent Reporting,¹¹ which IGAE has already incorporated in the recently approved International Standards on Auditing of the Spanish Public Sector (NIA-ES-SP)¹² and which the Spanish Institute of Internal Auditors¹³ (IAIE in Spanish) proposes applying to the public sector as a whole.

2 Pronouncements by international bodies concerning prevention and the fight against corruption. Conclusions concerning the role of internal control in the public sector

The Spanish economy is one of the fifteen largest in the world and the country is 27th in the United Nations Development Programme's (UNDP) Human Development Index (2019). In the Global Competitiveness Index Report (2019), the World Economic Forum ranks Spain 23rd out of the 141 countries analysed.

In spite of this, the Corruption Perception Index (2019), published by Transparency International (TI), puts Spain in the 30th position out of the 180 countries assessed, at the level of Barbados, Portugal and Qatar with a score of 62 out of 100. According to TI, although it had improved by four points since 2018, it will have to get above 70 points in the perception index if it wants to maintain its image and competitiveness.

In the report *Los costes económicos del déficit de calidad institucional* [The economic costs of the institutional quality deficit], which measures perceived levels of corruption in Spain compared with the main economies in Europe and the rest of the world and the cost that the deficit in institutional quality has on economic development, Fundació BBVA (Alcalá & Jiménez, 2018: 24) concludes with an unfavourable diagnosis of the quality of governance in Spain and a negative perception of its dynamics over the last fifteen years.

According to the European Commission's EU Anti-Corruption Report (2014), this correlation between institutional quality and deceleration of economic growth affects all member states and all levels of government, since corruption reduces the good functioning of the public administration; it causes serious harm to the economy and society in general, because it slows economic development and decreases investment and the quality of public services. It wastes resources and reduces countries' productivity, while unethical behaviour undermines democracy, social justice and the rule of law and causes citizens to lose trust in public institutions.

It is worth noting that the European Commission's concern with the fight against corruption is nothing new. Controlling the abuse of public powers has been a constant issue since the Declaration of the Rights of Man and the Citizen in 1789, which recognised society's right to demand accountability of any public official for their management.

Since then, different political regimes have come a long way in setting limits on administrative discretion, imposing judicial control (Fernández, 2019) and making accountability effective. The Charter of

11 National Commission on Fraudulent Reporting, 1985. This identifies the factors that make fraudulent information possible and makes recommendations to reduce its impact. The Commission produced the COSO I report in 1992. This has a new conceptual framework for internal control, the COSO II report (2004), "Enterprise Risk Management—Integrated Framework" and COSO III "Internal Control – Integrated Framework" (2014).

12 Spain. *Resolución de 25 de octubre de 2019, de la IGAE, por la que se aprueba la adaptación de las Normas de Auditoría del Sector Público a las Normas Internacionales de Auditoría* (NIA-ES-SP) (Official Gazette of the Government of Spain no. 255, 5/11/2019).

13 [Instituto de Auditores Internos de España](#), founded in 1983, is a non-profit professional association, that speaks on behalf of the internal auditing profession. It publicises the international standards for the internal auditing profession.

Fundamental Rights of the European Union in 2000¹⁴ recognised the right to *good administration* as the fundamental right of any citizen to have affairs that affect the public interest handled correctly. In 2001, in the *European Governance: A White Paper*, the EU pronounced its support for the principles and rules of “good governance” to achieve “good government”, which is that which promotes institutions and laws that encourage transparency and institutional integrity, promotes internal and external controls and accountability, effectiveness, information and impartial administration, in order to respond to the needs of civil society, organisations and companies to fight against corruption.

However, the concern regarding corruption scandals is not a problem exclusive to the public sector, as demonstrated by events in the United States (Enron, 2001, and WorldCom, 2002) as well as in Europe (Gescartera in Spain and Parmalat in Italy), which affected the private sector.

In order to decrease corruption in the private sector, the OECD,¹⁵ the Commission¹⁶ and the European Parliament approved Directive 2014/95/EU,¹⁷ which included various measures to encourage good corporate governance, which have translated into major reforms of Spanish commercial legislation, strengthening the internal control of companies.

The most notable new aspects are: the reform of the Criminal Code (CP in Catalan),¹⁸ which applies to state-owned enterprises, and establishes the requirements for mitigating the criminal liability of legal persons that implement regulatory compliance programmes to prevent criminal offences and internal control measures, as well as the *criminal regulatory compliance officer*; Order ECC/461/2013,¹⁹ the amendment of the Law on Capital Companies²⁰ and the amendment of the Commercial Code.²¹ These regulations govern the inclusion of non-financial information in management reports in financial statements, improvement of internal control—establishing the *audit committee*—and the supervision and control of good corporate governance practice by the National Securities Market Commission (CNMV in Catalan).

The measures promoting good corporate governance and strengthening internal control that are applied in the private sector are being extended to the public sector. Many different pronouncements have been made by institutions in favour of strengthening the internal control of the public sector. Among these, we could point out the OECD Recommendation on Public Integrity (2017), which considers internal control and effective accountability to be one of the three fundamental pillars in the fight against corruption and enhancing public integrity, and the Report by the Superior Public Prosecutor’s Office of the Valencian Community (2013), which highlights that the lack of prior controls—prior to intervention—, the relaxation of means and controls in administrative contracts, as well as the proliferation of temporary civil servants or trusted appointees with personal or partisan purposes, facilitates great discretionary or arbitrary action in administrative economic decisions that enable deviant conduct and the proliferation of corruption cases.

The most modern approaches to the internal control of organisations are those of the National Commission on Fraudulent Reporting, also called the Treadway Commission, which is the highest global internal control authority in the private sector. It advocates the integrated framework of internal control—known as COSO III

14 Article 41 of the Charter, which is incorporated in the Spanish legal system through *Ley Orgánica 1/2008, de 30 de julio*.

15 G20/OECD Principles of Corporate Governance (2016).

16 *Recommendation as regards the regime for the remuneration of directors of listed companies* (3177/2009/EC). Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting (“comply or explain”).

17 *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups* (OJEU no. 330, 15/11/2014).

18 Spain. *Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal* (Official Gazette of the Government of Spain no. 152, 23/7/2010). Articles 31 bis, 31 ter, 31 quater and 31 quinquies regulate the liabilities of state-owned enterprises.

19 Spain. *Orden ECC/461/2013, de 20 de marzo, por la que se determinan el contenido y la estructura del informe anual de gobierno corporativo, del informe anual sobre remuneraciones y de otros instrumentos de información de las sociedades anónimas cotizadas, de las cajas de ahorros* (Official Gazette of the Government of Spain no. 71, 23/3/2013).

20 Spain. *Ley 31/2014, de 3 de diciembre, por la que se modifica la Ley de Sociedades de Capital para la mejora del gobierno corporativo* (Official Gazette of the Government of Spain no. 293, 4/12/2014).

21 *Ley 11/2018, de 28 de diciembre, por la que se modifica el Código de Comercio, el texto refundido de la Ley de Sociedades de Capital aprobado por el Real Decreto Legislativo 1/2010, de 2 de julio* (Official Gazette of the Government of Spain no. 314, 29/12/2018).

(2013)—, which views the internal control of organisations in an integrated manner as “the process designed and effected by those charged with governance, management, and other personnel to provide reasonable assurance about the achievement of the entity’s objectives concerning the reliability of financial reporting, effectiveness, and efficiency of operations and compliance with applicable laws and regulations”.

This integrated view of internal control is gradually being incorporated in the public sector. One example is NIA-ES-SP, recently approved by IGAE, which also applies to the local public sector, as well as various rules regulating the internal control of public management approved by autonomous communities, as well as Law 22/2018 on the General Inspection of Services and the Alert System to Prevent Malpractice in the Administration of the Government of Valencia,²² which creates the *general inspector of services*, a new position responsible for internal control in the Government of Valencia. Respecting the internal control functions and independence of the General Comptroller office, it monitors compliance with internal control of management in public institutions within its territorial scope, among other aspects.

3 Internal control in the public sector in Spain. Definition, objectives and functions

In general terms, the concept of *control* is straightforward: it consists of verifying that what has been stipulated is complied with (Fueyo, 2014: 23). A distinction has traditionally been made between internal control and external control in the public sector.

External control is carried out by the Court of Auditors and the external control bodies of the autonomous communities, institutions set up to control fraud and corruption, such as the European Anti-Fraud Office (OLAF), the Special Prosecutor for the Repression of Economic Crimes related to Corruption—dependent on the Public Prosecutor’s Office—the Anti-Fraud Office of Catalonia (OAC in Catalan) and judicial control by the courts.

With regard to internal control of the public sector, we can highlight political control by the central and regional parliaments and the assemblies of local bodies, and control by single-person bodies, such as the Ombudsman appointed by the Congress of Deputies and counterparts in autonomous communities, which are elected by the respective parliaments, and the ombudsmen appointed by assemblies of local bodies.

In addition to the aforementioned controls, the public sector is subject to two additional forms of internal control: one that is the responsibility of the governing bodies, managers and assessment agencies belonging to the public sector, and one carried out by bodies for the internal control of economic and financial management in the public sector—IGAE, autonomous communities’ general auditing bodies and local bodies’ general auditing bodies. In this document we will analyse the strengths and weaknesses of these two types of internal control and make proposals to improve them.

One of the limitations in conducting this analysis is that internal control of the public sector is not defined in any of the laws that regulate the internal organisation of the different administrations in the Spanish public sector and their dependent bodies—the LOPRJC, LFPC and LBRL. These laws only list the functions and responsibilities for the direction, management and control of public policy by senior officials of superior and management bodies. Nevertheless, sectoral legislation does regulate the obligation to plan, manage, assess and be accountable, as well as the responsibility for internal control of public policy, which must be complied with by the aforementioned senior officials.

Regarding this sectoral legislation, we must differentiate between rules regulating specific management procedures—the Law on Administrative Procedure (LPA in Catalan),²³ the LRJSP, the Law on Public-

²² *Llei 22/2018, de 6 de novembre, de la Generalitat, d’Inspecció General de Serveis i del sistema d’alertes per a la prevenció de males pràctiques en l’Administració de la Generalitat i el seu sector públic instrumental* (DOGV no. 8419, 8/11/2019).

²³ Spain. *Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas* (Official Gazette of the Government of Spain no. 236, 2/10/2015).

sector Contracts (LCSP in Catalan)²⁴ and the General Law on Subsidies (LGS in Catalan)²⁵—which include instruments for the planning, monitoring and internal control of public management, such as the Annual Regulations Plan, the Strategic Subsidy Plan and the Annual Contracting Plan, and economic and budgetary legislation—the LGP, LFPC and TRLHL—which, for each of the subsectors of the public sector in Spain, regulate, on the one hand, programming, budgetary planning, the adaptation of economic management and public expenditure to achieving effectiveness in meeting the objectives set, which are functions of those responsible for superior bodies and the public-sector management bodies, and, on the other, the development of the functions of internal control of economic and financial management and producing the general accounts, which is the responsibility of the respective auditing bodies.

During the period of economic prosperity prior to the financial crisis in 2007, internal control of economic and financial management, which was the responsibility of auditing bodies—with a long-standing historic tradition, highly developed in regulations, which is the standard throughout the public sector in Spain—was undervalued by the theories of the so-called *new public management*, which was introduced in the public sector under the guidance of business schools.

These theories implemented private-sector forms of management in the public sector without tried-and-tested effectiveness and efficiency criteria. These involved disorderly outsourcing of public services and the creation and proliferation of many instrumental organisations that, with honourable exceptions, sought more to evade administrative law and traditional economic and financial controls than to effectively improve management.²⁶

The eruption of the economic crisis revealed that disproportionate investments had been made in all subsectors of the public sector. Some administrations had high debt levels and there was a need to reconsider the forms of management of basic public services that had been largely outsourced and whose management was notably opaque to both citizens and the administrations themselves.

Citizens' demands for transparency in public management and accountability and the obligation to rein in the tendencies to increase public expenditure so as to comply with the fiscal rules for budgetary stability forced a U-turn in these management practices and the internal control procedures that were the responsibility of governing bodies, management bodies and assessment agencies, in order to focus them on greater control of efficiency and effectiveness in public expenditure, provide incentives for budgetary planning and detect corruption and make management more transparent.

In parallel, the Organic Law on Budgetary Stability and Financial Sustainability (LOEPSF in Catalan),²⁷ the Law on the Rationalisation and Sustainability of Local Administration (LRSAL in Catalan)²⁸ and Royal Decree 424/2017 (RCI in Catalan—regime of internal control)²⁹ strengthened internal control by auditing bodies and increased its strictness. New public accounting plans were approved that were standardised and harmonised with International Accounting Standards (IAS). Financial control took precedence over the traditional intervention role and the NIA-ES-SP adapted to the International Standards on Auditing (ISA) were approved in order to enhance financial control of instrumental bodies in the public sector and their application to the central and local public subsector, in line with the International Organization of Supreme Audit Institutions (INTOSAI).³⁰

24 Spain. *Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014* (Official Gazette of the Government of Spain no. 272, 9/11/2017).

25 Spain. *Ley 38/2003, de 17 de noviembre, General de Subvenciones* (Official Gazette of the Government of Spain no. 276, 18/11/2003). Strategic Subsidy Plan. Article 81 LGS and articles 10 to 15 of *Real Decreto 887/2006, de 21 de julio*.

26 Court of Auditors Report no. 890, 24/2/2011. *Fiscalización del sector público local, 2006, 2007 y 2008*.

27 Spain. *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* (Official Gazette of the Government of Spain no. 103, 30/4/2012).

28 Spain. *Ley 27/2013, de 27 de diciembre, de racionalización y sostenibilidad de la Administración Local* (Official Gazette of the Government of Spain no. 312, 30/12/2012).

29 Spain. *Real Decreto 424/2017, de 28 de abril, por el que se regula el régimen jurídico del control interno en las entidades del Sector Público Local* (Official Gazette of the Government of Spain no. 113, 12/5/2017).

30 The International Organization of Supreme Audit Institutions, founded in 1953, has a special status in the United Nations Economic and Social Council (ECOSOC). It produces the *Guidelines for Internal Control Standards for the Public Sector* (2004) to

At this point, it is important to make progress with configuring the internal control model that is desired for the public sector and whether that can manage to overcome the antagonism that often exists between those responsible for public management bodies and auditing bodies. One solution to this situation is to establish an integrated framework of internal control, such as that advocated by COSO III, which considers that “management is responsible for establishing and maintaining internal control”, meaning “that which describes the function of the person or persons or organisations responsible for supervising the strategic direction of the organisation and the obligations related to accountability”, which is characterised by:

- Being a process designed and effected by those charged with governance, management, and other personnel.
- The purpose being to provide reasonable assurance about the achievement of the entity’s objectives concerning the reliability of financial reporting, effectiveness, and efficiency of operations and compliance with applicable laws and regulations.

The integrated framework of internal control in the public sector described above is not only totally compatible with internal control by auditing bodies; its application would also bring about a decrease in the current limitations that auditors come up against in performing their functions, which weaken their controls in the fight against corruption and for institutional integrity.

In order to make it easier to list the strengths and weaknesses of internal control in the public sector and propose improvements, the characteristics and principles for performing internal control by auditing bodies regulated in the LGP, LFPC and TRLHL are summarised below.

3.1 Internal control of economic and financial management in the public sector by the auditors of IGAE, autonomous communities and local bodies

The elements that define the internal control of economic and financial management carried out by auditing bodies, which are common to the entire public sector, are:

- *Functional autonomy.* This is guaranteed by stringent regulation that safeguards their objectivity, integrity and transparency in relation to the organisations over which they exercise control.
- *Scope of control.* The set of economic and financial activity of all public-sector bodies and organisations, which comprise national, regional (central, autonomous communities, provinces or other territories) and local (towns and cities) public administrations, as well as other organisations connected to the various public administrations (agencies, bodies, committees and companies).
- *Internal control objectives.* These comprise verifications of regulatory compliance and adequate recording of transactions and their faithful and regular reflection in the organisation’s accounts; assessment of the activities and procedures in accordance with the principles of good financial management, and compliance with the objectives assigned to expenditure management centres.
- *Forms of exercising control.* These comprise the auditing function and financial control in the aspects of ongoing financial control and public auditing. Internal control bodies also have powers to control partner organisations and the beneficiaries of funding and grants to public-sector bodies, and those funded with EU funds. The purpose and scope of the auditing function and financial control are:

The auditing function. This is a control of legality aimed at controlling, prior to approval, the actions of organisations subject to administrative law that give rise to the recognition of rights or the performance of expenditure, revenue and payments, investment and general application of their public funds for the purpose of ensuring that their management is in accordance with the applicable provisions. It is exercised in the forms of formal and material auditing through prior auditing, or basic requirements and recording of revenue in the accounts; in the last two cases, subsequent ongoing financial control action is performed.

assess internal control in OCEX audits in accordance with COSO, the International Standards of Supreme Audit Institutions (ISSAI) and the Guidance for Good Governance (INTOSAI-GOV).

The financial control function. This has two aspects: *ongoing financial control* and *public auditing*—in the forms of auditing accounting regularity, compliance auditing and operational auditing. Ongoing financial control is performed systematically in administrations and dependent bodies subject to administrative law, while public auditing applies to the instrumental public sector.

Control results. The results of the auditing function are subject to the so-called *adversarial procedure*, which is applied to resolve discrepancies between the auditing body and the management bodies. The results of ongoing financial control and public auditing are set out in provisional reports, which the management bodies can challenge before the final report is issued. The control results are included, each year, in a summary report that is submitted to the governing bodies of the respective public administrations and referred to the external control bodies.

In addition to these internal control functions, auditing bodies have an accounting role, which involves producing the general accounts for the public sector within their scope of responsibility.

3.2 Powers and limitations of internal control bodies in detecting fraud and corruption

The regulation of the concept of corruption, fraud or abuse and the legal definition of the functions and responsibilities of internal control bodies are some of the little-known limitations faced by specialised internal control bodies in preventing corruption.

The first problem is determining what *corruption* means, because this concept is not legally defined and the Criminal Code does not specify the criminal offences it comprises. Minguillón (2014: 26) states that corruption consists of “the abuse of power to obtain a private benefit” and analyses the concepts of *fraud*, *corruption* and *abuse* in relation to the criminal offences defined in the Criminal Code, while identifying fraud offences based on the powers of the Office for the Prosecution of Corruption and Organised Crime regulated in article 19.4 of the Law on the Organic Statute of the Public Prosecutor’s Office.³¹ The most relevant fraud offences notably include embezzlement of public funds (article 432 of the CP), accounting fraud (article 434 of the CP), subsidy fraud (article 308 of the CP) and administrative corruption (article 404 of the CP).

We will now analyse the concepts of *fraud*, *corruption* and *abuse*. NIA-ES-SP 1240, on the Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements, recognises that fraud is a broad legal concept, which it defines as “An intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage”. It also establishes that fraud is the responsibility of those responsible for the governance of the organisation and the management, who have an obligation to prevent and detect fraud. It states that it is the responsibility of the management—supervised by those responsible for the organisation—to establish internal control mechanisms that prevent and dissuade fraud, as well as to identify, halt and penalise fraud detected.

The aforementioned NIA-ES-SP 1240 defines the public-sector auditor’s responsibilities relating to fraud as follows:

- Obtaining reasonable assurance that the financial statements, taken as a whole, are free from material misstatement. In this sense, it distinguishes between two types of fraud: fraudulent financial reporting, due to manipulation or falsification of accounting records and accounting books or erroneous and intentional application of accounting principles; as well as misappropriation of assets, which involves a property loss by generating unnecessary expenses, misappropriation of income, theft of physical or intellectual property or putting assets to personal use.
- The possible risks of non-compliance, which are legally classified as fraud in the management of public resources, arising from non-application or misapplication of laws or regulations concerning the public sector.

31 Spain. *Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal* (Official Gazette of the Government of Spain no. 11, 13/1/1982).

Abuse is defined in ISSAI 1240 as “behaviour that is deficient or improper when compared with behaviour that a prudent person would consider reasonable and necessary business practice given the facts and circumstances”. The concept also includes cases of illegitimate use of authorisation by the authority or official for personal or family economic interests or those of commercial partners. The existence of abuse does not necessarily imply that there has been fraud or legal non-compliance, but it may be related, for example, to inadequate behaviour in accordance with the principles of good financial management.

In exercising their internal control functions, auditors may obtain evidence of possible situations of abuse, fraud or corrupt practices. The question is what they must do when they detect them. Regarding this question, article 179 of the LGP establishes that, in aspects the auditing role concerns, auditors must warn, in writing, of the inappropriateness or illegality of an action or decision before it is approved. If they do not do so and the offences defined in articles 177 and 178 of the LGP are committed, they may be forced to indemnify the public treasury for the harm actually caused if it gives rise to accounting liability, which is a legal institution connected to fraudulent action that gives rise to a type of civil liability stipulated in the organic law and in the laws on the functioning of the Court of Auditors,³² apart from criminal and administrative liability.

In the case of public auditing, NIA-ES-SP 1240 states that the auditor does not have to determine, from a legal point of view, whether or not fraud has been committed. However, it does state, in similar terms to those in article 5.1 RCI and article 4 of Royal Decree 2188/1995,³³ that when in the exercising of control and the performance of an audit, the auditor finds that the facts accredited and proven may produce an administrative infringement or give rise to the demanding of accounting or criminal liabilities, he/she must inform the competent body, the courts of justice or the Constitutional Court, especially in cases of infringements of economic and budgetary matters envisaged in the LT.

In summary, it should be noted that neither the results of the audit nor the reports issued by the auditors are binding on the governance bodies of the organisation, pursuant to that stipulated in the LGP, TRLFP, TRLHL and article 80 of the LPA. Once the discrepancies have been resolved and the final internal control reports have been issued, taking account of the statements made by the management bodies, the resolutions adopted by the governance bodies of the administrations and dependent bodies become valid in spite of the objections and unfavourable reports by the auditing bodies.

4 Strengths, weaknesses, opportunities and threats of internal control in the public sector

The differences between the central, regional and local public sector and their internal control structures make it difficult to conduct a SWOT analysis of the main strengths, weaknesses, opportunities and threats of internal control. However, we have set out those considered most relevant below.

4.1 Strengths

- The opportunity arising from generational change in the public sector brought about by the ageing of staff, which will make it possible to select new personnel based on the principles of publicity, merit, professionalism and political independence to promote the cultural change required to modernise internal control.
- Taking advantage of the knowledge and experience of the current internal control bodies as an asset to enhance the capabilities of the new personnel.
- Taking advantage of the approval of the NIA-ES-SP in accordance with the ISA to standardise and enhance the control procedures for institutional public-sector bodies, both whether they are subject to public law or commercial legislation.

³² Spain. *Ley Orgánica 2/1982, de 12 de mayo, del Tribunal de Cuentas* (Official Gazette of the Government of Spain no. 121, 21/5/1982). *Ley 7/1988, de 5 de abril, de Funcionamiento del Tribunal de Cuentas* (Official Gazette of the Government of Spain no. 84, 7/4/1988).

³³ Spain. *Real Decreto 2188/1995, de 28 de diciembre, por el que se desarrolla el régimen del control interno ejercido por la IGAE* (Official Gazette of the Government of Spain no. 22, 27/1/1996).

- The possibility of the electronic case file allowing the integration of the auditing and financial control requirements associated with the auditing function.

4.2 Weaknesses

4.2.1 Weaknesses related to the public sector as a whole

- The lack of an adequate control environment in administrations and the dependent institutional public sector and the delay in developing the self-regulation of institutional integrity frameworks (Jiménez, 2017, 40-42).
- Difficulties in approving public policy mandate programmes linked to multi-year budgetary planning, four-year investment programmes and action and funding programmes with objectives and monitoring indicators in accordance with tax policies and external financing, which make it possible to produce control models that facilitate the adoption and correctness of decisions and compliance with the objectives set in the LOEPSF.
- Difficulties in providing organisations with professional public management due to deficiencies in staff recruitment systems and the tendency for management positions to be filled based on political trust without following the principles of publicity, merit and ability stipulated in the Basic Statute of Public Employment.
- Difficulty in approving programming instruments such as the Annual Regulatory Plan, the Contracting Plan and the Strategic Subsidy Plan with objectives and results indicators that may be integrated in action planning by internal control bodies.
- Absence of specific officers who supervise internal control such as compliance officers or auditing committees in commercial organisations.
- Weakness in internal control agencies which, lacking resources, do not achieve effective results.³⁴
- Lack of protocols standardising and systematising internal control procedures and verifying compliance.
- Difficulties in the public sector implementing adequate computer tools to integrate internal control with the electronic case file, the accounting information system and corporate risk management (CRM) systems across the entire organisation that periodically and swiftly report reliable information to the organisation for decision-making.
- Ageing staff and lack of systematic and compulsory training programmes concerning crosscutting issues: legal, procedures, organisation, information and communication technologies, leadership, etc.

4.2.2 Specific weaknesses related to control of economic and financial management of auditing bodies

- Failure to adequately fill vacancies with civil servants with national qualification (FHN in Catalan), which gives a distorted image of the profession in the local public sector.
- Lack of technical and human resources to strengthen ongoing financial control aimed at effectiveness and efficiency, without that being to the detriment of the auditing role aimed at control of legality, as well as increasing the scope of public auditing to dependent bodies without technical assistance from supra-municipal organisations to small municipalities.

³⁴ One example is the State Agency for the Assessment of Public Policies and Quality of Services (AEVAL), which has been replaced by the Institute for the Assessment of Public Policies with the rank of an undersecretariat.

- Limitations on auditors performing internal control functions, principally in small and medium-sized local bodies, if organisation of internal control is not supported by the organisation's senior managers.³⁵
- Failure to implement financial control of public revenue, because the management and collection of taxes by local bodies has been delegated to supra-municipal organisations.

4.3 Opportunities

- Complying with social demands for improvement in institutional integrity, internal control and accountability in the public sector.
- Taking advantage of the legislative changes approved by the LCSP, LRJSP and transparency laws³⁶ to strengthen internal control mechanisms.
- Taking advantage of new technologies and implementing the electronic case file in order to incorporate these internal management control procedures across the entire organisation and promote the modernisation of controls.

4.4 Threats

- Political, technical and human resistance to change.
- Technological difficulties and budgetary restrictions on implementing technological tools for integrated internal control.
- A profusion of regulatory changes that may hinder change.

5 Proposals for the improvement of internal control in the public sector

- Implement an integrated internal control model such as that proposed by the Spanish Institute of Internal Auditors (IAIE) in the document *Aplicación del Marco Integrado de Control Interno (COSO) en el Sector Público español* (2016), which incorporates a methodology making it possible to identify the steps that a public administration must take to put the COSO III control model into effect with the objective of supporting the organisation's management and provide it with tools that allow it to supervise and assess compliance with the objectives of previously planned and defined public policies so as to achieve levels of good governance that can correct the weaknesses and threats set out in the previous sections.

The IAIE model views internal control in the public sector “as a process integrated into management that includes all of the agents in the corporation, starting with the senior managers”, without neglecting the scope of responsibility already developed by prestigious internal and external supervisory bodies, such as the Court of Auditors, IGAE, the general intervention bodies (regional internal control authorities) and service inspectorates, with the corresponding auditing or judicial function.

- Publish all of the internal control results on the webpages of the various public-sector administrations.
- Make the administrations' management bodies aware of the obligation to produce an annual action plan containing the measures to be adopted to correct the deficiencies that the auditing body stated in the summary report for the previous financial year and publish it.

³⁵ See the Court of Auditors reports no. 1260/2018 and no. 1326/2019 and the Report by the Public Audit Office for Catalonia no. 30/2018.

³⁶ Spain. *Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno* (Official Gazette of the Government of Spain no. 295, 10/12/2013). Catalonia. *Llei 19/2014, de 9 de desembre, de transparència, accés a la informació pública i bon govern* (Official Gazette of the Government of Catalonia no. 6780, 31/12/2014).

- Improve the auditing function by making it more agile and strengthening prior limited auditing, integrated in the electronic case file, embedded in accounting management and revenue management systems and in GRC.
- Improve financial control by establishing procedures based on risk analysis defined for different management areas: human resources, contracting, town planning, funding, revenue management, financial planning and compliance with the LOEPSF.
- Implementing formulas for collaboration between internal and external control bodies with action standards conducive to a single audit.
- Raise the profile of accounting (Miaja, 2019: 85-98; Fernández Ajenjo 2011: 8-19) in integrated control processes and analytical accounting as a management tool for analysing the result of political policies in order to move beyond analysis of budgetary results.
- Create a public inventory of public-sector internal control reports to improve transparency.

6 Conclusions

There has traditionally been separation between management procedures and their control by the managers of superior bodies and management bodies in the public sector and internal control carried out by central, regional and local public-sector auditing bodies. The failure of internal control mechanisms to detect cases of corruption reveals the deficiencies of this way of proceeding and the need to implement integrated frameworks of internal control such as those advocated by COSO III, which has inspired major reforms to commercial legislation that have improved the internal control of companies and have also been incorporated by INTOSAI and IGAE in ISSAI and NIA-ES-SP.

This is an important step forward. However, in order to effectively put an integrated control framework in the public sector into practice, a thorough reform of the culture of public administrations and the institutional public sector is required. This should start with management and control procedures for public policies, for which the senior bodies and management bodies in the public sector are responsible. This should be followed by modernisation of the procedures used by internal control bodies which, without leaving control of legality behind, must focus more on control of effectiveness and efficiency.

The public sector undoubtedly has a good opportunity for improvement in order to achieve an integrated and transparent internal control model in response to citizens' demands which, with the focus on effective accountability, may become one of the fundamental pillars in the fight against corruption, which holds back the good operation of administrations and causes great harm to society and economic development.

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